PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PENSION SCHEMES BILL [*LORDS*]

Third Sitting

Thursday 9 February 2017

(Morning)

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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

(Morning)

[Andrew Rosindell *in the Chair*]

Pension Schemes Bill [*Lords*]

11.30 am

Clause 27 ordered to stand part of the Bill.

Clause 28

Content of implementation strategy

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 30, in clause 28, page 20, line 14, after "charges" insert

", including any caps on these charges,".

This requires members to be informed about caps on charges.

Good morning, Mr Rosindell. The amendment is straightforward: it would ensure that members are given accurate information, particularly where caps have been placed on the charges alluded to in the clause. As the Secretary of State has yet to determine costs and charges throughout a pension scheme—not just administration but investment and transaction costs—we have yet another delay in ensuring that scheme members are delivered the efficiencies that they deserve. We are also dependent on the Secretary of State bringing forward secondary legislation on the continuity strategy, which means yet more delay.

I am in danger of repeating myself, but scheme members really ought to get more information about the issues that affect their pensions. We have to start somewhere, and I maintain that the Bill remains a good place to do that. As I have said elsewhere, the Government support a cost-collection template in the local government pension scheme, which prompts the question: why do they not use that for master trusts instead of going down the road of yet more consultation?

I know from experience this week that the Minister is unlikely to be sympathetic to the amendment. Assuming that we are in that place again, what consultation is he planning with scheme members on the need for greater transparency and how they think they ought to be informed and given the opportunity to be active rather than passive scheme members?

The Secretary of State said last week:

"We plan to consult later in the year on the publication and onward disclosure of information about costs and charges to members. In addition to the Bill, other things are clearly required to give greater confidence in the pensions system."—[*Official Report*, 30 January 2017; Vol. 620, c. 756.]

I had hoped that we could go some way to implementing at least some measures to help to fill the communication deficit, but now we will have to wait even longer. Trust members would have a little more confidence in this Government if they took this opportunity to take action on costs and charges and the need to share information about issues such as caps.

I conclude with a final question for the Minister. The review is under way. Is he satisfied that he will have the powers under the Bill or any other piece of legislation to accelerate the drive for greater transparency, or will we have to wait for another pensions Bill, which I understand is unlikely during this Parliament?

The Parliamentary Under-Secretary of State for Pensions (Richard Harrington): I can do no better than to echo the sentiments of the Opposition spokesman in welcoming you back to the Chair, Mr Rosindell, which is a pleasure indeed. I wish that I could accept the amendment with such enthusiasm—

Alex Cunningham: Go on. Give us one!

Richard Harrington—but we support the sentiments behind it. As with many things in the Bill, both sides want the same thing; the question is how things are achieved. The explanatory note to the amendment says that it

"requires members to be informed about caps on charges",

which I understand, but the Government argue that that would duplicate provision elsewhere, so it is unnecessary.

I have said before that the Government agree with the principle that members should be able to see the costs and charges that affect their pension pot. Since April 2015, regulations have required trustees to report information about costs and charges in a chair's statement, which must be shared with members, so that provision is there. Those regulations impose a charge cap where a scheme is used for automatic enrolment and contributions are invested in a default arrangement, as defined in the charges and governance regulations. To be clear, the cap is an annual one of 0.75%, or an equivalent combination charge, of the value of the member's rights. That applies to master trusts in exactly the same way as it applies to other pension schemes.

The Government recognise that more needs to be done to increase transparency. We will be making regulations requiring charges and transaction costs for money purchase benefits in occupational pension schemes to be given to members and to be published. We have to get it right, and we are consulting. The hon. Member for Stockton North said that he thinks it is just another consultation, but it will happen this calendar year.

The purpose of the implementation strategy is for the Pensions Regulator to have scrutiny as part of the approval process.

Alex Cunningham: Before the Minister draws to a conclusion, I would be interested to know whether the regulations will outline exactly what chairs will be required to do to report on issues such as the cap.

Richard Harrington: Sorry—I was distracted when the hon. Gentleman asked his question.

Alex Cunningham: I will repeat it; we all get distracted at times. Will regulations outline what will be required within a chair's statement to ensure that such things as caps are properly reported on?

Richard Harrington: I will answer that question in the same way as I have up to now: the consultation is looking at the way to disclose. I cannot give the hon. Gentleman the undertaking he seeks, but I fully expect that to be the case.

In answer to the other question, about whether the results of the consultation will require primary legislation, I can clearly say that they will not require another Bill. As to whether there will be another pensions Bill, the hon. Gentleman obviously has access to information on the Queen's Speech that I do not have. I certainly do not think it is the position—it may be, but I do not think anyone knows at this stage.

I ask the hon. Gentleman to withdraw his amendment. That is not because I believe it is silly or anything, but because it is not needed. The charges in the scheme will be tethered to any cap that applied, and that information is already available to members.

Alex Cunningham: The Minister teases me a little with the idea that we might have a second pensions Bill this Parliament. I do not think he really believes that will be the case.

I recognise what the Minister has said. The very fact that he believes that the information will be included in regulations is a positive response, and for that I am grateful, but again we are back to the issue raised originally by the Constitution Committee. It said that there was a tremendous reliance by the Government on secondary legislation in the entire Bill.

Richard Harrington: I remind the hon. Gentleman of the affirmative nature of the regulations. That will allow scrutiny and discussion.

Alex Cunningham: Indeed. That is exactly why I am confident that what the Minister is saying will come to pass. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 28 ordered to stand part of the Bill.

Clauses 29 to 31 ordered to stand part of the Bill.

Clause 32

PAUSE ORDERS

Alex Cunningham: I beg to move amendment 31, in clause 32, page 22, line 33, leave out paragraph (d).

This removes the provision that gives the Master Trust the ability to stop making payments to members of the scheme.

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

Amendment 36, in clause 32, page 22, line 44, at end insert—

"(f) a direction that further contributions or payments to be paid towards the scheme by or on behalf of any employers or members (or any specified employers or members) are collected and held in a separate fund, until the conclusion of the pause order;".

The amendment provides the Pensions Regulation with an alternative to stopping payments to the schemes under subsection 5(b) of a pause order.

Amendment 37, in clause 32, page 23, line 11, at end insert—

"(7A) The Secretary of State may by regulations set conditions on the terms of a separate fund, used for purposes under section 5(f).".

This amendment is consequential to Amendment 36.

Alex Cunningham: Our amendment 31 would remove the provision that gives the master trust the ability to stop making payments to scheme members in the event of a pause order following a triggering event. Our biggest concern with the clause is that, while the pause order is in place, there is a significant impact on the members of the scheme through no fault of their own. We understand that there may be circumstances in which a master trust should no longer collect contributions from an employer, but it is unacceptable that elderly, vulnerable people who are dependent on their pension do not receive it. It is our duty to ensure that pensioners do not pay the price for a problematic situation arising in a master trust, and that their quality of life is not adversely affected.

I think of the 80-year-old lady who trusted that her workplace pension would be safe and would look after her in retirement, but whose payments do not arrive when she expects. She is concerned, but decides that it must be an administrative error and that the payment will probably arrive the next day—but it does not. She does not have a computer to check the company website, and she may have spent hours on the phone waiting in a queue to inquire as to why she has not received her pension.

Amendment 28 called for not just employers but members to be told of triggering events. When we debated that amendment, the Minister said we could create unnecessary anxiety for scheme members before their lives were impacted. I accepted that point, and listened carefully to what he said about communication with a member when they were affected. A pause order resulting in the halting of payments is extremely significant. That woman may no longer have a workplace to go to; maybe the employer has ceased to exist and bears no responsibility to communicate with previous employees. She has not been informed about the triggering event that caused the pause order that has led to her not receiving the money she relies on to get by. The Minister knows the financial impact on such a person; I wonder what he would say to her.

