PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

PENSION SCHEMES BILL [*LORDS*]

Fourth Sitting

Thursday 9 February 2017

(Afternoon)

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PBC (Bill 125) 2016 - 2017

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not later than

Monday 13 February 2017

The Committee consisted of the following Members:

Chairs: † Ms Karen Buck, Andrew Rosindell

† Black, Mhairi *(Paisley and Renfrewshire South)* (SNP)
† Blackford, Ian *(Ross, Skye and Lochaber)* (SNP)
† Brine, Steve *(Winchester)* (Con)
† Courts, Robert *(Witney)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Elmore, Chris *(Ogmore)* (Lab/Co-op)
Fovargue, Yvonne *(Makerfield)* (Lab)
† Greenwood, Margaret *(Wirral West)* (Lab)
† Harrington, Richard *(Parliamentary Under-Secretary of State for Pensions)*
† Harris, Carolyn *(Swansea East)* (Lab)
† Heaton-Jones, Peter *(North Devon)* (Con)
† Knight, Julian *(Solihull)* (Con)
† Mackinlay, Craig *(South Thanet)* (Con)
Mills, Nigel *(Amber Valley)* (Con)
† Smith, Royston *(Southampton, Itchen)* (Con)

Ben Williams, Clementine Brown, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 9 February 2017

(Afternoon)

[Ms Karen Buck *in the Chair*]

Pension Schemes Bill [*Lords*]

2 pm

Ordered,

That the Order of the Committee of 7 February be amended as follows: in paragraph (2), leave out "new Clauses" and insert "new Clauses 8, 11, 12 and 13; remaining new Clauses".—*(Steve Brine.)*

The Chair: I understand that following the debate this morning, Mr Blackford no longer wishes to move new clause 8. Is that correct?

Ian Blackford (Ross, Skye and Lochaber) (SNP): That is correct.

New Clause 11

Asset protection for unincorporated businesses

"The Secretary of State must, by regulations, make provision to amend section 75 of the Pensions Act 1995 in order to protect unincorporated businesses at risk of losing their personal assets including their homes."—*(Ian Blackford.)*

Brought up, and read the First time.

Ian Blackford: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

New clause 12—*Review of actuarial mechanisms for valuing pension scheme liabilities*—

"Within six calendar months from the day on which this Act comes into force, the Secretary of State must conduct a review of the actuarial mechanisms used to value pension scheme liabilities under section 75 of the Pensions Act 1995."

New clause 13—*Non-associated multi-employer schemes: orphan debt*—

"The Secretary of State must, by regulations, exclude from the calculation in section 75 of the Pensions Act 1995 the orphan debt in any non-associated multi-employer scheme."

Ian Blackford: It is a pleasure to serve under your chairmanship, Ms Buck. I thank the Committee for its assistance in taking new clauses 11 to 13 earlier than planned.

New clause 11 would help to deal with an issue facing plumbers in Scotland. Plumbing Pensions (UK) Ltd was established in 1975 to provide pensions for the plumbing and heating industry UK-wide. The scheme is managed by a group of trustee directors appointed from nominees of the Association of Plumbing and Heating Contractors in England and Wales, the Scottish and Northern Ireland Plumbing Employers Federation and Unite the union. The scheme has more than 36,000 members and assets in excess of £1.5 billion.

Under section 75 of the Pensions Act 1995, employers may, in certain circumstances, become liable for what is known as a section 75 employer debt. That debt is calculated on a buy-out basis, which tests whether there would be sufficient assets in a scheme to secure all members' benefits by buying annuity contracts from an insurance company. Legislation specifies that a section 75 employer debt becomes payable when an employer becomes insolvent, winds up, changes its legal status or ceases to have any active members in the scheme. Although we must be mindful that the purpose of those rules is to protect pension benefits, the way they are currently framed creates problems for some stakeholders, and we are sympathetic to SNIPEF's concerns, which I know it has also raised directly with the Minister.

The solution is not clearcut. There are several options for the Government to consider, but each has complications for pension schemes, employers and scheme members. We urge the Government to balance employers' interests with the need to protect benefits for scheme members. The previous Pensions Minister, who sits in the House of Lords, indicated that she would look closely at how a solution to this complex issue could be reached. We need the same assurances from the current Minister that the Government will work to find a solution for the industry. They could use the Bill to bring forward such a solution.

SNIPEF aims to achieve an amendment to the section 75 debt legislation. Its main concern is for unincorporated businesses where people risk losing their personal assets, including their homes. It wants the Government to review the actuarial methods that are used to value pension scheme liabilities, as it believes that given the current economic conditions, the calculation of section 75 employer debt on a full annuity buy-out basis is inappropriate and detrimental to non-associated multi-employer schemes.

SNIPEF argues that orphan debt in any non-associated multi-employer scheme should be excluded from the calculation of section 75 employer debt. It also suggests that, provided that schemes are deemed to be prudently funded, the Pension Protection Fund should act as guarantor of last resort for orphan liabilities. SNIPEF believes that any changes in legislation should apply retrospectively to all employers from 2005. It would be helpful to hear the Government's view on that request.

As I mentioned, SNIPEF recently met the Minister, and it has advised several MPs that he confirmed that those objectives could be incorporated in a Green Paper, but I want to use the opportunity of the Bill to address these matters. We are eager to hear whether the Government intend to include a solution in the Bill, and I look forward to the Minister's comments.

The Parliamentary Under-Secretary of State for Pensions (Richard Harrington): It is appropriate, given the temperature in which we are working, that plumbers are mentioned. I only wish that some of them were in the Public Gallery to make repairs so that hon. Members would not have to wear their coats.

I joke about that, but I accept that this is a serious matter. When it was brought to my attention, it was my duty and pleasure to meet representatives of not just the plumbers but others. The Government are not ignoring the issue. Although some stakeholders have run an effective public campaign, as is their right, it was the job of the Department for Work and Pensions anyway to get to grips with this, despite the fact that MPs have contacted us individually, such as the hon. Member for Ross, Skye and Lochaber—

Ian Blackford: Well done!

Richard Harrington: Thank you. I have finally got it. I shall provide tuition for other hon. Members.

This issue is important. For the record, I should remind hon. Members who are not as familiar with it as the hon. Member for Ross, Skye and Lochaber why the employer debt legislation is in place. It is to help ensure that members of salary-related occupational pension schemes receive the pensions they worked for and have been promised when their own employer cannot provide them. I think everyone would agree that that is a noble aim. Were that not a rule, it would have led to even more difficulties.

When I see representatives of those in such positions, I try to think about this key question: if they are not responsible for the debt, who is? Someone has to be responsible for it. As hon. Members will have picked up from the hon. Gentleman's speech, people who have been working quite properly and, typically in this field, running their own businesses find themselves with—I do not know what the legal term is—a contingent liability that could be called upon. It is not as though they have received an invoice or a demand, or people have been banging on the door to repossess something, but it is understandably on their minds that that could and might happen, which is a serious matter.

