EVERSHEDS

Private and Confidential
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Date 18 June 2015
Your ref

By email: Annuity.Consultation2015@hmtreasury.gsi.gov.uk

Dear Sirs

Response to Consultation on Creating a Secondary Annuity Market

We have set out in the appendix to this letter our response to the HMT/DWP consultation paper, *Creating a Secondary Annuity Market*, published in March 2015.

We have the largest team of pensions lawyers in the UK, with over 65 specialist pension lawyers. Our clients include employers, trustees and managers of a number of the UK's largest public and private sector occupational pension schemes and some of the country's leading insurance companies and pension providers.

Our response represents our own views on the issues raised in the consultation paper and not those of our individual clients (unless expressly stated otherwise). However, in forming our views we have taken account of our clients' interests and concerns.

If you have any queries in relation to any of the points raised in our response please contact on (direct dial) or by email at

Yours faithfully,

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Appendix

Eversheds' response to the HMT/DWP consultation paper, *Creating a Secondary Annuity Market*

1. General comments

Before addressing the specific questions posed in the consultation paper, we have the following general comments on the proposal.

We fully understand and support the principle of seeking to ensure parity of treatment for all pension savers as far as possible, and likewise we welcome the Government's commitment to encouraging innovation and new solutions within the retirement products market. A constructive debate on the proposal put forward is likely to be highly beneficial in terms of identifying new options which hitherto have not been considered, and which may be genuinely advantageous to pension savers. For instance, the possibility of permitting buy-back or re-shaping of existing annuities in our view merits closer consideration (see further our response to Qu.3 below).

That said, in order for such a debate to be fully-informed, it is important for all involved to have an accurate understanding of the extent to which there is genuinely a problem here which needs to be addressed.

First, the problem (if there is one) is presumably historic only: ie. there is no obvious reason why anyone who buys a standard annuity on or after 6 April 2015 should be able subsequently to assign that income stream, given that access to the new alternatives of flexi-access drawdown, flexible annuities and UFPLS is now available, and free and impartial advice is likewise on offer to guide the individual through the options open to him.

It appears from the references in the consultation paper to "existing" annuity-holders that the proposal is confined solely to pre-6 April 2015 annuities, but this is nowhere stated explicitly. If this is not the intention, we question why it is considered to be appropriate to allow post-6 April 2015 annuity purchasers to revisit their retirement choices in this way, when those who choose any of the other flexibilities cannot. A pension saver who decides to opt for an UFPLS or flexi-access drawdown and later regrets that decision is not being offered the option to unwind what has been done: whilst he can purchase an annuity with whatever monies he still has left, he will potentially have lost a material portion of his total pension savings through income tax charges on the monies already drawn, meaning that even if he has not spent any of the monies drawn, the total amount available to him to secure an annuity is likely to be considerably less.

If the intention is indeed to confine assignability to pre-6 April 2015 annuities, it seems somewhat improbable that the industry will wish to develop what will need to be reasonably sophisticated processes and business models simply in order to trade in what would necessarily be a fixed and reducing pool of assets. There is growing evidence that the industry is not yet in a position to be able to offer full access to the new flexibilities for post-6 April 2015 retirees, without the added complexity of seeking to develop further options for pre-6 April 2015 annuity-holders.

A second, related, issue is whether the statistics quoted in paragraph 2.3 of the consultation paper relate purely to annuities purchased from defined contribution (DC) pension savings, or whether this also includes annuities purchased to secure defined benefit (DB) pensions (eg. on a winding-up of a DB occupational pension scheme). As explained in our response to Qu.6 below, it is questionable whether the policy rationale for these proposals extends to DB pension annuities. It is important that the scale of the alleged problem is accurately assessed before any final decision is taken as to whether and how best to proceed with the proposals.