The primary function of a master trust is to facilitate the collection of contributions and the payment of pensions. If a pause order has been issued, why can the master trust not still pay out? It may well be that the pause order lasts for only 48 hours, or even a week. Perhaps it is not unreasonable to expect people to be able to get by for a short amount of time, but pensioners could have no warning that they may not receive payments for an unspecified period. As it is, the Bill allows a pause order period of up to six months, and includes powers to extend that period.

What will happen to people and their livelihoods if they cannot access their pension? What provisions do the Government plan to put in place to ensure that those affected by a pause order will not face difficult and testing financial circumstances? We could have a widespread crisis on our hands—especially if it is a large master trust—that could impact on countless people and their families. I do not believe the Government have properly considered what would happen in those particular circumstances. I appreciate that requiring a master trust to pay out when there may be concerns about accuracy and record keeping could be problematic, but if the pensioners' pot is protected, surely the income stream can continue?

[Alex Cunningham]

That was also debated in the other place, without resolution. There was mention of exceptions, such as for ill health, but I am interested to hear the Minister's view on continuing payments. If there has to be exceptions for some groups, who would be protected in those circumstances? I understand that a pause order allows the regulator to go in and make sure that the situation is sorted, but that is a difficult situation, and there will remain much uncertainty among members who see their incomes dry up.

We are back to communications again. Will the Minister advise the Committee on what information he believes should be shared with members, and when? Is it at the point of impact—when payments stop? Members must be at the heart of auto-enrolment, and they must trust that the system actually delivers for them. Stopping their payments will discredit the entire process. Opt-out rates could soar and trusts could be undermined.

Turning to the amendments tabled by the Scottish National party, we firmly believe that the Government need a plan to ensure that pensioners do not miss out on receiving their pension for an unspecified period, but we also believe that payments into schemes should not simply be halted. As a result, we welcome the SNP amendments that make way for a separate fund for contributions to be paid into during the period of a pause order, thus protecting the long-term interests of the member who had contributed.

11.45 am

Richard Harrington: I wish to make it clear, without punning too many times on the word "pause", that we did pause after the intelligent discussion in the other place, so I will go into some detail on why we will not be accepting the amendments, two of which were tabled by the hon. Member for Stockton North and the third by the SNP.

First, amendment 31 would remove an important provision that allows the regulator to issue a pause order, which temporarily prevents benefits from being paid out from a master trust scheme to scheme members. Such an order can be made only in very limited and specific circumstances. I will briefly set out what those are.

Alex Cunningham: I appreciate the Minister allowing me to intervene so quickly. He says that pause orders can be made only in very specific circumstances, which he is about to outline. Will he acknowledge that they could last for up to six months, and perhaps be extended even beyond that?

Richard Harrington: The hon. Gentleman is correct, but of course it is at the discretion of the regulator, which will be dealing with all the circumstances. It could also be a very short period—that is the intention. I hope he agrees that the regulator has to have flexibility to deal with the specific circumstances of a particular case.

The scheme would have to be in a triggering event period, which means that one of the key risk events, which I explained previously, has occurred in relation to the scheme, the obvious one being that the scheme funder has become insolvent. Alternatively, the order could be made in relation to an existing scheme if it has submitted its application for authorisation and the decision on that application is not yet final. To satisfy the criteria, further conditions must be met. The regulator has to be satisfied that if a pause order is not made, there is or is likely to be an immediate risk to the interests of members in the scheme or the assets of the scheme.

Ian Blackford (Ross, Skye and Lochaber) (SNP): I am listening carefully to the Minister. We all understand the circumstances that would end up with a triggering event and what he describes as the potential insolvency of the scheme funder, but we have all been keen to make sure that in those circumstances the assets of the plan holders are protected. I want to tease out with him that scenario where we believe that the funds are protected. On the basis of the fear and alarm that could be spread when people see that their pensions are not being paid, I have a predilection for making sure that both payments into funds, whether it is a new fund that is created in the short term, or payments out of funds are maintained. There is a threat to confidence in master trusts and auto-enrolment if there is a pause in payments being made. On the basis that it always should be the case that the fund assets are protected, although I understand that there are certain circumstances where the regulator may want to take particular action, we have to be careful to scope out exactly what those circumstances might be.

Richard Harrington: The hon. Gentleman tries to tease things out from me and I am afraid I have to tease him back by saying that it is impossible to state the particular circumstances of every case. I was going to say later, in response to SNP amendment in this group, that no one wants to cause panic among members. There are many triggering events and there will be cases where the regulator might need to issue one of these pause orders, but they will be sorted out hopefully quite quickly; that is the idea. I do not see how, in those circumstances, writing thousands of letters to people would not cause precisely the kind of panic and lack of confidence that we are all trying to prevent.

I will return to that point. As with everything in the Bill, this is not a question of one side making stupid points and the other making sensible points; this is about trying to envisage different circumstances that might arise. It is my duty and my job to make sure that the regulator has flexibility, although I quite understand the hon. Gentleman's point of view.

Ian Blackford: I absolutely understand and have no reason in principle to believe that the regulator may not have to have such a power. However, I am trying to understand what kind of event might lead to such action taking place if it is the case that plan holders' assets are protected. Is it to do with any particular costs of administration for delivering all this? I am not clear what kind of event might lead to such action having to be taken.

Richard Harrington: It has been mentioned that, for example, suspicions of fraudulent activity might, in extremis, be such an event. Alternatively, the regulator might not yet be satisfied with respect to the administration

of the scheme. The pause order clause is intended to apply in extremis. I am certain that most things will be taken care of in the normal course of things, but we felt that the regulator needed that power in extremis. That does not necessarily mean that the sky has to be falling in. A pause order might be used to concentrate people's minds on resolving the situation quickly. Nevertheless, the power is there. It can be used

"during a triggering event period…if…the Pensions Regulator is satisfied that making a pause order will help the trustees to carry out the implementation strategy."

The order is designed for quite particular and limited circumstances. I know that we keep using sledgehammer and nut analogies—on Tuesday I mentioned kernels—but I really believe that if it did trigger the kind of communication that the Opposition referred to, it might cause a major panic, which is something that we have to avoid and that the system exists to resolve.

Alex Cunningham: To extend the nut analogy, for a pensioner who may be losing £40 a week from their pension for up to six months, a pause order is not a tiny nut; it is a large coconut. It has a major impact on their lives.

Richard Harrington: I quite agree, and of course there are checks and balances within the system: the pause order can be exercised only on a determination by the determinations panel, and then there is a higher level of scrutiny. In a small administrative matter, it would be totally irresponsible for the regulator to suddenly decide on a pause order with the exact effect that the hon. Gentleman alludes to, either on pensioners receiving benefits or on people working as normal and paying contributions that come out of their weekly or monthly statements.

I totally agree with the hon. Gentleman's intent, but I think it is important to look beyond the general definition of a pause order and into the specifics, which I hope I have explained, albeit briefly. I ask him to withdraw the amendment; he makes an important point, but I think we have attended to the detail necessary to ensure that what he fears, and we all fear, does not take place.

As we have heard, amendment 37 is consequential on amendment 36, so I will discuss both SNP amendments together. The hon. Gentleman has stated that he supports them, so at least it will be on the record that the Opposition and the SNP actually agree on this subject. *[Interruption.]* That was teasing, to use this Committee's terminology. I withdraw any teasability if I have caused offence.