Ian Blackford: That is exactly the point. We are talking about often small businesses that have done the right things in making sure their employees are protected and have adequate pension provision, but there is a sword of Damocles hanging over them with the worry and uncertainty, caused purely by this debt, that they may lose their businesses and houses.

Richard Harrington: I accept the hon. Gentleman's point. We all agree there is a problem. I do not see how anyone could disagree with that. These people are simply in an unfortunate position, but the Government have to decide, "If not this, what?" and "What are the alternatives?" The hon. Gentleman said, as the groups involved have, that the debt should be passed to the Pension Protection Fund, which everyone would agree has been a very successful mechanism. We mentioned the Maxwell case before lunch. The PPF was intended to deal with failing schemes. It is paid for by the levy payer—by all the successful pension schemes—and I am sure they complain because it is a significant amount of money, but everyone would agree that it has been successful.

In this case, we would place an unfair burden on the PPF, because we are not talking about failing schemes. Many of them are successful and proper. That is why I mentioned a contingent liability. If it is your liability—I do not mean yours, Ms Buck, but anyone's—it is real to you. It is not quite as real as having an invoice or a demand, but it is there all the time. I do not deny that. However, passing the debt to the PPF would place an unfair burden on the PPF and its levy payers.

Like so many issues facing defined-benefit schemes, the problem is complex and finding a solution is difficult. I accept that it is for the Government to address it. That is what we are elected and paid for. But like everything else in government, there is not an instant, easy solution. It is worth highlighting the fact that the Government have already made significant changes to the legislation in response to representations made by some employers. A number of mechanisms have been made available in employer debt regulations whereby only part of the debt or none may be payable. There are eight such mechanisms in legislation. A wide variety of circumstances can arise, because there are a lot of diverse scheme structures. The best example, which has been discussed with the plumbers and those making similar representations, is flexible apportionment arrangements, which permit an employer debt attributable to the departing employer to be shared among the remaining employers. That sounds attractive, but it is part of a triangle of previous employers, remaining employers and the PPF—it is about which of them gets kicked with this liability. Each group is obviously going to be in favour of the others getting it. I say that not to cast any aspersions or to make a value judgment, but it has to go somewhere, and in the end that is for Government to decide. On the face of it, however, that would be such a solution.

New clause 11 calls specifically for a change by regulations to the employer debt legislation in the Pensions Act 1995. It is aimed at providing protection for the owners of unincorporated businesses. Many of the plumbers who have made representations happen to be self-employed because that is the structure of their business, but they are not self-employed and running a large business. They just happen to be a business owner who is self-employed. A mandatory provision to protect one group of employers from their responsibility for an employer debt, for which there may be personal liability, again boils down to that debt needing to be met in some way by others in order to safeguard members' pensions. It is true to say that such an approach would also conflict with existing employer debt provision that recognises the wide range of employers who participate in occupational pension schemes. It does not differentiate between different types of business structure in relation to employer debt duties.

Secondary legislation, in the form of the 2005 employer debt regulations, already includes a range of mechanisms to facilitate the management of an employer debt when an employer ceases to employ active members of a pension scheme. The regulations operate so that in some circumstances, only part of the debt or no debt may be payable. Those regulations are currently under review. We had a call for evidence about the operation of employer debt legislation in non-associated multi-employer schemes. We needed to call for evidence because there are losers and winners. It is the role of Government to try to assess interests, and some form of judgment has to be made. This area of legislation is extremely complex, and we have to check and consider things carefully.

I reiterate that we are not kicking the can down the road—it is not that we do not want to make a decision. It is a complex issue, and we are looking to consult on specific proposals in the very near future. In any case, a whole range of new proposals might come about in our Green Paper on defined-benefit schemes. If I say the release of that Green Paper is imminent, that could mean anything from tomorrow onwards, but it will be very soon.

Ian Blackford: I think the Minister will accept that I am trying to be helpful to the Government in trying to find a resolution to this situation. Let us look at the wording of new clause 11 again:

"The Secretary of State must, by regulations, make provision to amend section 75 of the Pensions Act 1995 in order to protect unincorporated businesses at risk of losing their personal assets including their homes."

I would be content if we could get an assurance that the Government are willing to work together with us to solve this problem. The Green Paper will be coming forward, and I appreciate that the Minister has said he is prepared to look at this matter and see whether there is a resolution that can be found that would not have any unintended consequences,. I seek assurance from the Government that that will be the case. I know the Minister cannot be too prescriptive about the Green Paper at this stage, but I hope there is willingness to ensure that these issues of actuarial valuations will be taken into account in it.

The Chair: Order. I remind hon. Gentleman that he is making an intervention, not a speech.

Ian Blackford: Sorry, Ms Buck; I will sum up. I am trying to get to a consensus, so that we can work together on this.

2.15 pm

Richard Harrington: I think I understand the hon. Gentleman's intervention; I accept that he did not mean it to become a speech, but I think it did. He knows, because I have told him privately, that it is the Government's intention to resolve this issue. I have stated many times that I cannot go into what will be in the Green Paper. I also cannot accept that the new clause should be included in the Bill, because we are not ready for it. We do not have a solution; there is no simple solution.

The hon. Gentleman has been involved, not actually in this issue but in many others to do with asset management and financial services, and knows that everything is more complex than it first appears. I have accepted that there is a problem, I have mentioned that there are different entities that have to deal with it, and I have accepted that we have to try to reach a solution—by consensus, I hope. However, I cannot give him that good news today; I have to resist the new clause being added to the Bill.

Craig Mackinlay (South Thanet) (Con): It is a pleasure to see you in the Chair and to serve under your chairmanship, Ms Buck. The experience of the hon. Member for Ross, Skye and Lochaber comes through very clearly.

I hope I can offer some help to the Committee. I realise that this is a complex area, but the hon. Gentleman's new clause does not actually encompass the extent of the problem, which goes further. Under the old rules—extra-statutory concession C16 on the winding-up of companies, which was used widely until 2012—a group of directors or owners could wind up a company using a very informal method, but that did not cease their liabilities to that company. That liability extended for 20 years afterwards. That was then formalised under section 1030A of the Corporation Tax Act 2010, which gave a statutory basis to the informal winding up of companies with assets of less than £25,000. That provision is still used very widely. Directors or owners of such companies being wound up under that statutory method could still face 20 years of future liabilities, so although the hon. Gentleman has identified a problem in the system, it does not just apply to unincorporated associations.

The effect of the section 1030A of the 2010 Act, which came into force on 1 March 2012, is that directors and owners of slightly larger companies are going down the route of a formal liquidation, which terminates their liabilities for ever more. However, hundreds—if not thousands—of old, smaller companies using the old extra-statutory concession will still be caught by a section 75 notice. This is a very wide issue that does not apply only to unincorporated associations, so I do not think the hon. Gentleman's new clause is enough to close down his concerns on future liabilities. Personally, I accept the Minister's assurances, but I think this is the start of a wider debate as to how those liabilities can be cut down.