Similarly, there is a risk that the proposal is underpinned by an unspoken assumption that these annuities (particularly those taken out in recent history) represent poor value for money, such that annuity-holders should be enabled to "escape" from them and claw back the value passed to the annuity provider. The accuracy of that assumption is highly questionable when viewed against recent changes in longevity and ongoing poor returns from the investments which must, ultimately, be used to back any pension. The inescapable fact is that people are living longer, and therefore any given size of pension pot simply will not now purchase the same level of income stream that it previously could. This is why so many DB pension schemes face increasing funding deficits. However, it is not clear that annuity-holders will understand that fact, or be able accurately to assess the real value of what they already have.

If the concern instead relates to the inflexibility of the income stream from a standard annuity, an obvious solution would be to enable existing annuities to be converted into flexible annuities, so that annuity-holders would be able to vary the level of income received, whilst still retaining the protection of a certain level of guaranteed income for life. Similarly, where the level of income from the annuity is sufficiently small that the capital value of the projected future income stream is below the £10,000 threshold for small pot commutations, it would be fairly simple to extend the existing commutation rules to allow such trivial annuities to be exchanged for a lump sum. Neither of these options necessarily requires the creation of a secondary market in annuities.

Finally, the Government's own view (see paragraph 2.4 of the consultation paper) is that for "most" existing annuity-holders, retention of their existing income stream will be the right decision. This does raise the question of why it is nevertheless thought to be a good idea to offer the option of assignment to all annuity-holders, if taking up the option is expected to be detrimental to the majority of them.

2. Response to specific questions

Qu.1 In what circumstances do you think it would be appropriate to assign one's rights to their annuity income?

This is a difficult question to answer. From one perspective, assignment will only rarely be appropriate. Pension annuities are the product of tax-privileged savings designed to provide a secure income in retirement, and the justification for enabling annuity-holders to cash them in for the purpose of (say) providing a lump sum to relatives, as suggested in the consultation paper, is dubious. Certainly, if an "appropriate" assignment is one which is in the best financial interests of the annuity-holder, we suspect that assignment will not be appropriate in the majority of cases.

Where an annuity-holder's personal circumstances have changed materially – for instance, the annuity-holder is no longer married, and therefore has no further need for cover for dependants – there may be good grounds for allowing the income stream to be re-shaped. However, achieving this does not necessarily require assignment of the income stream in its entirety.

In other circumstances, it is difficult to describe an annuity as "inappropriate" for a particular person. It seems to us that the most one can say is that, had that person had the choice not to purchase an annuity when he did, he might not have done so (even though in fact it might have been a perfectly suitable product for him). We do have some sympathy with the notion that the pensions flexibilities which were brought in under the Chancellor's 2014 budget ought to be available for existing annuity-holders, but this is on the ground not so much that an annuity is inappropriate for the existing annuity-holders, as that it is anomalous to give increased flexibility to some but not others. However, there are risks in offering this greater flexibility, as explained elsewhere in this consultation response.

Against this background, we have also considered whether it might be possible to have some kind of compromise solution, under which an annuity-holder might be able to assign **only** where there has been a material change of circumstances / significant life event (rather than allowing assignment either in all cases or in none). We have in mind the analogy of the US 401(k) rules which permit withdrawals to be made prior to retirement on account of an "*immediate and heavy financial need*" of the individual saver where the withdrawal is necessary to satisfy that financial need. The particular rules used in that regime are intended to cover pressing needs such as (eg) medical expenses for the individual saver or his immediate family, funeral expenses, or expenses (such as rent arrears) which must be met in order to prevent eviction.

Any such system would present the perennial dilemma of where to strike the balance between having a list of defined circumstances which will permit assignment and a more generic test of "good cause". The former has the advantage of being essentially a mechanical "tick-box" exercise, under which cases where assignment is permitted would be easily identifiable, but creates the risk that the results could be (or could be perceived to be) arbitrary. The latter has greater flexibility, but would need some kind of arbitration mechanism, which creates added complexity.

Qu.2 Do you agree with the government's proposed approach of allowing a wide range of corporate entities to purchase annuity income in order to allow a wide market to develop, whilst restricting retail investment due to the complexity of the product? What entities should be permitted and not permitted to purchase annuity income and why?

We agree that this is not a market which is suitable for retail investment, though the same factors which lead to that conclusion equally call into doubt the appropriateness of allowing annuity-holders – who are also retail investors – to sell their annuity income.

