Northern Ireland Assembly

Committee for Communities

Report on Legislative Consent Memorandum on the Westminster Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill

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Ordered by the Committee for Communities to be printed 17 June 2021

Report: NIA 108/17-22 - Committee for Communities.

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Powers and Membership

Powers

1. The Committee for Communities is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Communities and has a role in the initiation of legislation.

2. The Committee has power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- call for persons and papers;
- initiate enquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Communities.

Membership

3. The Committee has nine Members, including a Chairperson and Deputy Chairperson, and a quorum of five Members. The membership of the Committee is as follows:

Paula Bradley MLA (Chairperson)
Kellie Armstrong MLA (Deputy Chairperson)
Andy Allen MBE MLA
Alex Easton MLA
Mark Durkan MLA
Sinéad Ennis MLA
Fra McCann MLA
Robin Newton MBE MLA
Karen Mullan MLA

Background

4. The Westminster Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill currently before Parliament includes provision relating to devolved matters. The Bill was introduced on 12 May 2021, and is expected to progress through Parliament quickly, with Royal Assent anticipated by July 2021.

5. Although pensions is a devolved matter, in general pensions policy and legislation here operate in line with corresponding pension provision in England, Scotland and Wales, in line with section 87 of the NI Act 1998. Private pensions are subject to a somewhat complex web of tax law (an excepted matter), financial services law (a reserved matter) and general pensions law (a devolved matter). Given the nature of the private pensions sector, most bodies in this area such as the Pensions Regulator, the Pensions Ombudsman, the Pension Protection Fund (PPF) and the Fraud Compensation Fund (FCF) operate across the jurisdictions.

6. The Pensions Act 2004, parts of which extend here, established the PPF and the FCF. The FCF provides compensation if a workplace pension scheme has had its assets reduced due to an offence involving dishonesty and there is no solvent employer to make good the shortfall. Payments are made from the FCF, a statutory fund managed by the PPF Board, and paid for by a levy on all eligible workplace pension schemes. The levy is collected by the Pensions Regulator on an annual basis and the funds transferred to the PPF, as Scheme Manager of the FCF.

7. Recent times have seen a surge in claims to the FCF in respect of so-called "pension liberation" fraud with the result that around £324m of potential liabilities are unfunded. Without urgent remedial action the Fund could fail as a going concern leaving affected members without recourse to compensation.

8. The Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill makes provision in relation to the FCF, to enable the Secretary of State to make a loan to the Board of the PPF. The money lent will go into the FCF and will be used to pay out claims. This will ensure that the PPF and FCF can maintain provision of service and continue to provide a safety net for pension scheme members. Loans will be repaid out of the FCF, using money derived from the Fraud Compensation Levy, which is imposed in order to pay for "expenditure payable out of the Fraud Compensation Fund", under the Pensions Act 2004 and the Pensions (NI) Order 2005.

9. The Bill also provides for the Treasury to incur expenditure in respect of a compensation scheme in relation to London Capital & Finance plc. However, this is a reserved matter and does not require a Legislative Consent Motion.

10. The Bill makes provision for the allocation and spending of money through the FCF. This is considered to impact on devolved competence on the basis that it will be used to fund compensation payments from the FCF. Compensation payments from the Fund here are a devolved matter.

11. Whilst the FCF is established under the Pensions Act 2004, parts of which extend here, Articles 165 to 171 of Pensions (NI) Order 2005 make provision for Fraud Compensation payments to be made here. The money allocated on foot of the Bill will allow compensation payments to be made to any affected pension scheme members here. The Secretary of State loans provided for in the Bill will, over time, be repaid out of the FCF, using money derived from the Fraud Compensation Levy. The Fraud Compensation Levy in relation to here is provided for in Article 171 of the Pensions (NI) Order 2005.

12. When the FCF was established, “pension liberation” fraud did not exist and therefore it was not the policy intent for these type of schemes to be eligible for entry. “Pension liberation” frauds involve members being persuaded to transfer their pension savings from legitimate schemes to scam schemes with promises of high market returns or that they would be able to cash in all or part of their pension fund, or receive a loan from their pension fund, before age 55 without incurring a tax charge. Some members have since received tax charges for these payments and loans, as HMRC views these as unauthorised payments. Fraudsters charged high administration costs and then drained any remaining scheme funds, often moving them abroad.