Critically, amendment 36 would allow the Pensions Regulator to issue a pause order containing a direction that any paused payments into the scheme are to be

"collected and held in a separate fund, until the conclusion of the pause order",

and amendment 37 would allow the Secretary of State to make regulations about the fund. On the face of it, it seems sensible to have a separate fund set up, but it would be extremely difficult in practice. Employers would have to negotiate with their employees to obtain their permission to take deductions from their pay and pay them into a different entity. That money would not actually be being paid towards a pension scheme; it would have to go to a solicitor's client account, for example, or to another account that had been set up, instead of to the pension itself. There are tax implications and many other implications. That would cause fear, because people would think, "What is happening to my existing pension money? I am having to pay it into an emergency account."

Craig Mackinlay (South Thanet) (Con): On that point, may I ask what the sponsoring employer's position would be under a pause order? Would the sponsoring employer be in contravention of his auto-enrolment obligations, having been forced to stop paying towards a master trust that is set up or is part of the employees' contributions arrangements?

What would happen to the employer in terms of his obligations under auto-enrolment? Is it envisaged, if a pause order is in place, that he would have to keep the money within the business until the situation is resolved, and then that money be passed over to the same fund, if it is cleared to continue in operation, or to a new fund that stands in its place?

Richard Harrington: My hon. Friend raises a very good point that we have considered. Having been an employer for many years and supervised payroll systems, I understand that that would be the obvious thing to do: simply hold on to the money. Provided it was kept within a business but earmarked for that, I do not think anyone could say that the employer would be in breach of their legal duties for auto-enrolment.

Of course, then a problem arises. It sounds appallingly administrative and technical, but it is the sort of thing that lawyers make a lot of money out of. If it were paid into a non-pension fund emergency account, which I believe could be an unintended consequence of the honourable amendment tabled by the hon. Member for Ross, Skye and Lochaber, it could mean that the money is not being paid into a pension fund. What happens to its legal status, the tax and everything else? It is very much in extremis and complicated.

I am not regarded within the pensions trade as a great voice for employers, as I think everybody in the House would agree, but this would represent a significant burden for employers. I ask hon. Members to bear in mind that employers will not typically have been responsible for this problem—they will not typically have been responsible for the events leading to the pause order being made. From their point of view, they have simply been complying with their duties under auto-enrolment, as my hon. Friend the Member for South Thanet said.

I do not believe we can place them in a situation where they risk being unable to comply with their legal duties or where compliance becomes a significant burden. As I have said, this is very complicated and the tax and payroll implications are not certain. I think we would all agree that in these rare and very limited circumstances, the solution presented in the Bill is the most simple for employers to comply with. Given the very limited impact on scheme members and the low likelihood of this situation arising, I believe that is the right solution.

Alex Cunningham: The Minister keeps talking about short periods of time when there might be an impact. Has the Department given any consideration to the impact of loss of income on members of the scheme and on the social security system? What would happen

[Alex Cunningham]

to ensure that people affected by the loss of income due to a pause order are compensated by social security in the event of their qualifying for benefits because they no longer have a pension income?

Richard Harrington: The hon. Gentleman makes a very good point about social security implications. I cannot answer that question. I will have to give it some thought and I am happy to correspond with him on that subject. I think it is interesting and, although not directly relevant to this point, it is an important implication.

Hon. Members will be delighted to know that I have just remembered that employers are excused from AE duties during the pause order period. From the hundreds of pages of the Bill it had to get to the front of my mind, and it has. I thank the hon. Gentleman for triggering that recollection. I do think that everything has been taken into consideration. I hope that my explanation has been sufficiently comprehensive for the amendment to be withdrawn.

12 noon

Ian Blackford: It is a pleasure to see you back in the Chair, Mr Rosindell. I know that, in the interests of brevity, we are considering this slightly the wrong way round, in that I will speak to the amendment that the Minister has already responded to.

We all share the desire to ensure that the plan holders' funds are protected in both the accumulation and decumulation phases. We are concerned about the impact of a pause order on a member's savings, as there are no mechanisms in place that allow ongoing contributions to be collected and held on behalf of the saver. I know that the Minister has said that there are issues about where the funds would go and what kind of protection would be given, but those are exactly the kinds of things that we have to resolve in this Committee. It is clear that any additional contributions that savers make at a time of a pause order have to be protected properly, but surely it is within our gift to architect that properly.

It is unacceptable that a member should be penalised, and in effect lose wages in the form of employer contributions, due to events that are out of their control. The Society of Pension Professionals has also said that it will be necessary to ensure that the period of effect of a pause order cannot start before the trustees receive notification of the pause order. That would mean that any contravention could occur only after the trustees are in receipt of the order. The society argues that without that notification, the trustees could be in breach of a pause order through no fault of their own if a direction is not complied with during the period between the date the regulator makes the order and the date the regulator notifies the trustees of it. That could happen, for example, if new members joined the scheme in that period contrary to a direction under clause 32(5)(a). The Government should clarify whether they intend to take action to protect savers.

Richard Harrington: Mr Rosindell, before we end our debates on this clause, I would like to make a point of clarification regarding an error on my part. In previous sittings, when I was referring to the regulations generally, I said that they are subject to the affirmative procedure. However, I made a mistake in referring to clause 28 in that context, because the negative procedure applies there. I apologise for that. Obviously, it was not done on purpose. I hope that Members will forgive me.

Regarding the amendment itself, I have adequately covered the points that have been raised, and I reiterate the Government's position that we reject the amendment.

Alex Cunningham: It is quite heartening in some ways that we can all make mistakes.

The Minister has talked several times during his response to the amendment about the short period that the pause order will probably apply. I remind him again that that period could be six months, during which a scheme member may not receive their income.

Richard Harrington: I reiterate that that is a maximum period. There will be very few cases of this type and the regulator will be on it every minute of every day; it is not the case that it will be forgotten about for five months and then dealt with in the final month. It is for the Government and the regulator to put in a long stop and to answer the questions, "What if this happens? What if that happens?" and so on. However, I am absolutely certain that if we were to be in front of a Committee such as this one in years to come, I would be amazed if the process took anything like six months.

Alex Cunningham: I certainly understand the Minister's point of view, but in the event of one of the large master trusts failing—perhaps one that has a million members—in 10 years' time, a considerable amount of could pass before any resolution could be found. For that reason, we must take some action in this area.

The Minister also said that the regulator needs flexibility. Well, that does not offer any financial flexibility to the scheme member. The hon. Member for Ross, Skye and Lochaber—I nearly messed up as well and I should not mess up that constituency name, should I?—repeated the point I made in my original speech. If the pot is protected and is safe, why on earth can the benefits not still be paid out to the member in these circumstances? The Minister spoke about checks and balances, but checks and balances do not deliver income for the person who depends very specifically on what is probably a small amount of income. I have talked about the impact that that could have on the social security system.

Therefore, because resolution could take up to six months and it could be a major master trust that is affected, with the impact felt by many people, I intend to press the amendment.

Richard Harrington: It is absolutely true that the pause order can be extended, but the regulator closely supervises the scheme in this period. If the hon. Gentleman accepts that the role of the regulator in this matter is, in effect, to take it over, it is very hard to envisage this taking longer and longer. I certainly cannot see it happening with no one even bothering to communicate with the members, even in the case of a disaster happening, such as the hon. Gentleman mentioned, which I obviously do not think will happen, to the administrators of such a scheme. We have given the matter considerable thought and I ask him to withdraw his amendment.

Alex Cunningham: I am afraid I have to disappoint the Minister. I am not going to withdraw the amendment. The bottom line is that there is always a real possibility—a quite long word with an extremely long meaning—that there could be a failure in the system, and that failure could result in a loss of income to some of the most vulnerable people in our society. For that reason, I intend to press the amendment to a Division.