Separately, there is a very material concern that the ability to assign annuities could be exploited by (for example):

- pension "scammers" (and given that many scam schemes are set up as occupational pension schemes, there would therefore be potential risks in permitting occupational pension schemes to access this market on an unrestricted basis); and
- commercial creditors of the annuity-holder (particularly those entities, such as unregulated lenders, which are not noted for their consumer protection ethos).

It seems difficult to see how annuity-holders can be adequately protected against these risks except by restricting eligibility to enter the secondary annuity market to regulated investors (such as insurers) and verified defined benefit occupational pension schemes.

Qu.3 Do you agree that the government should not allow annuity holders to access the value of their annuity by agreeing to terminate their annuity contract with their existing annuity provider ('buy back')? If you think 'buy back' should be permitted, how should the risks set out in Chapter 2 be managed?

We disagree with the proposed prohibition on buy-back. Permitting buy-back has many significant advantages over the secondary annuity market model, and, subject to certain safeguards for the annuity-holder, is the mechanism which is arguably most likely to achieve the desired policy outcome of enabling annuity-holders to access the new flexibilities. In particular:

- It removes the difficulty of death notifications, which is likely materially to hamper the development and functioning of any secondary annuity market.

- In a case where the annuity is commuted for a lump sum, the removal of longevity risk from their books (particularly where longevity estimates have been revised upwards since the annuity was taken out) may well be an attractive prospect for annuity providers, meaning that they are willing to price competitively.

- If the annuity-holder is happy with the level of service provided by the annuity provider, but merely wishes to reshape the nature of the benefit – for instance, to move to a flexible annuity or a drawdown arrangement rather than a level / increasing annuity – it seems perverse that the annuity-holder should in all cases be forced instead to sell the existing income stream and then purchase a fresh product.

- It removes the risk that annuity-holders may be persuaded to assign their annuities to pension "scammers" (though neither buy-back nor the secondary annuity market can remove the risk that annuity-holders may be tricked into re-investing the cash lump sum payment received in return for the annuity in an unsuitable or fraudulent investment vehicle).

- Buy-back could be used to give additional force to the argument that annuity providers can reasonably be expected to agree to annuity transfer, or even to an argument that they should be legally **required** to give consent, where the annuity-holder or purchaser is willing to meet reasonable transaction costs. If the annuity provider is completely barred from entering the secondary market in respect of its own annuities, there is minimal incentive for the annuity provider to agree to facilitate the transfer, since it derives no direct commercial benefit from doing so; indeed, it faces direct commercial risk in the form of the increased likelihood of overpayments being made. However, if the annuity provider is entitled to bid for the annuity purchase itself, it becomes more reasonable to restrict its ability to veto the sale to a higher bidder.

  Indeed, it could even be made a condition of the annuity provider's eligibility to buy back the annuity that it should also agree to permit a third-party sale at a certain level of transaction cost. This would facilitate the annuity-holder's ability to shop around for the best deal, since purchasers will be more interested in bidding competitively if they know that the annuity provider will not be able to block the sale or to demand excessive transaction costs (which if payable by the annuity-holder may deter the annuity-holder from selling, and if payable by the purchaser is likely to reduce the price which the purchaser is willing to pay).

- As regards the risk that the annuity-holder will (through inertia) simply accept the offered buy-back terms from his annuity provider, even though a higher price could be obtained by shopping around, this is in substance no different from the wider consumer protection concerns discussed in connection with Qu.13. If a requirement were to be introduced that a minimum number of quotations must be obtained (either for any sale, or for a buy-back by the provider), any material under-pricing by the annuity provider would be readily exposed. An obvious and very simple, if rough-and-ready, test of the value being offered by the provider would be to seek current annuity quotations based on the price offered and the annuity-holder's current age / state of health / other circumstances (eg. if no longer married), and this is something which an independent financial adviser could readily assist with (if the annuity-holder were required to obtain advice, as suggested). Even if guidance alone were provided, it would be simple enough to explain to the annuity-holder how to carry out such a comparison exercise for himself.