In the hon. Gentleman's new clause 12, there is a problem with determining the proper value of a pension liability. It is not as sharp as just the transfer value that is often given, and we will need in future to be a little bit cleverer in how we actuarially assess pension liabilities.

Ian Blackford: On the basis of the Minister's response, I will certainly not push the new clause to a vote. We have received assurances that the Government will look at these issues; I hope they will not only be addressed in the Green Paper, but that there is the possibility of legislation as a result of that. I think we all recognise—there is a consensus on this—that we have to make sure we can resolve this problem for the benefit or incorporated and unincorporated businesses. On that basis, I will happily leave things as they are for now. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 2

Investment Strategy

"(1) A Master Trust, after taking proper advice, formulate an investment strategy which must be in accordance with guidance issued from time to time by the Secretary of State,

(2) The Trust must consult scheme members on—

(a) the Trust's assessment of the suitability of particular investment and types of investment;

(b) the Trust's approach to risk, including the ways in which risks are to be assessed and managed;

(c) the Trust's policy on how social, environmental, and corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments;

(d) the Trust's policy on the exercise of the rights (including voting rights) attaching to investments; and

(e) the right of scheme members to consider non-financial issues relating to their investments and be consulted on these issues.

(3) The Trust must review the strategy at least once a year, and revise if appropriate

(4) The Trust must revise the strategy at any time if there is any significant change to the information included in it.

(5) In the event of (4) above, the Trust must consult with scheme members, and the revise the strategy in the light of comments made.

(6) The Secretary of State may make regulations with a view to ensuring that the information disclosed under subsection (1) is provided in a timely and comprehensible manner.”.—*(Alex Cunningham.)*

A Master Trust must include an investment strategy which outlines what the Master Trust should consult scheme members on in areas of investment.

Brought up, and read the First time.

Alex Cunningham (Stockton North) (Lab): I beg to move, That the clause be read a Second time.

Welcome to our walk-in fridge, Ms Buck. I had a discussion with the Government Whip, the hon. Member for Winchester.

Richard Harrington: On a point of order, Ms Buck. Actually, I do not know whether it is a point of order or a point of clarification. Before we come to the hon. Gentleman's new clause, am I correct in saying that new clauses 11, 12 and 13 were all withdrawn?

The Chair: New clauses 12 and 13 were not called.

Alex Cunningham: I was talking about the conversation that I had with the Government Whip about whether we should invoke the Factories Act. He reminded me that, unhelpfully, said law does not apply to the Palace of Westminster. The Minister mentioned kicking a can, and I remember playing kick the can in the street as a young boy. Perhaps you can provide us with a can, Ms Buck, and we can have a game after we debate the next new clause to warm ourselves up.

New clause 2 continues our theme of transparency and member engagement. It is designed to improve the way that master trusts consult their members about their investment strategies and ensure that members are aware of the guidelines that trustees establish for the management of members' assets. The new clause would modernise the approach to fiduciary—I find that word even more difficult to say than “Lochaber”—management of savers' assets and update the statement of investment principles approach currently required of master trusts. A master trust would have to have an investment strategy and consult scheme members about that strategy and about socially responsible investment—commonly known as environmental, social and governance issues.

Until now, every occupational pension scheme has been legally required to prepare and maintain a statement of investment principles, which is expected to cover the trustees' plans for securing compliance with their statutory duties, their policies on investments, risks and returns, and how they will exercise their voting rights. In short, it allows trustees to consider factors that they believe will influence the financial performance of their investments and consult members about those issues. As long as pension funds can show that any investment or policy decision was made on a fiduciary basis and members were consulted, they can avoid the charge that they have not considered members' best interests.

Public opinion tends to position the average citizen as a helpless bystander in this drama, but in fact it is their money that underpins the entire system. Anyone with a pension is, indirectly, an owner of Britain's biggest companies. The new clause seeks to create a world in which people feel that their savings give them a positive stake in the economy and a voice in how the companies in which they invest are run. Although we may hope or even expect that scheme members have a say, the reverse is true: power has become increasingly concentrated in the hands of a relatively small number of opaque and unaccountable financial institutions. As the Kay report showed, those institutions often face systematic pressures to act in ways that may not serve savers' interests. Direct accountability to savers is a vital component of a healthy economic and financial system. As millions more savers are about to enter the capital markets through pensions auto-enrolment, now is the right time to build a more accountable system.

In June 2011, the Government invited Professor John Kay to conduct a review of UK equity markets and long-term decision making. The Kay review considered how well equity markets were achieving their core purposes—to enhance the performance of UK companies and enable savers to benefit from the activity of those businesses through returns to direct and indirect ownership of shares in UK companies. The review identified that short-termism is a problem in UK equity markets. Professor Kay recommended that company directors, asset managers and asset holders should adopt measures to promote both stewardship and long-term decision making. He stressed in particular:

> “Asset managers can contribute more to the performance of British business (and in consequence to overall returns to their savers) through greater involvement with the companies in which they invest.”

He concluded that adopting such responsible investment practices would prove beneficial for investors and markets alike. In practice, responsible investment could involve making long-term investment decisions, as well as playing an active role in corporate governance by exercising shareholder voting rights.

I hope that master trusts will want to consider the Kay review's findings when developing their proposals, including what governance procedures and mechanisms are needed to facilitate long-term responsible investing and stewardship through the funds that they choose for members to save into. The UK stewardship code published by the Financial Reporting Council also provides master trusts with guidance on good practice in monitoring and engaging with the companies in which they invest. The new clause would ensure sure that trustees are guided by the members of the scheme whose money they invest.

In recent decades, efforts to improve the way companies are run have focused heavily on making directors more accountable to their shareholders—for example, the recent introduction of a binding “say on pay”—but the job is only half done. Ownership rights are exercised largely by institutions that are themselves intermediaries. Accountability to the underlying savers who provide the capital remains weak. The logical next step must be for institutional investors to extend the same accountability they expect from companies to the savers they represent.

The UK stewardship code was introduced in the aftermath of the financial crisis to address concerns that shareholders were behaving as absentee landlords. Rather than being enforced by regulators, it is a voluntary code that relies on scrutiny from below to promote compliance, mirroring the corporate governance code for

[Alex Cunningham]

companies. The investment regulations currently require master trusts to set out within the statement of investment principles the extent to which social, environmental or corporate governance considerations are taken into account in the selection, retention and realisation of investments, but savers are left out of the loop. Just as I have argued for greater engagement with members on other issues, I believe it is needed here too.

In addition, accountability should build trust in the system even among those who do not choose to engage, thus encouraging people to keep saving. That is an important consideration in a market where just 7% of retail investors trust investment firms to do the right thing and consumers cite lack of trust as the No. 1 reason for opting out of private pension saving. Practical objections on the grounds that savers are not interested or not capable of engaging with their money simply perpetuate a vicious circle of disengagement. Savers may be put off by the language of investment, but that does not mean they are not interested in where their money goes. The onus must be on the master trusts and the wider investment sector to communicate with savers in a way they find meaningful. Likewise, savers may lack understanding of the technicalities of investment, but there are many matters on which they are qualified to comment, including the way their scheme behaves as an owner of major companies or its policy on social, environment and governance issues.