13. Following receipt of an unprecedented number of applications from “pension liberation” schemes, the PPF, which administers the FCF, sought guidance from the High Court in England on which schemes should be eligible for the FCF, using a representative scheme now overseen by Dalriada, a professional pensions trustee company (The Pension Protection Fund Board v Dalriada).

14. The Court held that the representative scheme in the Claim had an employer, for the purpose of satisfying the eligibility requirement, for an employer’s insolvency. The effect of this judgment is that (provided a scheme meets other entry criteria) liberation schemes similar to the representative scheme, will be eligible for FCF compensation. 122 schemes are now eligible for entry into the FCF with the total claims amounting to £350m. These claims are due to be paid between 2021 and 2025.

15. The FCF had previously paid out compensation totalling approximately £5.4m in respect of 14 claims since it was established in 2005. The value of current claims is £350m compared to assets of approximately £26m. The funding pressure is therefore around £324m. The Fraud Compensation Levy is currently capped at 30p for Master Trusts and 75p for other pension scheme classifications that are eligible. Under current

limits, the Fraud Compensation Levy would take approximately 30 years to secure the income required. The FCF balance sheet is not sufficiently capitalised, and sufficient funds cannot be collected via the Fraud Compensation Levy, to accommodate this immediate funding pressure.

16. Due to the timing requirement of the claim profile, the FCF is not able to accommodate this funding pressure from the £26m assets held in the Fund and, without intervention, the FCF will be unable to comply with the Court ruling and continue as a going concern. This will be highly damaging for the PPF as confidence in the pension lifeboat could be eroded. A condition of being a going concern is that the FCF is able to maintain continued provision of service. The FCF assets will be exhausted by October 2021 and at that point the PPF will be unable to comply with and implement the judgment.

17. The DWP Minister for Pensions and Secretary of State has confirmed that the judgment will be complied with and legislation should be made as soon as is feasibly possible. The Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill is to amend the Pensions Act 2004 to ensure that the judgment can be complied with and implemented. This will allow funding to be provided to the Board of the PPF as administrator of the FCF.

18. Although pensions is a devolved matter, there is, in effect, a single system of pensions across Britain and NI, with many pension schemes and indeed the Regulator, Pensions Ombudsman, PPF and FCF etc. operating across the jurisdictions. The PPF and FCF were both established under the Pensions Act 2004, which extends in part to here.

19. The Bill amends provision in the Pension Act 2004 which extends here. The amendments will have repercussions for how the FCF operates here, as provided for in the Pensions (NI) Order 2005. In particular, compensation payments here may, in effect, be funded by the Secretary of State loan. The loan repayments will be made from the FCF, from money collected from the Fraud Compensation Levy, which is provided for by Article 171 of the Pensions (NI) Order 2005.

Consideration of the Legislative Consent Memorandum by the Committee

20. The Committee was briefed by Departmental officials at its meeting on 27 May 2021.

21. The Officials briefed Members on the purpose of the LCM as outlined above in the background section. Members asked what the impact would be on Northern Ireland if the LCM was not agreed as quickly as possible. The Officials advised that if the LCM was not agreed, the provisions of the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill relating to the pensions Fraud Compensation Fund would not be extended here.

22. The Officials further advised that the LCM provides legal certainty for schemes, allows Fraud Compensation payments falling from “pension liberation” fraud to be made and ensures the going concern status of the FCF. It would also ensure scheme members in Northern Ireland are not put at a disadvantage compared to people in Britain, and are able to enjoy the benefits of the loan.

23. If it is not agreed that provisions in the Westminster Bill extend here, it would be necessary to bring forward a separate Assembly Bill to ensure that parity is maintained and that the FCF can continue to function, and avoid the threat of revocation of its going concern status by the National Audit Office.

24. The Committee sought the views of The Pensions Regulator (Annex A) on the LCM who advised that it had no objection to the LCM being approved by the Committee.

25. In order to endure that Northern Ireland members are not disadvantaged and that this is handled in a timely manner without the need for a separate Assembly Bill, Members were content to recommend that the provisions in the Westminster Bill, as outlined in the LCM, are extended here.