Ian Blackford: I will support the amendment. We have to feel satisfied that there are reasoned arguments why a pause order should be made and why payments should not be paid to pensioners. I am certainly willing to listen to further arguments, but I do not think a clear case has been put for why it should be made, except in very extreme cases of fraud and so on, and that case has not been made. Equally, in terms of retaining confidence, I wish to press our own amendment on the basis that it is important that plan holders continue to make payments, even in a triggering event. I want to test the will of the Committee and press our amendment to a Division as well.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 3]

AYES

Black, Mhairi	Elmore, Chris
Blackford, Ian	Greenwood, Margaret
Cunningham, Alex	Harris, Carolyn

NOES

Brine, Steve	Heaton-Jones, Peter
Courts, Robert	Knight, Julian
Davies, Chris	Mackinlay, Craig
Harrington, Richard	Smith, Royston

Question accordingly negatived.

Amendment proposed: 36, in clause 32, page 22, line 44, at end insert—

> "(f) a direction that further contributions or payments to be paid towards the scheme by or on behalf of any employers or members (or any specified employers or members) are collected and held in a separate fund, until the conclusion of the pause order;".—*(Ian Blackford.)*

The amendment provides the Pensions Regulation with an alternative to stopping payments to the schemes under subsection 5(b) of a pause order.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 4]

AYES

Black, Mhairi	Elmore, Chris
Blackford, Ian	Greenwood, Margaret
Cunningham, Alex	Harris, Carolyn

NOES

Brine, Steve	Heaton-Jones, Peter
Courts, Robert	Knight, Julian
Davies, Chris	Mackinlay, Craig
Harrington, Richard	Smith, Royston

Question accordingly negatived.

Clause 32 ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 33 ordered to stand part of the Bill.

Clause 34

PROHIBITION ON INCREASING CHARGES ETC DURING TRIGGERING EVENT PERIOD

Amendments made: 14, in clause 34, page 23, line 41, after "scheme" insert

"that is a Master Trust scheme".

This amendment confines clause 34(2) to receiving schemes that are Master Trust schemes (in consequence of the amendment to the definition of "receiving scheme" made by amendment 16).

Amendment 15, in clause 34, page 24, line 16, at end insert—

"(5A) The Secretary of State may by regulations apply some or all of the provisions of this section to a receiving scheme that has characteristics specified in regulations under section 25(1A)(b).".

This amendment enables the prohibition on increasing administration charges or imposing new administration charges to be applied where members' rights or benefits are transferred to a pension scheme that is not a Master Trust scheme.

Amendment 16, in clause 34, page 24, line 20, leave out "Master Trust" and insert "pension".

This amendment amends the definition of "receiving scheme" so that the clause can be applied to pension schemes that are not Master Trust schemes.

Amendment 17, in clause 34, page 24, line 28, at end insert—

"(7A) Regulations under subsection (5A) are subject to affirmative resolution procedure.".

This amendment makes regulations that apply the clause to non-Master Trust schemes subject to the affirmative procedure.

Amendment 18, in clause 34, page 24, line 29, at beginning insert "Other".—*(Richard Harrington.)*

This amendment is consequential on amendment 17.

Question proposed, That the clause, as amended, stand part of the Bill.

Richard Harrington: Clause 34 provides for a prohibition relating to member charges during a triggering event period. Trustees must not increase charges above the level set out in the implementation strategy, introduce new charges on members or impose charges as a consequence of a member leaving or deciding to leave the scheme during a triggering period.

Regulations under clause 34 will set out how the charge levels in the implementation strategy are to be calculated. The Government intend that those levels will reflect what members paid towards the normal running of the scheme before the event happened. The charge levels will be calculated by looking back at previous charges in the scheme, and controls will be built in to protect against cases in which schemes increase charges shortly before a triggering event, so a scheme would not be able to get away with that one before the extra scrutiny.

The effect of these measures is that members will not pay any more during a triggering event period than when the scheme was operating normally. That will protect the members; even though a scheme itself is likely to incur additional costs, the money to pay them

[Richard Harrington]

will not come from members' pension pots. I hope that everyone will agree that that is most important. It will preserve the value of members' rights during a triggering event.

The clause also restricts the charges that can be imposed by a master trust, proposed by trustees or employers, to receive members under the continuity option 1. Such a receiving scheme—a new scheme—will be prevented from increasing charges above the levels set out in a statement that it will give the regulator before the transfer happens, or from imposing new charges to meet the costs incurred by the transferring scheme. That means that members can join another scheme and continue to save in another pension without their pot being depleted to pay for costs incurred as a result of that happening. The clause keeps normality of charges and prevents schemes from taking advantage of a triggering event, and protect members' pots and maintains their value.

Alex Cunningham: I wish to ask a couple of question on clause 34 as I again return to the theme of transparency. The Minister outlined the purpose of the clause, and we welcome the protection of members from administration charges beyond those set out in the implementation strategy during a triggering event period. The clause makes clear the responsibilities of both trusts transferring members out and those receiving them.

The Minister listened carefully to my previous contributions on costs. With regard to this clause, I would like a better understanding of what those administration costs actually cover. Do they cover investment transactions, for example? Assuming that they do, will the Minister confirm that subsections (1)(c) and (2)(a) afford members protection from additional transaction costs as a result of the transfer of their funds out of a master trust and into a new one?

12.15 pm

I know that the devil will be in the detail, and I look forward to a comprehensive debate about this issue when the Minister produces the regulations, but I am sure that scheme members would welcome any clarification that he can give now. Given that we have discussed transparency at great length and the Minister has nailed his colours to the mast on that issue, I have no doubt that savers would very much welcome his assurance that he will always act in their best interests.

Richard Harrington: I thank the hon. Gentleman for his constructive comments. I can do no better than remind him of what I have already said: our whole purpose is to ensure that everything remains the same so far as all charges are concerned. He is right about the regulations and the devil being in the detail. That is precisely because we do not want the kinds of loopholes that could exist. If I may mix metaphors briefly, we do not want a chink of light that people can drive a coach and horses through. It is clear that—to be a bit pompous and draw on my O-level Latin from 1973—ceteris paribus, they have to remain as they were.

Question put and agreed to.

Clause 34, as amended, accordingly ordered to stand part of the Bill.

Clauses 35 to 38 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 39 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 40

INTERPRETATION OF PART 1

Amendments made: 19, in clause 40, page 28, line 15, at end insert—

"'pension scheme' has the meaning given by section 1(5) of the Pension Schemes Act 1993;".

This amendment defines "pension scheme" where it is used in Part 1 without further qualification. The definition in section 1(5) of the Pension Schemes Act 1993 catches both personal and occupational pension schemes.

Amendment 20, in clause 40, page 28, line 35, at end insert ", and—

'(2A) The reference in section 11(3) to activities that relate directly to Master Trust schemes is, in its application to a Master Trust scheme which provides money purchase benefits in conjunction with other benefits, to be read as a reference to activities that relate directly to the scheme as a whole.'".—*(Richard Harrington.)*

Where a Master Trust scheme is a "mixed benefits" scheme (providing money purchase benefits and other benefits), clause 1(2) provides for Part 1 to apply only to the "money purchase benefits" aspect of the scheme. This produces an unintended effect for clause 11(3), as it would require the scheme funder's activities to relate only to the money purchase benefits aspect of each of the Master Trust schemes referred to which is a mixed benefit scheme. This amendment prevents that effect from arising, by saying that even for mixed benefit schemes, a "scheme" in clause 11(3) means the scheme as a whole.

Clause 40, as amended, ordered to stand part of the Bill.