Transparency is necessary, but not sufficient for a more accountable investment system. Savers must also have the right to engage directly with decisions about their money, in the same way that shareholders engage with companies. Of course, we are not suggesting that all savers should be consulted on every decision. In our view, engagement with savers has three key elements. Savers should have the right to be consulted about investment policies, particularly those that should be firmly grounded in the views of savers, such as socially responsible investment policies. It is sometimes argued that since savers will inevitably disagree, acting on their views can prove difficult, but that objection can be refuted by example: schemes such as the National Employment Savings Trust demonstrate the possibilities of using face-to-face engagement with savers to inform the development of policy. Savers should be able to subject decisions made on their behalf to healthy scrutiny and challenge. While companies are obliged to hold annual meetings at which the board accounts to their shareholders, no such requirement extends to pension schemes.

Making capital markets more answerable to the individuals whose money they invest offers a potential lever for rebuilding trust in the City and for promoting more responsible and long-termist corporate behaviour. Such accountability must be nurtured over time by institutional investors such as master trusts, other pension savers and civil society in general. As Mark Carney said back in 2013, if it is

"finance that becomes disconnected from the economy, from society, finance that only talks to itself and deals with each other, that becomes socially useless."

We have an opportunity here to change the landscape that sees pension savers as passive uninterested participants by engaging with them on decisions that affect their lives. When I started this speech, I said I was continuing the theme of member engagement. The new clause would extend what currently happens in relation to investment decisions, and I commend it to the Committee.

Ian Blackford: Before the hon. Gentleman concludes his speech, I wanted to ask about subsections (3) and (4) of the new clause, which state:

"The Trust must review the strategy at least once a year…The Trust must revise the strategy at any time if there is any significant change to the information".

Can he explain what form that review would take and what role investment advisers would have, if any, in that review?

Alex Cunningham: That is an extremely difficult question to answer. *[Interruption.]* Everyone can laugh, but the Government talk about regulations and laying down guidance, and I hope that they would be able to provide the necessary guidance.

2.30 pm

Ian Blackford: This is actually a very serious point. The hon. Gentleman's new clause would require an annual review, so it is pertinent to ask how that would be conducted and what role, if any, investment advisers would have.

Alex Cunningham: There has to be a role for investment advisers, but the crux of my point is that members should have some say in the investment decisions that affect them.

Ian Blackford: Can I deduce from that that the hon. Gentleman actually has no idea how such reviews should be conducted?

Alex Cunningham: That is not exactly the case. It is clear that we need a set of circumstances in which members are properly engaged, equipped and informed. If they are, they will be able to contribute.

Craig Mackinlay: I oppose new clause 2 just as I opposed new clause 1, not least because of practicality. Let us go back to the example of NEST, which could have millions and millions of members—and I envisage that it probably will. How on earth could an investment strategy be decided by 3 million members? That would probably lead to three million and one different investment strategies.

I do not see anything in the Bill that would prevent a scheme such as the one the hon. Gentleman proposes from coming to the market if there was demand for it from several employers and members in those employers. The market could then decide, "I like the look of that scheme, with its huge member involvement." I see no reason why such a scheme could not evolve if one was called for.

The hon. Gentleman speaks about an ethical investment policy. That is all very well, but I remind him that the Co-op bank took a similar route, and it is not exactly in great shape. I put it to him that when I go to a doctor, I like to see the doctor; I do not particularly want to see the lay members of the NHS trust as well. I feel comfortable leaving this with investment professionals, because they will be judged on their performance. If they do not achieve, employers may look at an alternative master trust.

Julian Knight (Solihull) (Con): Surely when picking a pension fund employers interact with funds and many of these issues are raised in those interactions.

Craig Mackinlay: As my hon. Friend says quite clearly, the results will speak for themselves. I come back to the principles that I mentioned earlier: the fund has to have good returns and be well run and focused, because it has one function—to deliver good pensions. Again, I do not see that the new clause would achieve any of those principles, and if nothing else, it is unworkable because of the size of funds.

Richard Harrington: I absolutely agree with my hon. Friend; member engagement and involvement sounds very good—it is a laudable objective—but I have been around for nearly 60 years, of which I was in business for nearly 30, and I do not feel qualified to assess an investment strategy. I say that not to insult the vast majority of people, but because, although independent financial advisers and accountants may be able to do that, it is almost impossible for an individual to do so. We have to look at a way of ensuring that the investment strategy is the correct one for the majority of members, and that the regulatory system, the supervisory system and so on are in place. Hon. Members mentioned NEST, which already has more than 4 million members and 230,000 employers. This idea is very interesting but not at all practical.

I remind hon. Members that trustees play a key role in managing assets. They have overall accountability for the investment strategy. They have a legal duty; the hon. Members for Stockton North and for Ross, Skye and Lochaber—I can just about manage to say that now—used the expression "fiduciary duty," and the trustees have a fiduciary duty to the members.

Laudable as new clause 2 is, pensions legislation already includes requirements for investment decisions to be transparent and in the best interests of members. The Government fully recognise the possible impact of investment decisions on members' retirement outcomes. Even without the new clause, the Bill will add to those requirements. Clause 12(4)(d) already sets out that regulations made by the Secretary of State

"may include provision about…processes relating to transactions and investment decisions",

while clause 12(2) states:

"In deciding whether it is satisfied that the systems and processes used in running the scheme are sufficient…the Pensions Regulator must take into account any matters specified in regulations".

The new amendment would duplicate the provisions for master trust schemes that already exist under the Occupational Pension Schemes (Investment) Regulations 2005. The regulations require trustees of all schemes with 100 or more members to set out a statement of investment principles for their scheme. That statement must be made available to members on request and

"must cover…their policies in relation to…the kinds of investments to be held…the balance between different kinds of investments…risks, including the ways in which risks are to be measured"

and other key issues. The trustees must ensure

"that the statement of investment principles…is reviewed at least every three years…and without delay after any significant change in investment policy."

Most people who are automatically enrolled into pension schemes are likely to remain in their scheme's default fund and will not actively engage themselves in the governance of the scheme. That is why legislation makes requirements about governance and oversight of these matters, and why most schemes, including master trust schemes, need to provide a default strategy that covers similar areas.

Finally, multi-employer schemes have a legal duty under the Occupational Pension Schemes (Scheme Administration) Regulations 1996 to make arrangements to encourage members of the scheme or their representatives to report their views on matters that relate to the scheme, including areas about which the new clause proposes that the trustees should consult scheme members.

Ian Blackford: I am listening carefully to the Minister, and I broadly agree with him. Obviously there will be ongoing reviews of investment strategy, which should be communicated to members where appropriate. One way in which that could be done, as a matter of best practice for these schemes, would be for a statement of investment principles to be mailed to members as part of the annual report. That would give more clarity on the direction of travel of the fund's investments.