- As regards the risk that insurers would feel themselves obliged to acquiesce in requests to buy back annuities upon a scale, and within a time-scale, which might threaten their solvency, this seems highly implausible. Insurers have not felt themselves obliged to offer access to the full range of the new DC pension flexibilities where this would be detrimental to the proper operation of their businesses, and it therefore seems extremely unlikely that they would succumb to investor pressures to buy back annuities. Their legal and regulatory duties in respect of capital requirements alone would provide them with clear justification for restricting access, where necessary.

Qu.4 Do you agree that the solution to the death notification issue is best resolved by market participants? Is there more the government should be doing to help address this issue?

As indicated in our response to Qu.3, the best solution to the death notification issue is to permit buy-back. Failing that, a workable solution is likely to require some kind of tripartite arrangement to be put in place, so that there is a direct obligation owed by the third party purchaser to the annuity provider to verify the continued existence of the original annuity-holder at regular intervals. This is broadly similar to the second of the three possibilities described in para. 2.21 of the consultation paper.

However, given that the core of the proposal is that there should be an assignment of the income stream under the **existing** contract (rather than entry into a fresh contract with the third party purchaser), the above solution will depend upon there being suitable powers in the existing contract terms for the annuity provider to withhold payment until the continued existence checks have been performed. Legislation may therefore be required to permit annuity providers unilaterally to vary the terms of the annuity upon assignment, in order to incorporate a suitable power. Alternatively, a statutory power to withhold payment could be provided.

Qu.5 Do you agree with the proposed approach of the government working with the FCA regarding the fees and charges imposed by annuity providers?

Yes.

Qu.6 Do you agree that the scope of this measure should be annuities in the name of the annuity holder and held outside an occupational pension scheme?

Broadly, yes. It is unlikely that trustees would wish to assign an annuity income stream in any event, for as long as the scheme remained liable to pay benefits to the individual member upon whose life the annuity was secured. The one exception might be where the related benefit liability is re-shaped: for instance, if an increasing pension were to be exchanged, at the member's request, for a higher, level pension, the trustees might wish to be free to secure the revised benefit liability, rather than continuing to receive an income stream modelled on the old liability.

One other area of doubt relates to whether annuity-holders whose annuities derive from DB pension saving should be permitted to assign them. The policy rationale for the proposal is that those DC pension savers who have already bought an annuity should be given the option to revisit that decision, and instead to access the new flexibilities which have been made available from 6 April 2015. In turn, the rationale for introducing the new flexibilities was to provide more choice to DC pension savers, whose savings often derive substantially from their own contributions, and who (it is assumed) may have hitherto been unable to access good value or sufficiently flexible income streams in the form of annuity products.

It is not clear that the same rationale applies in the case of DB annuity-holders, and to date the Government has not seen fit to provide current DB pension savers with a right of access to the new DC flexibilities at retirement (for instance, the right to a statutory cash equivalent in respect of DB benefits still falls away one year prior to normal pension age, and the statutory override in section 273B of the Finance Act 2004 does not apply to DB arrangements). Indeed, in implementing those flexibilities, the Government has actually sought to make it **more** difficult for DB pension savers to relinquish the protection of their DB promise in order to access DC-type retirement products, by introducing the requirement for independent financial advice prior to transfer or conversion. Against that background, it does not seem logical to allow DB annuity-holders to assign their annuities in order to access DC-style benefits in the course of their retirement.

Qu.7 Are there any other types of products to which it would it be appropriate for the government to extend these reforms?

We are not aware of any such products.

Qu.8 Do you agree that the design of the system outlined in Chapter 3 achieves parity between those who will be able to access their pension flexibly and those who will be able to access their annuity flexibly? Are there any other tax rules which the Government would need to apply to individuals who had assigned their annuity income?

We are not convinced that the proposed application of the £10,000 annual allowance in these circumstances is appropriate. Whilst there is a superficial parity of treatment in applying the reduced annual allowance in the way suggested, the rationale for introduction of the reduced annual allowance was to prevent DC pension savers from diverting taxable earnings (by way of salary sacrifice) into a DC pension vehicle, and then drawing down an equivalent amount, 25% of which would be tax-free.