Clause 41

REGULATIONS MODIFYING APPLICATION OF PART 1

Question proposed, That the clause stand part of the Bill.

Alex Cunningham: The clause allows the Secretary of State to adjust the range of pension schemes to which part 1 of the Bill applies, either to extend the regime or to disapply it in whole or in part. As it stands, the clause is an extraordinarily wide provision. This almost turns on its head the normal approach, which is to determine policy first and then to legislate. We accept the importance of having flexibility to deal with the changing models that an agile sector might bring forward, but in scrutinising this legislation we need to have the opportunity to test the boundaries of that flexibility.

It appears that we will not now get further details of the regulations before the Bill leaves the House, despite what the Constitution Committee has said to the Government. As I mentioned earlier, that is a real shame. I therefore have a few questions for the Minister. The Minister in the other place suggested that the clause would be used to disapply some or all of the provisions for a mixed-benefit master scheme. Given the amendments tabled in this place in relation to mixed-benefit schemes, can the Government outline how exactly this clause will be used? Which schemes will be carved out of the regulation, to borrow a phrase from the Minister?

I know that additional voluntary contributions and non-associated multi-employer schemes were raised in the other place, but can the Government also confirm whether they plan to carve out schemes on an individual scheme basis or exclude them on a broad scheme basis through the application of more general principles?

Richard Harrington: I thank the hon. Gentleman for his comments, which I will answer. The overall principle is to allow the flexibility that accepts that master trusts, which have grown tremendously over the past couple of years, do not fit into a one-size-fits-all formula. It is certainly not a case of saying this is the scheme's rule; it is basically optional whether someone is in it or not, because it can be carved out. I know that the hon. Gentleman understands that and respects the principle. Again, it comes down to how it will be applied. We want to make it specific. We have had some useful consultations with master trusts and others on this subject. The regulations will give us the flexibility to ensure that we can deal with the existing situation and see what examples have been thrown up. More importantly, there will be the flexibility to change. The clause makes provisions to modify part 1 where it applies.

We have tried hard in a complex area to ensure that all relevant master trusts are in the scope of the authorisation regime. That is the point of the part of the Bill that we have been discussing up to now. As I have said, things change and the industry moves quickly. That is why we are calling for a type of flexibility that would not on the face of it seem necessary because the Bill regulates master trusts, which we all agree is the right thing to do—there is no question about that. The industry has shown that it is very flexible and can change. The provisions will be designed so that the regulations can be disapplied if they are not relevant. We intend to ensure that the whole system for authorisation, which we have discussed at length, applies in a proportionate way.

The scope of the power was discussed extensively in the other place. We have made it clear—this is the critical point, if the hon. Gentleman will bear with me—that we intend to continue discussions with the industry and also with the regulator to develop secondary legislation. It is not as though civil servants, however good they are, have sat in a room and just designed regulations. We have asked for time after the Bill to make sure they reflect the way in which the industry has developed. The passage of the Bill, from concept to now, could be near equivalent to the time that master trusts have grown in the first place. I hope that the hon. Gentleman will bear with me. We have indicated that we intend to consult on regulations under clause 41(1)(b) in relation to mixed master trust schemes, where the only money purchase benefits are those related to the additional voluntary contributions. It is technical and much of it is common sense, but it has to be done right, otherwise there will be unintended consequences of institutions and members of schemes being caught when it is perfectly well dealt with elsewhere. I know that the hon. Gentleman would not want that to happen.

Another example would be the provisions in clause 41 for regulations

"which provide for two or more pension schemes to be treated as a single Master Trust".

Again, that is in certain circumstances. Those circumstances would be common control, common rules or schemes provided by the same service provider. It is easy to say that common sense will prevail, but we need the flexibility to ensure that the framework is there for those specific, albeit exceptional, cases.

I believe strongly in the clause and think it necessary that the significant regulatory powers included in it have the potential to alter the scope of the regime. Members will want to debate and approve the making of such regulations. That is why, as I have mentioned several times—albeit once incorrectly—that these are subject to the affirmative procedure; they will not be done on new year's eve at five minutes to twelve without anybody noticing. The purpose is not to hide this from Parliament or anybody else, but to ensure that we get this important provision in the Bill absolutely right.

Question put and agreed to.

Clause 41 accordingly ordered to stand part of the Bill.

Clause 42

POWER TO OVERRIDE CONTRACT TERMS

Question proposed, That the clause stand part of the Bill.

Alex Cunningham: On Second Reading, the Secretary of State, in answer to the hon. Member for Tonbridge and Malling (Tom Tugendhat), nailed his colours to the mast on transparency and pension freedoms, not that we have seen much of the former displayed in recent days. He said:

"Transparency is a key area. Hidden costs and charges often erode savers' pensions. We are committed to giving members sight of all the costs that affect their pension savings. He asks for more detail. We plan to consult later in the year on the publication and onward disclosure of information about costs and charges to members. In addition to the Bill, other things are clearly required to give greater confidence in the pensions system. Greater transparency is clearly one of the steps forward. I completely agree with him on that."

I agree completely with the Secretary of State on that. He also said that he was determined

"to remove some of the barriers that might prevent people from accessing pension freedoms".

He said:

"The Financial Conduct Authority and the Pensions Regulator indicate that significant numbers of people have pensions to which an early exit charge is applicable. The Bill amends the Pensions Act 2014 to allow us to make regulations to restrict charges or impose governance requirements on pension schemes. We intend to use that power alongside existing powers to make regulations to introduce a cap that will prevent early exit charges from creating a barrier for members of occupational pension schemes who are eligible to access their pension savings."

We remain disappointed that this grand commitment to transparency has not yet found its way into the Bill, but we are reassured that the Government seek to protect scheme members from prohibitive costs and exit charges.

The Secretary of State said that he had consulted the industry on the issue.

"The measures proposed in the Bill have been developed in constructive consultation with the industry and other stakeholders, so we have confidence that they are proportionate to the specific risks in master trusts and will provide that necessary protection."—[*Official Report*, 30 January 2017; Vol. 620, c. 756.]

In the light of that statement, we seek assurance from the Minister that legislation proposed in subsection (2) allowing breach of contract in that way will not leave

[Alex Cunningham]

the Government open to challenge from the industry, something that would cause unnecessary upheaval for both schemes and members. With that in mind, will the Government tell us what consultation took place with providers and advisers and confirm that they are content that this part of the Bill is not open to challenge? If a legal case is brought against a master trust for breach of contract, is the Minister satisfied that it will have a defence under the clause?

Finally, what consideration have the Government given to the interests of members who, in the event of a legal challenge, will be unable to draw down money from their pots?

12.30 pm

Richard Harrington: As hon. Members will be aware, what we are now discussing is not restricted only to master trusts; the rest of our discussions today have been. It is a bit of a change. We are now talking about all occupational pension schemes.

The clause will cap exit charges and member-borne commission, which is the sort of thing we all want. Like most of the measures in the Bill, it relates to what we all accept is a problem; in this case it is exit charges—where they come from, who pays them, how they are calculated and so on. The hon. Gentleman refers to protecting members, which I perfectly understand, but that is the point of the legislation. I say that in case anybody reading about the Bill in *Hansard* or elsewhere thought that the Opposition were trying to protect members and the Government were not. The intention of the Bill is to protect members. I have laboured that point—I hope that the hon. Gentleman will excuse the pun on his party's name—because it is fundamental.

The clause amends the existing legislation—the Pensions Act 2014—to allow regulations to be made that enable a term of a relevant contract on charges to be overridden if that contract conflicts with a provision in those regulations. I emphasise that the power will allow for a contract to be overridden only if it conflicts with a provision in the regulations, which will ensure that relevant contracts are consistent with regulations and will provide certainty to the parties involved.