Richard Harrington: As usual, the hon. Gentleman makes a very sensible suggestion, which should be considered. However, I believe that everything in the new clause is already included in legislation and that it is therefore unnecessary, so I urge the hon. Member for Stockton North to withdraw it.

Alex Cunningham: Let me first address the point about size and the ability to organise communications in this sort of situation. If Legal & General can do it, so can others.

The Minister described lots of ideas raised today as laudable. Sadly, all the ideas he supports exclude members. He rejects the idea of members being represented among trustees and the idea of member-nominated directors. His position is that everything should be left to professionals and to the marketplace, and that members may not be able to take part in or understand investment decisions. He admitted that he might not understand those decisions, but there are members out there who do, and it would be helpful if at least some of them could represent their fellow members and challenge some of the things that their trustees are doing.

One further point concerns me. An employer may opt for a particular trust but become dissatisfied with it and move. There are a very large number of employers, and I fear that a large number of them are disengaged. I wonder whether they are acting in the best interests of their employees. I will come to that during the debate on a later amendment. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 3

Annual Member Meeting

"(1) The trustees of an authorised Master Trust Scheme must hold an annual meeting open to all members of the scheme.

(2) The Master Trust must take all reasonable steps to make the meeting accessible to all members, this includes making arrangements for—

(a) scheme members to observe the meeting remotely, and

(b) scheme members to submit questions to trust members remotely.”.—*(Alex Cunningham.)*

This new clause requires Master Trusts to hold an Annual Member Meeting, and sets out ways to ensure members are properly given the opportunity to be involved.

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

This new clause takes us back to our member engagement theme. It would require master trusts to hold an annual member meeting, and it sets out ways to ensure that members are properly given the opportunity to be involved in that. It is now common practice for pension funds to hold an annual member meeting. Good member communications, provided at the right time and in an accessible format, are vital if members are to engage and make decisions that lead to good outcomes during their retirements. An annual member meeting ensures that trustees and administrators can be made human and accountable.

A Legal & General master trust annual report states:

“In September last year we hosted a Members’ Forum at Legal & General’s office in London. It wasn’t just a first for us, it was the first ever for any scheme like ours. We got a lot out of that meeting, and we hope that those members who attended did so too. Our aim was to get a better understanding of the things that matter most to members, to help inform our plans for the future. We believe we achieved our aim, and the feedback we got from those members was encouraging.”

I am not here to promote Legal & General, but I commend its attitude and its work in this arena.

Trustee boards should regularly review member communications, and when deciding on the format of those communications, should take account of innovations of technology that may be available to them and appropriate for their members. That would allow the more engaged members to hear a presentation from trustees and senior executives about how the scheme has managed their retirement assets over the previous year and what plans the scheme has to deliver a strategy and manage risk into the future on their behalf. If Legal & General can organise such an event, I think others can too—even if they have vast numbers of members.

If others do not do what Legal & General did, how could they have an annual forum? We must not forget that there is no necessity to fill a hall with thousands of people in this technological age. It is possible to reach more people perhaps by combining a live meeting with an online platform, or indeed to hold the whole meeting online. A recording of the meeting could then be made available on the trust’s website, with an opportunity to give feedback.

The Pensions Regulator’s guidance accompanying its new defined-contribution schemes code of practice highlights AMMs as one way that multi-employer schemes can stay close to members. The new clause would bring master trusts into line with the normal practice in the corporate sector and among the growing number of pension schemes.

Richard Harrington: Again, I find myself having to disagree, not with the hon. Gentleman’s intention, but that this is a practical solution to what he wants to achieve. The new clause would require the trustees of an authorised master trust—it would not be there if it was not authorised—to hold an annual meeting open to all members, even if they cannot attend in person. It is clear what the hon. Gentleman wants.

As I have said—I know it is a bit of standard response, but I reiterate it—we are doing everything in the Bill to encourage member engagement and communication, especially now that the pension freedoms have been implemented. People must have the ability to assess their choice, and part of that is communication with what goes on. As we know, the Bill works alongside the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 and the Financial Conduct Authority rules that set out minimum standards for communication. Those ensure that members have access to appropriate information to make decisions about their pension saving, including an annual benefit statement and, for most people, a statutory money purchase illustration, which gives members a projection of their pension in retirement.

Documents relating to the governance of a scheme, such as the trustees’ annual report, the chair’s statement and the statement of investment principles, have to be provided on request. In addition, the Government have committed to ensuring that the pensions industry builds and launches a pensions dashboard, which is very important and would allow members to see their pension rights with different providers across the pension landscape.

2.45 pm

Schemes are also developing their own methods of communicating with members. The hon. Gentleman has mentioned Legal & General several times and I endorse what he said, with the caveat that it is not the only company that communicates with its members. I have seen a big television campaign at the moment that shows people how to assess Aviva, and I have seen Standard Life’s app. Technology has really helped that kind of engagement. Regarding the new clause, I question whether an annual general meeting is the right way to improve matters. We have already established, for example, that NEST has millions of members from 230,000 employers—and will have a lot more in future. The hon. Gentleman also mentioned Legal & General’s members’ forum. Many firms have such a body. NEST has a members’ panel; the name is different, but it is effectively the same thing—a forum for scheme members to give their views on the scheme to trustees. NOW: Pensions, which is one of several competitors to NEST, is embracing digital communication and has a mobile-enabled website, which I have seen.

Some employers, such as Kingfisher and Tesco, are using mobile apps and games to interest members in their scheme. Those are far more interesting than an invitation to an annual general meeting, which apart from the impracticality of organising it for millions of people, is quite dull, I am sure, compared with the modern and user-friendly way of finding out what is going on. In addition to that, the Pensions Regulator provides detailed guidance for trustees about the standards it expects schemes’ communications strategies to meet to ensure that they communicate transparently with their members. The details of that are on the regulator's website and are quite extensive.

I sympathise with the drive for member engagement and accept that the hon. Gentleman has not tried to turn this debate into a goodie and baddie thing, implying that he is in favour of member engagement and we are not. I think we all agree on the objective; it is a question of how to achieve it. I do not believe that making AGMs mandatory is the answer. Some schemes may want to do that, and that is perfectly acceptable, but complex and expensive logistics will need to be thought out. I agree that some may do it and may use technology very well. It may be that future generations will be able to tap their app and get such a meeting or institution—I do not mean an institution as in a pension fund; I mean the institution of such a meeting. I do not have the technological jargon. That sort of thing would have seemed impossible to do on a screen 10 years ago that we now can.

I want to avoid the situation that the hon. Gentleman wants in which a scheme is obliged to hold an AGM, because the cost will be passed on to the membership and I cannot see that it will achieve the noble objective that the hon. Gentleman wants. I hope the points I have made sufficiently explain why the Government are of the view that the new clause is not appropriate, and I sincerely urge the hon. Gentleman to withdraw it.