Sale of an existing annuity to provide a cash sum (whether that amount is taken as cash or re-invested into a flexible annuity or a flexi-access drawdown arrangement) is unlikely to be a tax avoidance mechanism which can be used with the same ease. To achieve the same result, an employee would need to:

- make salary sacrifice contributions into a DC pension vehicle;
- purchase an annuity with those contributions;
- and then sell that annuity on the open market.

This process is likely to be extremely unwieldy, and certainly not something which could be accomplished in a sufficiently short time-frame (start to finish) to allow the employee to replicate the kind of cash-flows achieved through salary payments. As such, it is inherently unlikely that it would present the same level of risk of tax avoidance which a straightforward flexi-access drawdown / UFPLS arrangement might create.

In addition, the consultation paper proposes that (where taken as a cash sum) the purchase price received by the annuity-holder will be fully taxable at his marginal rate (unlike an UFPLS). Similarly, where reinvested into a flexi-access drawdown arrangement or flexible annuity, the consultation paper proposes (rightly) that there will be no entitlement to tax-free cash from either type of arrangement. Against this background, it is difficult to see how there is any genuine scope for tax avoidance: all monies received by the annuity-holder will be chargeable to income tax at his marginal rate during the tax-year in which they are drawn.

Also, as already alluded to (see section 1, above), there is lack of clarity in the consultation paper as to whether the secondary market will apply only to pre-6 April 2015 annuities. If it will, a sale of an annuity which has already been purchased before these proposals have even been implemented cannot realistically be used as a vehicle for the kind of deliberate tax avoidance which is feared may arise as a result of the new rules.

For all of the above reasons, we consider that the reduced annual allowance should not apply in this scenario. However, if this conclusion is rejected, then as a minimum, we do not consider that the reduced annual allowance should apply except in relation to the sale of an annuity which is first purchased after the proposals are implemented.

Qu.9 How should the government strike an appropriate balance between countering tax avoidance and allowing a market to develop?

See our response to Qu.8. Given that it is proposed that all payments to the annuity-holder which derive from the sale of the annuity income will be taxable at the annuity-holder's marginal rate, and given that the existing changes to taxation of death benefits will already apply to benefits payable under the annuities, we do not see that these proposals give rise to material tax avoidance concerns meriting imposition of an unauthorised payments charge.

Assignment to a connected person is not obviously a means of tax avoidance. To the extent that any form of income is then passed back to the annuity-holder, it is likely that this will be caught by the income tax charges on miscellaneous income, and taxed at the annuity-holder's marginal rate. In any event, as explained in response to Qu.2, we consider that the scope of those to whom it will be appropriate to permit assignment is likely to be sufficiently limited that assignment to a connected person ought not to be possible.

Assignment to a SSAS / SIPP to be held within a DC account for the benefit of the annuity-holder would potentially give rise to a risk of tax avoidance (since what would otherwise have been taxable income would be used to fund future benefits, 25% of which would potentially be tax-free). However, this could be addressed by removing the entitlement to a tax-free lump sum from that DC account, in the same way as is proposed where the purchase price received by the annuity-holder is reinvested into a flexi-access drawdown fund or a flexible annuity. Imposing a 55% unauthorised payments charge would be more draconian a remedy than is actually needed.

Qu.10 What consumer safeguards are appropriate – is guidance sufficient or is a requirement to seek advice necessary? Should the safeguards vary depending on the value of the annuity?

The holder of an existing lifetime annuity has a clear DB pension promise from the annuity provider, which he would be relinquishing in favour of either a capital sum or a form of income which is far less certain. As such, the closest analogy is with a member of a DB pension scheme who wishes to transfer to a DC arrangement. On that analogy, independent financial advice should be required in the same circumstances as applies to DB-DC transfers or conversions (ie for any such transfer or conversion where the value exceeds £30,000).

In all other cases, signposting to Pension Wise and provision of standardised risk warnings / "second line of defence" protections should be required as a minimum, since effectively the annuity-holder is faced with the same decision as a new retiree: is he better off with a guaranteed income stream in the form of an annuity, or should he instead be considering one of the other available options?