At this point it might be helpful if I clarified that the clause is distinct from previous clauses in the Bill that refer to charges, which all relate to the proposed master trust authorisation scheme. The discussions on charges and capping before now were specific, whereas this discussion is general. We intend to use the clause alongside existing powers in the 2014 Act to make regulations clearly to cap or ban early exit charges. Those charges are any administration charges paid by a member for leaving their pension scheme early when they are eligible to access pension freedoms, which in the past they would not have faced at their normal retiring date.

I mentioned early exit charges before in a different context. Cynical commentators might say that providers impose those charges to take advantage of a situation—a kind of last hurrah—because they know they are going to lose the value of a pension. The industry's converse argument, which I have some sympathy with, is that they calculate the value of a pension over a period of years, and early exit means that value may then be x years minus 10. That is not a ridiculous argument, but the Bill makes it clear that the Government do not have much sympathy for it.

As has been mentioned, the Financial Conduct Authority will make rules to ensure that the cap or ban on early exit charges in personal and workplace pension schemes, which they regulate, will comes into effect on 31 March 2017. That has already been approved by Parliament through amendments to the Financial Services and Markets Act 2000, which broadly allows for a contract to be overridden. The consultations we undertook on early exit charges and member-borne commission showed that the charges generally arise in contracts between trustees or managers of certain occupational pension schemes and those who provide administration services to the scheme.

Our existing powers in schedule 18 to the Pensions Act 2014 enable us to make regulations that override any provision of a relevant scheme where it conflicts with a provision in those regulations. For example, we have used that power in relation to the appointment of service providers in the scheme administration regulations. The reason we are taking this new power is that the existing power does not extend to the contracts under which these charges arise. That is why clause 42 contains a power to allow the overriding of a term of a relevant contract that conflicts with a provision of the regulations under schedule 18. What is a relevant contract? It is defined as one between a trustee or a manager of a pension scheme and someone providing services to the scheme.

The regulations that we intend to make will apply to charges imposed from the date the regulations come into force, even where these arise under existing contracts. We expect the regulations to come into force in October this year, so it is not a long difference. It is a difference for legislation reasons, but on the scale of things it is not a lot.

Ian Blackford *rose—*

Richard Harrington: If the hon. Gentleman would bear with me, I will answer the question asked by the hon. Member for Stockton North before giving way, unless it is really urgent.

Ian Blackford: My point is in relation to new clause 8, which I have tabled. I want to be clear that the Minister is saying that there will be no exit charges for anyone exiting a master trust, whether a new saver or someone who is currently in a master trust plan. If the answer is in the affirmative, I would be happy not to press new clause 8, because it would be superfluous.

Richard Harrington: I will come to that point in a minute, if I may first respond to the question from the hon. Member for Stockton North—I am not ignoring what the hon. Gentleman has just said, but I think that the answer will become apparent.

There was public consultation in 2015 that concluded in August. Since then we have had various discussions with providers and other industry bodies; we are really trying to get everyone involved. Again, we do not want to be unfair to one side or to create loopholes that should have been anticipated. I think that the hon. Member for Stockton North will accept that this area is complex.

Alex Cunningham: I appreciate the Minister's answer to my question. I also asked for the Government to confirm that the people they have consulted are content that this part of the Bill is not open to legal challenge.

Richard Harrington: It is very hard to talk about legal challenge because the legal profession in the United Kingdom has provided that itself in many cases where legal challenge was not intended by the Government. All that I can say is that we do not expect legal challenge on this issue.

Legislation introduced to challenge capping contract schemes has already been passed, so it is creating parity. I hope that I am not misleading anyone by saying that we do not expect that. We have done our due diligence and no one thinks that there will be a legal challenge, but I am afraid that I cannot give the hon. Gentleman a categorical assurance, because that is what the legal system exists for. I am sure that very clever counsel might read this one day and think, "Ah, ha! I've thought of something." There is nothing that we know of.

Alex Cunningham: With those considerable caveats, I assume the same applies to any legal case brought against a master trust for breach of contract and that they would have a defence under this clause.

Richard Harrington: If I may, I will answer the question from the hon. Member for Ross, Skye and Lochaber concerning new clause 8 and the point about no exit charges from a master trust. I confirm that when a master trust is closing the scheme cannot levy a charge for leaving. I believe that responds to his question, unless I misunderstood it.

Ian Blackford: No, I do not think it does. To be absolutely specific: in any circumstances of any exit of an individual from the master trust there would be no exit fee. If the Minister is responding to that statement in the affirmative, I would happily withdraw new clause 8, if that is permissible.

Richard Harrington: When the master trust is closing it cannot levy a charge. That is as clear as I can be. Perhaps we can discuss the point in more detail. I am not trying to mislead the hon. Gentleman and he knows that, I hope.

The pensions market is continuously evolving and modernising and that extends to charging practices. It may be necessary to alter the charges requirements at pace to reflect any changes in the pensions market that may disadvantage members. I revert to the point I made to the hon. Member for Stockton North: that is the purpose of the whole exercise; we are doing it for that reason. That is why we intend to consult on the draft regulations later this year. I am aware that people outside the House, and sometimes hon. Members, groan when a further consultation is announced, as though the Government are doing it to kick the can down the road. I can assure them that that is not the case. We intend to get it right and public consultation is very important.

The regulations would also be subject to parliamentary scrutiny, as I have explained, through the negative procedure. The Delegated Powers and Regulatory Reform Committee was content with that approach because it would allow future legislation to be amended quickly to provide the member protection that the hon. Gentleman and I both want.

Before I conclude on this clause, I will address the point made by the hon. Member for Ross, Skye and Lochaber. I have learned the name of his constituency now and look forward to visiting. He was satisfied by my answer to his earlier question but he wants to know what happens if the master trust is not closing. In that case, the normal exit charge protections apply; there is no difference. I believe that is a clear answer to his question.

Alex Cunningham: There is one area that the Minister has not addressed. As he said, we are all here to champion the member, but Opposition Members might just go a bit further in some of those protections. I did pose the question about elected members and what consideration the Government had given to the interests of members in the event of a legal challenge who would not be able to draw down their benefits.

12.45 pm

Richard Harrington: I have already made it clear that the Government do not expect legal challenges. It is a bit of a circular argument but in the legislation the regulator exists to protect members, so I cannot accept his point on this matter.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.

Clauses 43 to 45 ordered to stand part of the Bill.

Clause 46

SHORT TITLE

Amendment made: 21, in clause 46, page 31, line 3, leave out subsection (2)

This amendment removes the privilege amendment inserted by the Lords.—(Richard Harrington.)

Clause 46, as amended, ordered to stand part of the Bill.

New Clause 1

MEMBERSHIP OF MASTER TRUST SCHEMES: MEMBER TRUSTEES

'(1) By a date to be set by the Secretary of State in regulations, approved Master Trust Schemes must ensure that at least half of the trustees of the scheme are Member Trustees.

(2) Member Trustees must be individuals who are—

(a) members of the Master trust scheme; and

(b) not members of senior management of a company that is enrolled in the Master Trust scheme.

(3) Member Trustees must be appointed by a process in which—

(a) any member of the scheme who meets the condition in subsection is to apply to be a Member Trustee;

(b) all the active members of the scheme, or an organisation which adequately represents the active members, are eligible to participate in the selection of the Member Trustees, and

(c) all the deferred members of the scheme, or an organisation which adequately represents the deferred members, are eligible to participate in the selection of the Member Trustees.

(4) Member Trustees should be given sufficient time off by their employer to fulfil their duties.