Alex Cunningham: I do not have the app jargon either, as the Minister will probably realise. We have talked much about engagement and communication over the past two or three sittings. I remain concerned that there is still no real requirement on the trustees of any of the master trusts to communicate with the people whose money they are responsible for managing. We need to make communications much more practical, and I believe that if member meetings work well for some organisations, they could also work well for master trusts.

I hope that master trusts out there will learn from NEST and from Legal & General, and will understand that member meetings can happen and that they can derive tremendous benefits from their members being much more engaged. I would prefer to see a situation in which it is enshrined in the law and there is a compulsion for people to build on what is already happening out there, to repeat some of it and to see a level of engagement that we have so far not seen, but I do not intend to press the clause to vote at this stage. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 4

Master Trust Schemes: Review of Participation

'(1) The Secretary of State must, before the end of the period of 12 months from the day on which this Act receives Royal Assent, establish a review of participation in Master Trust Schemes.

(2) The review must consider what steps can be taken to increase the participation in Master Trusts Schemes by the following groups—

(a) carers;

(b) self-employed;

(c) workers with multiple employees; and

(d) workers with annual earnings below £10,000."

(3) One of the options considered by the review to improve participation must be changes to the terms of auto-enrolment.'.—*(Alex Cunningham.)*

This new clause reviews options for widening participation in Master Trust Schemes for groups currently facing barriers, in particular groups not currently covered by auto-enrolment.

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

I was pleased to table this vital new clause, which attempts to widen access to master trust saving for those whom this Government have left excluded for too long. As it stands, the Bill does little to build on the success of Labour's auto-enrolment policy and ensure that saving into master trusts is accessible and encouraged for the number of groups that evidence suggests are not saving adequately for their retirement.

I recognise that the Government have announced a review of the operation of auto-enrolment into master trust saving, but its scope is broad, with few specifics in the terms of reference published yesterday. It is vital that the review specifically addresses the question of how we can improve master trust saving among the groups specified in the new clause. That will ensure that the Bill delivers plans that strengthen security and dignity in retirement. The Minister may already be wondering why I am pursuing the new clause when it appears he has the matter in hand. He may have it in hand, but there is merit in naming some of the very specific groups who most need change and in implementing the recommended changes.

It is a testament to the last Labour Government that 10 million additional workers are estimated to be newly saving or saving more as a result of auto-enrolment into master trusts. It has led to an additional £17 billion of pension saving being put away, mostly by low-income workers. Nevertheless, many excluded groups remain, in part due to the actions of this Government, who increased the triggering threshold at which workers were automatically enrolled into a master trust saving scheme. According to the latest Department for Work and Pensions statistics, 37% of female workers, 33% of workers with a disability and 28% of black and minority ethnic workers are not eligible for master trust saving through auto-enrolment. Critically, those groups are over-represented among low earners, the self-employed, those with multiple jobs and carers—the areas we believe that the Government should focus on in their review, as set out in the new clause. I hope they will.

At the end of last year, the Pensions Policy Institute published a report assessing future trends in defined-contribution pension saving. It is worth quoting the following section of the report in full, as it clarifies the current situation. It states that

"the evidence so far suggests that many households will be unable to maintain their current standard of living when they reach retirement. The advent of auto-enrolment has increased the number of workers saving for retirement, with more active savers now in defined contribution (DC) pension schemes rather than defined benefit (DB). This rise in the number of pension savers is a step in the right direction, but DC plans must continue to evolve in order for them to provide savers with an adequate pension."

The report goes on to find that the median saving of DC scheme members could yield £3,000 a year as an annuity, which is not a lot of money.

[Alex Cunningham]

More work needs to be done to improve the adequacy of returns on DC savings, including by looking in more depth at costs and charges, as we have tried to do throughout our consideration of the Bill. Nevertheless, the top-up provided from access to master trust saving through the auto-enrolment scheme is a valuable addition to state pension provision, so it is worth while to ensure that as many low-income groups as possible have access to master trust saving.

I will start with how master trust saving for low-income groups could be improved through the Bill. Taking carers first, while those who leave or reduce their hours of employment to care for loved ones are rightly supported through the social security system, it seems unjust that they will probably miss out on the fuller benefits enjoyed by those who are able to save more into occupational pensions as a result of being able to remain in employment, in spite of the fact that carers engage in valuable labour—work that would otherwise have to be picked up by the state. It is my strong belief that the Government should try to improve the retirement prospects of carers, and master trusts, which have been set up to service large numbers of low-income savers, may be an avenue worth exploring. We would include carers as part of a wider review of groups that are excluded from pension saving.

The same is true of the self-employed. I was personally heartened by the amendment tabled by the hon. Member for Amber Valley. After more than a decade of expansion in that part of the labour market, self-employed people now make up 15% of the workforce. Vast numbers of them are at the very bottom end of the income scale, and there is much evidence to suggest that they are not saving as much as those in other sections of the workforce. Research by the Association of Independent Professionals and the Self-Employed found that four in 10 self-employed people do not have a pension. The New Policy Institute found that the self-employed are not only less likely to participate in pension saving but tend to save less as a whole when they do.

Despite that worrying evidence, there are few obvious means by which the self-employed can begin to build up a savings pot in a master trust. That is just one way in which Britain's entrepreneurs have been let down and ignored. There is no mechanism to manage the enrolment of self-employed people in master trust schemes. Of course, the fact that there is no employer means that, like informal carers, self-employed people's contributions cannot currently be topped up. I do not believe that it is beyond the bounds of possibility for an expert review to look into that conundrum. The Labour party remains the party of working people, including the self-employed, and we are keen to explore how they might be encouraged to save into defined-contribution master trust schemes to ensure that they have the dignified and secure retirement that we believe everyone has the right to.

Perhaps moving closer to the existing system of saving into master trust schemes, there is also the urgent question of people with multiple jobs. Under the current system, those whose earnings exceed the earnings threshold but result from multiple jobs are unable to access auto-enrolment into a master trust scheme. It seems that the only logic preventing that group from accessing savings is the administrative barrier posed by their having more than one employer. In other words, there is no mechanism either to establish total earnings to trigger access to auto-enrolment, or to determine the sponsoring employer of a person working multiple jobs. Although that issue may seem overwhelming to the Government, we believe that it warrants further attention—especially given the way the labour market is changing, with as many as 3 million people estimated to be working multiple jobs just to make ends meet.

I turn finally to access to master trust savings for low-income savers. Under the auto-enrolment policy developed by the Labour party, working people would have been automatically enrolled into a master trust scheme once their earnings had crossed the trigger level of just over £5,000, the logic being that people would begin to save towards an occupational pension at the same earnings level at which they began to pay national insurance contributions. However, the coalition Government increased the earnings threshold to £10,000, denying millions of low earners the automatic right to save towards a relatively low-cost occupational pension through a master trust.