Qu.11 What is the best way to implement these safeguards? Should the safeguards include expansion of the remit of Pension Wise?

See response to Qu.10. As the consultation paper acknowledges, this is likely to be a relatively niche market, and therefore it seems sensible to use existing advice / guidance structures to provide consumer safeguards, rather than creating something new and bespoke.

Qu.12 Should the costs of any advice or guidance be borne by the annuity holder (mirroring the arrangements for conversion from a defined benefit scheme)? If not, what arrangements are appropriate?

Yes. It is the annuity-holder's choice to relinquish his entitlement to his guaranteed income stream, and therefore it should equally be his responsibility to pay the associated transaction costs (as is the case for a DB member seeking to transfer out to a DC arrangement). In contrast to the at-retirement guidance under Pension Wise, there is no obvious policy reason for the advice to be subsidised by the taxpayer or by any section of the pensions industry in a case where the individual has already made his retirement choice and is now voluntarily looking to change that choice.

To the extent that the cost of advice has a deterrent effect on transactions, this is arguably beneficial in terms of consumer protection, since (as acknowledged in the consultation paper) it is unlikely that assignment will be suitable in the majority of cases anyway.

Qu.13 Do you agree that the government should introduce a requirement on individuals to obtain a number of quotes? How else should the government best promote effective competition to ensure consumers obtain a competitive price?

In view of the concerns over inertia / captive markets, it may be appropriate to prohibit the annuity provider from proceeding with a buy-back offer unless the annuity-holder has obtained at least some external offers for comparison purposes. However, if any such requirement is included (whether in the context of buy-back or more generally), consideration needs to be given to what happens if the annuity-holder cannot obtain the stipulated minimum number of quotations.

Just because there are only a small number of interested buyers does not automatically mean that the offers on the table are to the seller's disadvantage. What is more important than sheer number of offers is that the annuity-holder has a proper understanding of whether or not the offers actually received represent good value. To that end, a requirement for the annuity-holder to obtain independent advice is arguably much more likely to achieve the desired aim. Therefore, whilst inclusion of a requirement to obtain a minimum number of quotations may be a useful default position, it should be possible to proceed with a transaction despite this requirement not being met, provided that the annuity-holder has:

- taken appropriate steps to attempt to obtain the required number of offers (eg requesting a broking service to seek offers from purchasers) and been unsuccessful; and
- taken regulated advice regarding the adequacy of the offers actually received. Consideration should also be given to whether it should be possible for the annuity-holder to proceed as an "insistent customer" or whether the advice received must confirm that the offer to be accepted represents satisfactory value.

Qu.14 Does the government's approach sufficiently protect the rights of dependants upon assignment? If not, what further steps should the government take?

Arguably not. Even if the written consent of dependants is required, it is highly likely that a dependant will come under significant pressure from the annuity-holder to agree to the assignment in order to realise the full value of the annuity. The moral argument likely to be used (and which may well have considerable influence, particularly as between couples) would be that the dependant's future income stream represents the proceeds of the partner's / parent's savings, and that therefore it is not really something which "belongs" to the dependant in a moral sense. This kind of moral pressure is likely to undermine to a significant extent the effectiveness of any requirement of written consent as a protection for dependants.

As regards what further steps could be taken, the only option which is absolutely certain to protect dependants is the proposal discussed in relation to Qu.15 – ie. severing dependants' income streams from that of annuity-holders, and then imposing an absolute prohibition upon assignment by the dependant. Any less draconian steps would not completely mitigate the identified risks.

Of course, it may be concluded that achieving absolute protection for dependants in this manner is not compatible with the policy aims behind the proposal. Further, although the two situations are not directly analogous, it is also relevant to note that the statutory right for a member to take a cash equivalent transfer value from a DB arrangement into a DC arrangement does not require the consent of the member's dependants, even though DB pension schemes will generally include some form of dependants' benefits as standard, whereas DC arrangements will not.

