

REGULATOR NEEDS NEW POWERS TO DEAL WITH CONSOLIDATORS, SAYS HERBERT SMITH FREEHILLS

31 January 2019 | London
Firm news

Herbert Smith Freehills has today responded to the Government's [consultation](#) on defined benefit (DB) pension scheme consolidation.

More than 70 questions were raised in the Department for Work and Pensions' consultation. In its response, Herbert Smith Freehills stressed the need to create a robust regulatory framework if consolidation is permitted and called for the Regulator to be given new powers.

[Rachel Pinto](#), pensions partner at Herbert Smith Freehills, said: "If the Government supports the development of the market for DB consolidation it is essential that the Pensions Regulator is given sufficient powers and resource to supervise superfunds effectively. Without additional powers to oversee both the operation of the superfund and the management of the buffer fund, members' benefits risk not being adequately safeguarded."

Herbert Smith identified five key areas where the Regulator should be given additional powers. These include the ability to:

- appoint and remove people responsible for making investment decisions in relation to the buffer
- issue improvement notices to those responsible for managing the superfund or the buffer
- freeze the assets in the buffer
- ensure assets in the buffer are transferred to the superfund scheme or the Pension

Protection Fund in appropriate situations, and

- recover assets paid out of a buffer fund where a payment breaches any legal restrictions.

According to the firm's submission, the Regulator should also be granted powers to close a superfund to new business and to wind-up superfunds, where it considers this necessary to protect the interests of present and/or prospective members.

Pinto added: "DWP must also ensure appropriate safeguards are built into the rules of a superfund, such as restrictions on changes being made to members' benefits and the rules governing profit extraction. Legislation should also prevent restrictions being placed on the power for trustees and those responsible for managing the buffer fund to select their own service providers, as is the case with DC master trusts."

Herbert Smith Freehills also questioned whether the proposed regulatory gateway will be workable, with Pinto concluding: "It is unclear how the gateway will operate in practice. How likely does a buy out need to be? What if a sponsor is willing to fund consolidation but is not willing to fund a buy out? And what if a scheme may be able to afford to buy out the benefits of pensioner members but not deferreds? These are issues that the DWP and the Regulator will have to address."

MEDIA CONTACT

For further information on this news article, please contact:

**MIKE PETROOK, COMMUNICATIONS
MANAGER**

LONDON

Tel: +44 20 7466 3939

Email: mike.petrook@hsf.com