(5) For the purpose of this clause "senior management", in relation to an organisation, means the persons who play significant roles in—

(a) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or

(b) the actual managing or organising of the whole or a substantial part of those activities.'—*(Alex Cunningham.)*

This new clause ensures that where named individuals hold the position of Trustee in a Master Trust, at least half of those Trustees must be Member Trustees. "Member Trustees" are members of the trust themselves and must not hold a senior management position in an organisation which participates in the Trust.

Brought up, and read the First time.

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

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

New clause 6—*Member-nominated directors*—

'(1) By a date to be set by the Secretary of State in regulations, all companies that are trustees of a Master Trust Scheme where all the trustees are companies must ensure that at least half their directors are Member-nominated directors.

(2) "Member-nominated directors" are directors of the company in question who—

(a) are nominated as the result of a process in which at least the following are eligible to participate—

(i) all the active members of the occupational trust scheme or an organisation which adequately represents the active members, and

(ii) all the deferred members of the occupational trust scheme or an organisation which adequately represents the deferred members, and

(b) are selected as a result of a process which involves some or all of the members of that scheme.'

This new clause will ensure that where companies hold the position of Trustee in a Master Trust, at least half of their directors are Member-nominated directors. "Member-nominated directors" are active or deferred trust members who have been selected by other members of the scheme.

Alex Cunningham: New clauses 1 and 6 take me back to my central theme for the Bill, which is putting members first by introducing member-nominated trustees and directors for master trusts, or member governance of their money. I remind the Committee that all the investment risk lies with the members and not with the sponsor or the provider; they should therefore have representation at the decision-making level.

The Pensions Act 1995 introduced the requirement for company pension schemes to have member-nominated trustees, or MNTs. If the scheme's sole trustee is a company including the employer, rather than individuals, scheme members will have the right to nominate directors of that company, who will be member-nominated directors, or MNDs. In those circumstances, my references to MNTs apply equally to MNDs. Member-nominated trustees of pension schemes have been a part of UK pensions since the emergence of occupational pension plans in the middle of the last century.

Under the Pensions Act 1995, following the Goode report, a rule was introduced that a third of trustees had to be nominated, although companies could opt out of that rule. The Goode report came out of a series of scandals and corporate collapses in the late 1980s and early 1990s that led to losses to occupational pension funds. In particular, Robert Maxwell, the proprietor of the Mirror Group Newspapers, was subsequently exposed as having stolen millions of pounds from his employees' pension schemes. In the Pensions Act 2004, the rule was made compulsory. The Secretary of State has the power to raise the threshold from one third to one half, and Labour is committed to implementing that. Many pension funds already have one half of trustees nominated, even though the law requires less.

Given the steady growth in numbers and the formalisation and establishment of member trustees in our pension system, the Association of Member Nominated Trustees emerged in September 2010 to provide support for member trustees. It is adamant that master trusts must be obliged to have member representation on their boards. It is no surprise that master trusts are lobbying against that, but they are mostly profit-making entities, so it is in their own best interest that they have member representation in order to win the confidence of scheme members.

After the Robert Maxwell scandal, the Government legislated to ensure member representation on pension scheme trust boards because they recognised that that would be a powerful way to prevent unscrupulous scheme sponsors from repeating Maxwell's behaviour. That argument is no less relevant to master trusts. Defined-contribution schemes managed by master trusts owe fiduciary and other duties to their beneficiaries, and trustees are required to act in the best interests of their members. Trust-based schemes are subject to trust law and regulated largely by the Pensions Regulator. If the scheme's sole trustee is a company rather than individuals, scheme members would have the right to nominate directors of that company.

Ensuring effective governance for pension schemes remains a challenge. While trust-based schemes benefit from a clear governing body in the form of the trustees, there is a clear absence of member-nominated trustees in the majority of master trusts. Improved governance must include MNTs, packaged with improved training and facility time to dedicate time to the job. Master trusts and independent governance committees lack scheme member input into the investment process, and they need an overhaul. Since the pot belongs to the member and the scheme-sponsoring employers bear no investment risk, there is an argument to be made that governance by scheme members should prevail in number terms over employers.

While some companies choose to operate a trust-based defined-contribution scheme, most new auto-enrolled members will not be saving into one; instead, the vast majority will be saving into a master trust or a group personal pension arrangement. In such schemes, member representation on governance boards is far more rare. With one or two exceptions, we are not aware of any master trust or independent governance committee that has taken the step of putting in a member or finding a mechanism for electing members or appointing members to governance boards.

The benefits of member representation in the trust-based world have been examined. One benefit is the increased diversity that MNTs can bring. Having a member perspective adds diversity, and diversity prevents the risk of group-think within boards. That is because of a range of different member perspectives, experiences

and areas of interest. It is also comforting for members to feel that they have some stake in the management and stewardship of a pension scheme. Ian Pittaway, chair of the Association of Professional Pension Trustees, said:

"They're brilliant in so many areas, they ask difficult questions that other people might be frightened to ask, they're great on member issues, whether it's changing benefits or a death-in-service case or something like that. Every board I chair is enriched by having members on it and it would be a very sad day if we sat there with just professionals running the scheme in a very arm's-length way."

The AMNT's 700 members are trustees of about 500 pension schemes with collective assets worth approximately £700 billion. It stated:

"We believe that member representation is crucial in the governance of Master Trusts. It will give greater assurance that these trusts operate, and are seen to operate, in the members' interests and that the scheme members can have confidence in them. The importance of giving members representation on the trustee board has been borne out by research by The Pensions Regulator and Share Action, which demonstrate that diversity is a key benefit of the trustee model. This view is widely supported in the pensions industry."

In the DB world, as long as a scheme was well governed and well administered, the member would end up with a reasonable replacement ratio. In the DC world, however, a member's outcome depends on a host of factors that are beyond members' control. Most members do not have a say in which scheme they are enrolled into, and even if they believe a scheme is not the best possible fit for them, they are unlikely to be able to transfer without losing their employer contributions. A worrying feature of the UK is that people who bear the risk are not freely able to exercise choice.

Better member representation could help to reassure members that they are enrolled in schemes that are well governed by boards that have their best interests at heart. That would also help solve the thorny issue of getting people to save more. The figures for auto-enrolment show low levels of contributions, and we need members to feel willing to increase their contributions.

Member representation may face some resistance. For a master trust with 20,000 clients and 900,000 members, running an election could be challenging. Some master trusts, however, have had success with elections. The Pensions Trust, which started life as a DB master trust but has now expanded into DC, has a board made up of 50% member-nominated trustees and 50% employer-nominated trustees. Those representatives are elected from the pool of companies that use the trust. The AMNT believes that employer support is necessary to enable member trustees to fulfil their roles with appropriate time off. There are clear issues with governance in both trust-based and contract-based DC workplace pensions. In the past the Office of Fair Trading has highlighted a lack of member engagement, along with higher charges and a lack of review, as the main challenges for the DC schemes. As auto-enrolment is extended to smaller employers, the need to address those challenges is becoming more pressing.

We need a clear route into better member representation. Most in the sector agree in principle that it can only be beneficial to the DC landscape. The Bill has nothing on a mandatory requirement for MNTs, but seems like a logical place in which to include them. To place an emphasis on member representation and perhaps change some of the barriers to an effective system, therefore, the Government should act now.

Some say that as larger master trusts cater for thousands of employees, the vast majority of them would not be represented on the trustee board. Others say that democracy is too expensive, but the scale of the master trusts should not be a barrier. USS, the universities superannuation scheme, has more than 250,000 members and nearly 400 employers. The plumbers and mechanical services (UK) industry pension scheme has more than 36,000 members and more than 400 employers. RPMI has more than 500,000 members and more than 100 employers. All those have member-nominated directors nominated by representatives of the members and pensioners of the schemes. If schemes on that scale can do it, so can master trusts.