- **Should the government or FCA issue guidance to annuity providers about protection for dependants?**

Any such guidance would be helpful in ensuring that annuity providers do not overlook the question of dependants, but is unlikely to overcome the problems described above.

- **Are there particular classes of beneficiary which require special consideration, for example minors or following a divorce or dissolution of a civil partnership?**

Yes. Minors cannot legally enter into many kinds of contracts, and it is unlikely that even older children could give effective legal consent to a transaction having such a potentially significant impact on their future welfare. Similarly, vulnerable adult children (ie. those who would count as dependants for the purposes of the Finance Act 2004 definition as a result of mental impairment) would not be able to give valid consent.

In relation to divorce / dissolution of a civil partnership, the position should be more straightforward. If no claim has been made during the divorce / dissolution proceedings to impose a pension sharing order in relation to the annuity rights, there is no obvious reason why the ex-spouse / ex-civil partner should be required to consent to assignment. He/she will presumably have sought an alternative form of financial provision as part of the divorce / dissolution settlements, and should not therefore be able to create obstacles to any lawful disposal by the annuity-holder of his pension rights.

- **Are there specific equality impacts that should be considered in this context?**

Yes. See our response to the previous bullet-point, and to Qu.18.

Qu.15 Should the government permit the principal annuity holder's income to be assigned while dependants retain their own income stream? Should the decision on whether to do so be left to the discretion of the parties to the transaction?

We agree with the assessment that this proposal may be costly and difficult to implement effectively. For that reason, if it is considered to be necessary to follow this route in order to protect dependants adequately, it is likely to be insufficient to leave the decision to the discretion of the parties.

In relation to this particular proposal, it is also not clear from the consultation paper whether the Government is suggesting that there should be an absolute prohibition on the assignment by dependants of their separate income stream. Viewed from the perspective of the "freedom and choice" reforms, there is no strong policy rationale for doing so. Such arguments as there are in favour of permitting assignment by the annuity-holder seem equally applicable to dependants' annuity rights.

However, if assignment by dependants is permitted, we are then faced again with the problems around moral pressure which are identified in our response to Qu.14. Fundamentally, the question to be resolved is whether the risks in respect of dependants' benefits outweigh the possible benefits to dependants of permitting assignment by them of their income stream.

Qu.16 How can the proposed consumer protections for the assignment of annuities ensure that any impact on means-tested entitlement is understood by those deciding whether to assign their annuity income?

Achieving this objective requires those providing advice / guidance to understand fully what the impact on means-tested entitlement will be, so that this aspect of the annuity-holder's financial position can be properly covered during the advice / guidance session. This may require more detailed guidance from the DWP, particularly as regards the rules around "deprivation".

Qu.17 Should those on means-tested benefits be able to assign their annuity income?

It seems inherently unlikely that those receiving means-tested benefits will be well-served by assigning annuity income. By definition, they do not have adequate sources of other income to meet their needs (ignoring state benefits), such that they can safely take the risks associated with giving up the guaranteed income from their existing annuity.

However, a new retiree is currently permitted to access the new DC flexibilities even though his total income and pension savings are sufficiently low that he would be eligible for means-tested benefits if he used his DC pot to purchase an annuity. Whilst that remains true, there is no sound policy rationale for prohibiting assignment by an existing annuity-holder. In either case, it needs to be made very clear to the individual what the implications of forgoing annuity income will be, as regards eligibility for means-tested benefits.

Qu.18 What are the likely impacts of the government's proposals on groups with protected characteristics? Please provide any examples, case studies, research or other types of evidence to support your views.

It seems likely that those who are elderly and those suffering from mental illness / disability may be particularly vulnerable to exploitation if the proposals are brought in. Their ability properly to understand and assess the risks and advantages / disadvantages of the options being offered to them may well be materially impaired, and there is a significant risk that they may be placed under considerable pressure (including by close family members) to cash in annuities which they would be better off retaining, or to agree to the assignment of annuities under which they would potentially benefit as dependants.

There is also a significant risk that there will be a disproportionately adverse impact on women, who are more likely than men to be the recipient of dependants' pensions. See in this connection our response to Qus.14 and 15.