The last annual review of auto-enrolment into master trust savings concluded that the lower earnings threshold will be £5,876 and the trigger threshold will be frozen at £10,000. Although that freeze will bring a few more workers into the scheme through inflation, we do not believe that that is happening quickly enough. Given the generational crisis that is developing in our pensions system, more needs to be done to include low earners in savings provision and encourage retirement planning.

In conclusion, we recognise that the upcoming 2017 review of auto-enrolment presents the Government with an opportunity to take seriously the problem that certain groups are excluded from master trust savings. The new clause would guarantee that the Government engaged with these vital issues and those groups in the full and proper way. To be clear, we are not trying to force the Government to implement specific policy proposals after the Bill's passage, although in the view of our colleagues on the Constitution Committee, that would not be out of step with much of the rest of the Bill. We merely wish to place a statutory requirement on the Government fully and properly to consider as part of their planned review what steps could be taken to widen participation for some of the most vulnerable groups.

I have one very specific question about the implementation of the review's recommendations once it is completed. We talked about this earlier in relation to another matter. Will the Minister have powers under regulations to implement those recommendations, or will we have to wait for another pensions Bill, which is unlikely during this Parliament? The new clause would help to increase the security and dignity of retirement for groups on the lowest incomes. How can the Minister possibly refuse to guarantee that the review will address these important issues and groups?

Richard Harrington: I compliment the hon. Member for Stockton North on his speech. He has quite clearly listened to all the speeches I have made since being appointed to this job. I will point out one or two facts to respectfully disagree with him—and, for once, his style, which I have not done up to now. To make this into a political matter by saying that auto-enrolment was Labour's idea is not really fair. I may be correct in saying that Lord Turner, who chaired the Pensions Commission, was offered a peerage by three political parties and took one from the Liberal Democrats. The other commissioners were Labour and Conservative. I am not being flippant, but the spirit of our debate has generally not been party political at all.

3 pm

Alex Cunningham: I accept that—okay, we are making a few political points. It was a Labour Government who brought in auto-enrolment, but this Government have successfully encouraged more and more people to invest more and more, which is a very positive thing. I place that on the record.

Richard Harrington: That is very reasonable. The hon. Gentleman's general approach—and mine, I hope—has been not to bring party politics into the debate, because we all have exactly the same objectives.

I have one or two further points to make. The hon. Gentleman mentioned women being excluded from auto-enrolment—not by law but in practice—for different reasons. Actually, the number of women being enrolled is very impressive, although I do not have it to hand. I am pleased to say that I do not think that this is a gender equality issue.

The fundamental point is that the issues that the hon. Gentleman mentioned and that his new clause would address were mostly covered by the Secretary of State in yesterday's announcement about the extent of the auto-enrolment review. That was not timed to happen just before this Committee sitting; it is just how things worked out. The review will look at the self-employed, who are excluded from the current system, which has gone from nought to a lot very quickly, after all. It will also look at people with multiple earnings under the £10,000 mark from different sources. Incidentally, people paid less than that—I cannot remember the exact figure, but it is just under £6,000—are allowed to enrol, and they get help from their employer and the tax system, although at that level they would not necessarily pay tax. All these things are being looked at. The review will be very comprehensive and will go far beyond what the statute calls for. I will be very pleased to look at its results.

The hon. Gentleman asked whether implementing the review's recommendations would involve another pensions Bill, which he and Her Majesty have decided we will not be having in this Session. I cannot say, because I do not know what the recommendations are, but some things will need primary legislation and others will not.

Unless the hon. Gentleman has an urgent intervention to make, I will conclude. I have listened carefully to what he said and am glad to have included it all in my speeches, and I am glad that it will all be included in the review.

Alex Cunningham: My final intervention is to raise the very specific issue of carers. Will carers be included in the review?

Richard Harrington: The review is generally worded. It could include carers—they are not specifically mentioned, but I believe that it will include them, and I would encourage it to include them. However, to include them as a category would be a little unfair on others who may be in a similar financial position.

The hon. Gentleman's sentiments are absolutely right, as were most things he said in his speech, but I do not think it is appropriate for the new clause to go into the Bill. It is far too early; we have been doing auto-enrolment for only a short time, and we are doing a comprehensive review. Despite his sentiments, I ask him to withdraw the motion.

Alex Cunningham: I am pleased to have those commitments on the record, particularly those relating to some of the more vulnerable groups. I appreciate that there are other groups apart from carers, as the Minister said, but carers provide a tremendous service that is probably worth billions of pounds to our country every year, so it is important that we have some form of provision for them. The new clause was always going to be a probing clause. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 7

Enrolment in Master Trust scheme: duty on employers

"Before an employer enrols in a Master Trust scheme they must—

(a) take reasonable steps to ensure themselves that the scheme is financially viable;

(b) ensure the scheme is on the list of authorised Master Trust schemes maintained by the Pensions Regulator (section 14); and

(c) take reasonable steps to ensure themselves that the scheme will meet the needs of their employees.".—*(Alex Cunningham.)*

This new clause would require employers to conduct basic checks before signing up to the Master Trust scheme.

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

It is almost as if I am doing an aerobics class; I have already warmed up, even in this cold Committee Room.

New clause 7 would provide employers with a fiduciary duty and a duty of care to members to ensure that the master trust of their choice meets the needs of their staff. The auto-enrolment process in the UK rests on the employer making the choice of scheme for those purposes. The new clause would ensure that, before authorisation, the employer is duty-bound to ensure that the master trust is fit for purpose and has all the necessary information for that choice to have a sound footing.

We need to ensure that the employer has a defined duty to carry out due diligence when choosing a workplace pension. Otherwise, many employers—through expediency or otherwise—will continue to make choices that may not be in the best interests of the scheme's beneficiaries.

The past 20 years has seen us lurch from one mis-selling scandal to another. Pension transfers, endowments, payment protection insurance and interest rate swaps have all been subject to class actions, and to massive retrospective penalties being imposed on those found wanting in due diligence.

[Alex Cunningham]

In the US, the employer has a fiduciary responsibility to their staff and chooses their scheme in their best interests. That means that if employers do not take due care in the choice and governance of the plan that they set up for their staff, they are liable to civil prosecution. Employers in the US take fiduciary obligations seriously, not least because scheme members are now taking and winning class actions if they do not.

A class action can focus on the choice of scheme provider, failure to establish suitable investment options and failure to monitor how funds perform as the scheme progresses. Some advisers in the UK, such as Pension PlayPen, think that the information given to employers to choose a workplace pension is insufficient, and that there is little supervision of the due diligence process by regulators, which is in sharp contrast to what happens in America.

The other day, Pension PlayPen stated on its blog:

"The common law includes the concept of an employer's duty of care to staff, not just for their health and safety but for their financial welfare. This duty of care forms part of a social contract, the implicit responsibilities held by individuals towards others within society. It is not a requirement that a duty of care be defined by law.

An additional worry is that employers do not see this as their choice. Too often we get answers from employers 'we did what our accountants told us to'. It is as much in the interests of accountants to ensure the employer states why they have chosen their pension as it is the employer's."