Richard Harrington: I would like to make the point that, in the trustee system that has evolved, trustees have a duty to act in the best interests of all members, as the hon. Gentleman stated. I certainly agree that one of the strengths of the trust-based system for occupational pensions is that there are different sorts of trustees. I have been a trustee of a pension scheme myself, so I accept that argument.

The hon. Gentleman's mention of Robert Maxwell and that scheme is very relevant to my life now, because many of my constituents in Watford call themselves the Maxwell pensioners. Most of the system of regulation, including this Bill, came about because of that and other examples.

I respectfully remind the hon. Gentleman that in many of the cases that the Pensions Regulator has dealt with, there have been plenty of member trustees, and they have been ignored, not listened to, not felt to be relevant or just bamboozled, so it is not a perfect system anyway. As he knows, the whole reason for the Bill is that master trusts, which are hugely complex, have evolved over a very short period in a very sophisticated way. They are not the same as individual trust-based pension schemes, which is why we need this extra legislation.

Alex Cunningham: I accept the Minister's explanation that member trustees are being ignored, or that their views are simply being set aside, but I would suggest that is why we need proper procedures in place, whether for master trusts or other pension schemes, to ensure that member trustees are given the proper training and understanding and the time to do their job to the best of their ability, so that they are not ignored.

Richard Harrington: I agree. That relates to a general regulatory issue, as well as the specific ones we are talking about today. I remind the hon. Gentleman that master trusts are subject to scheme administration regulations, which require that schemes used by multiple employers must have three trustees. The majority of those trustees have to be independent of anyone who provides services to the scheme. We are not just saying, "Forget member trustees; they should all be representatives of the scheme." All trustees, whoever they are, have got the same fiduciary duty to all members. I am sure that the hon. Gentleman is aware of that, but I think that is very relevant in resisting his new clauses. It is very important that all trustees know that, and I believe they do.

[Richard Harrington]

Although master trusts are exempt from the existing requirements for member-nominated trustees, they are subject to all other regulatory obligations. As I said, the scheme administration regulations ensure that the majority of trustees are non-affiliated trustees. The authorisation criteria in the Bill subject all trustees to a fit and proper person tests assessed by the regulator. Facts to be considered in that test include how the people running the scheme are connected with other companies or people.

The new clause appears very attractive on the surface, because it appears that it is just saying, "Members are great and can stop all bad things from happening. They need to be represented, and the way to do that is by making sure they are directors or trustees." I would not want the hon. Gentleman to think that we are against member-nominated trustees, because we are not, or that we think that member-nominated directors are inappropriate in master trust schemes. He mentioned the universities superannuation scheme, which is very complex and sophisticated, and certain things work for it. I have met staff of that scheme. I believe that the Bill will address the points he made.

I hope that hon. Members are sufficiently reassured that we are ensuring that trustees act in the best interests of members. I have explained why the Government are of the view that the new clause is unnecessary, and I respectfully urge the hon. Gentleman to withdraw it.

Alex Cunningham: The Minister appeared to agree in part of his speech that member-nominated trustees are a good idea, even if he feels that in many cases their views have been ignored in the past. He has left me a little confused as to whether he supports member trustees, though certainly not in the context of master trusts. Well, I do, and I referred in my speech to organisations that also support the idea of empowering members and ensuring that they have the time and training to fulfil that role. Therefore, I will not withdraw the new clause and will press it to a vote.

1 pm

Ian Blackford: The proposed new clause contains a principle that I think we would all like to encourage concerning member engagement. There is the issue of democracy and the fact that these are members' funds, and I think that we all get that point. The salient point for me is that addressed by other hon. Members: trustees are to act in the best interests of their members. We all recognise the duty and obligations that trustees must have. It is important, whether they are independent or member trustees, that they are aware of their responsibilities.

The key matter, in what is becoming a very complex world, rightly with increasing regulation, for which we understand the reasons, is that trustees can discharge their obligations and duties. Although I would encourage member trustees to be involved, and it is important that they are given adequate training, I would find it difficult to support the compulsion in the proposed new clause that member trustees must make up 50% of the board. That would be the case in an ideal world.

Alex Cunningham: I did not say 50%. That was an example. We would need a situation in which we can have some member trustees.

Ian Blackford: Reference has been made to member trustees making up 50% of the board, which is something I could not support. I can support the general principle that member trustees should be represented, that there should be elections and that they should be able to take the time they need to devote to this and get proper training, but I cannot support at this stage having compulsion as part of that, on the basis of the responsibilities that trustees have to represent all member interests.

Craig Mackinlay: I can understand the laudable aims of the hon. Member for Stockton North, but where such boards have had member participation, the reality has not always been a fantastic success. I had an oblique interest in the Maxwell pensions fiasco because I belonged to a firm of chartered accountants appointed to look into that big mess, so I have some experience of that. I was also a member of the Joint Committee that looked into the BHS pension schemes, which also had member participation. That really did not come out as a great success. There was no issue of fraud, but were those employee members really tough enough to stand up to an overpowering sponsoring employer?

What we have is different from the occupational pension scheme arrangement, for which I think it is good, right and proper for its members to participate. We are considering master trusts, in which thousands of employers may be involved. I am sure that there may be only a few hundred master trusts that would bother to adhere to the new clause's regulations after they come into place. The National Employment Savings Trust is probably going to be the biggest master trust for some time to come, with possibly millions of employees involved, and I cannot understand how on earth we could have an election process involving millions of people and different employers.

Alex Cunningham: Legal & General, one of the largest insurance companies, manages to do that in order to communicate properly with its members. While I am on my feet, I also make the point that the hon. Gentleman says that having member trustees has not been a fantastic success. Does he therefore believe that the views of members should be excluded? I remind him that in master trusts it is the members who bear all the financial risk—no one else—so why should they not have some control or some say over their funds?

Craig Mackinlay: I do not disagree with what the hon. Gentleman says; ultimately, it is the employees' funds, and it is important that they should take the greatest interest in them. I think that employee involvement in occupational schemes has generally been worthy and a great success, but I am more concerned about the practicalities of how the form of democracy he advocates could possibly work when there will be millions of employees in a single master trust.

Julian Knight (Solihull) (Con): With regard to the potential for an administrative nightmare, is it not also true that companies will switch between different master trusts? If the requirement of having elections and so on is put upon them, that will make administration even more difficult, if not impossible.

Craig Mackinlay: I thank my hon. Friend for outlining further the complexities of what the hon. Member for Stockton North is proposing. What we are looking for from master trusts is that they are well run, safe and that they actually perform for the pensioners of the future. With the greatest respect, the administrative costs of what he is proposing could actually outweigh any positive parts that he thinks will come out of it, so I cannot support his new clause.

Ian Blackford: I know that the hon. Member for Stockton North has stated that he is not asking for a majority of trustees to be elected, but that is exactly what new clause 1 calls for—it calls for at least half of the trustees of a scheme to be member trustees. I just wanted to clarify that point. For that reason, I cannot support the new clause.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 10.

Division No. 5]

AYES

Cunningham, Alex	Greenwood, Margaret
Elmore, Chris	Harris, Carolyn

NOES

Black, Mhairi	Harrington, Richard
Blackford, Ian	Heaton-Jones, Peter
Brine, Steve	Knight, Julian
Courts, Robert	Mackinlay, Craig
Davies, Chris	Smith, Royston

Question accordingly negatived.

Ordered, That further consideration be now adjourned. *—(Steve Brine.)*

1.7 pm

Adjourned till this day at Two o'clock.