So what happens when the duty of care and fiduciary obligations go wrong? The only option is the courts. According to a *Financial Times* article last November, there has been an "explosion" of class actions in the USA on the issue of financial detriment to scheme members. These suits have not yet gained much public attention, due to the reputation of the US legal system, but it is also partly because the legal action is fragmented and spread between different courts, and cases are often settled in private with binding confidentiality clauses. What is more, pensions have the unfortunate reputation of being rather dull, even though the sums involved dwarf those of the multibillion dollar settlements seen in banking since 2008.

However, the basis of the complaints are sound and echo a warning that we have been making about the lack of transparency and engagement for members of schemes. Members may have been charged excessively high fees, the most noticeable or important point being that the investment process may be used to extract wealth.

As in other financial suits, such as PPI suits, the cases claim that financial organisations have used opaque structures, so that transactions extract money that ought to go to members of schemes. In one case, JP Morgan has been sued by a participant for allegedly causing employees to pay millions of dollars in excessive fees, through a scheme motivated by "self-interest". The plaintiff claims that JP Morgan, as well as various board and committee members, breached its fiduciary duties by, among other things, retaining proprietary mutual funds from the bank and affiliated companies for several years, despite the availability of nearly identical, lower-cost and better performing funds.

Not all of these cases are just related to charges in the investment chain; some are also about administrative processes. A website—401khelpcenter.com—highlights that members of Essentia Health in Minnesota filed a class action lawsuit against the sponsor, claiming that the organisation paid excessive fees to their record keepers.

Craig Mackinlay: The hon. Gentleman has mentioned many times the potential for class action, particularly in the US, on various issues. Does he not believe that having the word "reasonable" twice in the new clause that he has tabled actually becomes a licence for class action, rather than closing it down?

Alex Cunningham: I certainly do not. I am not a lawyer, but I believe that the new clause is sufficient and does not open the way for such action. What I am trying to do is provide a protection for employers within the scheme, and therefore also for members.

The latest complaint was filed in January against Aon Hewitt Financial Advisors, accusing the company of breaching the Employee Retirement Income Security Act 1974, or ERISA. That is the fourth lawsuit to target the fee arrangement for services provided by a computer-based investment advice programme.

The Chair: Order. May I ask the hon. Gentleman to move away from discussing court cases in his comments?

Alex Cunningham: I am doing that now. We have a clear warning that if a company fails in its fiduciary obligation, litigation may be an option. We know from the FCA report that implicit costs are opaque and likely to be much higher than those that have been explicitly presented. We believe that it will not be long before legal teams from the US alert their operations in the UK of potential opportunities for litigation. I can see the adverts on TV now: "Problems with your pension fund? Have you been subject to high fees and transaction costs that you never knew were there?"

The most important "don't" must be, "don't assign a low priority to your employees' auto-enrolment choices." The big lesson of the litigation—albeit US litigation—is that employers must assume that they have that fiduciary duty, as do trustees, and that they always need to have auto-enrolment choices on their radar screens. It is a lesson once again that the lack of transparency in the governance process, the administration process, the investment process and the advice process will lead to the detriment of the member.

To ensure that we can help build citizens' trust in the system, we must have transparency for employers and members. We must have the information in front of the employer choosing the scheme to protect them and their employees. I commend new clause 7 to the Committee.

Richard Harrington: I thank the hon. Gentleman for his contribution with the new clause, but I respectfully give him my opinion that he seems to be fundamentally misunderstanding the whole regulatory system of automatic enrolment. So long as an employer chooses a scheme that meets the criteria—we have been through all the criteria and the whole regulatory and legislative system is behind that—the scheme qualifies for AE. The employer—which may be a he, she or it, if it is incorporated—cannot just decide on any old scheme. There is a significant regulatory hurdle in the Bill.

The employers' duty is met by scheme choice, because that is what auto-enrolment is. It is not like a defined-benefit type of scheme, where the employer has to ensure that the contributions are enough to be able to pay out what they are contracted to pay out in the scheme documentation. They have to make a reasonable decision based on the whole authorisation regime. I argue that asking for more would be inappropriate and burdensome for employers.

It may help the hon. Gentleman to see my point if he looked at the regulator's website—he might have done so already—which has comprehensive guidance for employers. Under the new clause, a typical employer would be doing exactly what the hon. Gentleman says is inappropriate: they would basically be doing what their accountant or adviser tells them, because most employers, particularly the small ones, by definition do not have this kind of knowledge. They are not professionals in this area; there are there to run their own business.

I do not understand, whether from a personal or a Government perspective, how asking them to do meaningful checks after they have gone with an approved and regulated scheme would add anything to the process. It is well-meaning, but it is unnecessary and should not be part of the Bill. I sympathise with the intent. The hon. Gentleman is trying to protect members from people acting in a fraudulent way.

Alex Cunningham: Perhaps the Minister can address this very simple question: is he satisfied that employers could not be subject to legal action against them if they end up making a bad choice on behalf of their employees?

Richard Harrington: As I have explained, their choice on auto-enrolment is restricted to choosing a regulated, authorised scheme. I am not a Government lawyer, or any other type of lawyer, although perhaps I should disclose to my chagrin that I did a law degree 40 years ago.

Julian Knight: Is it not true that many of the auto-enrolment schemes are vanilla in their investment outlook? Many of them—or a high proportion—are based around direct savings accounts and passive investment funds. They are not the high-risk, high-octane investments that would perhaps need the approach in the new clause.

3.15 pm

Richard Harrington: I absolutely agree. In fact, such schemes are often criticised for precisely that reason. They are criticised for being too conservative—in the investment sense, not the political sense—and for missing out a lot of good possible investment decisions, and the thought of that being reviewed by every single employer. I mentioned NEST and its 230,000 employers. I cannot believe that it would be fair to place such a regulatory burden on them when they are choosing from an approved list. The whole purpose of the regulation is that the schemes are approved, proper and regulated.

I am trying to see where the hon. Gentleman is coming from. I hope that he can see where the Government and I are coming from, and why I am not of the view that the new clause would be appropriate. I respectfully invite him to withdraw it.

Alex Cunningham: I accept the explanation that the Minister has provided about the employer making a choice from a regulated scheme and the protections included within that. If he is satisfied that employers will not face legal challenge as a result of the choices that they make within a regime where they must choose a scheme on behalf of their employees, and has placed that on record, I am content. I beg to ask leave to withdraw the new clause.

Clause, by leave, withdrawn.

Bill, as amended, to be reported.

3.17 pm

Committee rose.

Written evidence reported to the House

PSB 02 Robert Hodge, Chairman of the Trustee of Citrus Pension Plan

PSB 03 The Society of Pension Professionals

PSB 04 Welplan Pensions master trust (the Scheme) by the Scheme Sponsor, the BESA Group

PSB 05 James Jones-Tinsley

PSB 06 Smart Pension Limited