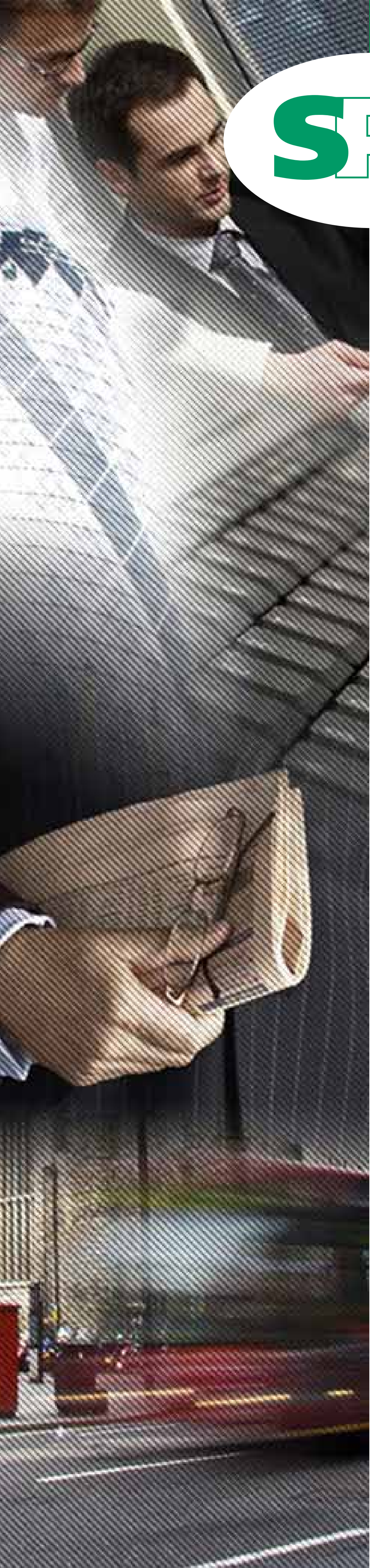
SPC News No. 4, 2011 Issued in August, 2011



SPC

THE NEWSLETTER OF THE SOCIETY OF PENSION CONSULTANTS

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Issue No. 4, 2011

SPC Conference October 6th 2011, Hyatt Regency Churchill, London W1: Save the date

This year's SPC conference will be at the Hyatt Regency Churchill on October 6th 2011.

The theme of the conference will be "A Future Without Retirement: Embracing the Opportunities and Meeting the Challenges". The intention is to look positively at the opportunities created by, and responses to, an environment in which retirement age becomes a matter of personal choice, in which increasing longevity means that many people no longer choose to make financial plans on the basis of complete cessation of economic activity hitherto associated with retirement and in which defined contribution provision offers the flexibility of a pot of money, rather than a pension. We are assembling a high level panel of speakers from business, political, academic and pensions backgrounds.

Steve Webb, the Pensions Minister, will be our principal speaker.

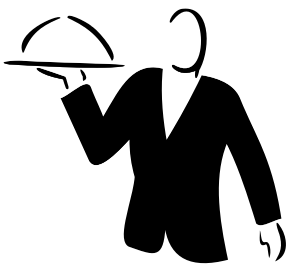
We are looking forward to repeating the success of last year's conference, when comments from those present included.

- Possibly the best one-day conference I have participated in: engaging and informed speakers, congenial company, well organised
- Very good overall, no disappointing sessions
- A great overview of the key issues in pensions. Extremely pleased with the interaction with delegates
- An excellent overview of the landscape and challenges in workplace savings from an employer and employee perspective.
- Excellent speakers – thought provoking content – good participation

The delegate rate is £299 plus VAT, but with a discount to £249 plus VAT for bookings received by August 31st 2011.

To book, please click here www.conferencesandtraining.com/spc-conference.

We look forward to seeing you at this important SPC event.



SPC Dinner 2011

November 2nd Dorchester Hotel, London W1

Key information on this year's SPC Dinner is as follows:-

- **Principal Speaker**

  Rt. Hon. David Willetts, MP (Minister of State for Universities and Science)

  David Willetts is an accomplished and stimulating speaker and continues his long-standing interest in pensions and related subjects in his highly acclaimed current book "The Pinch: How the Baby Boomers took their Children's Future – and why they should Give it Back".

  Kevin LeGrand (SPC President and Principal and Head of Technical Services at Buck Consultants) will also speak.

- **Presentation of the "SPC Journalist of the Year Awards"**

  These awards will recognise one journalist from each of the national press and pensions trade media, who has made an outstanding contribution to pensions journalism in 2011, as voted by SPC members.

- **Sponsorship**

  This year, we are again offering SPC Members the opportunity to associate themselves with the prestige and success of the Dinner, through sponsorship.

  We would welcome your sponsorship of one or more of the following:

  - The printed list of those attending, available to the 300+ diners on arrival.
  - The menu at each place at the Dinner
  - The SPC Pensions Trade Journalist of the Year Award
  - The SPC National Pensions Journalist of the Year Award — *Sponsorship agreed for this award*

  The sponsorship amount for each is £1,500 (VAT is not chargeable). Please contact John Mortimer at SPC as soon as possible to seize these opportunities.

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SPC Dinner

- **Venue**

  The Dorchester, Park Lane, London W1

Tickets are £170.00 per head and feedback from previous years' Dinners indicates that this is a modest cost, which can be re-paid many times over in terms of the useful networking opportunities, which exist to strengthen your business relationships. The price includes pre-dinner cocktails, a five-course meal, half a bottle of wine with dinner, and a liqueur with coffee.

As ever, we are keen to encourage "new blood" at the Dinner and ensure that it continues to offer the broadest possible range of networking opportunities for those attending. To that end, if your organisation has never previously been represented at the Dinner, the person making the booking will benefit from a special price of £135.00, as will one additional guest.

The closing date for applications is October 5th, and tickets will be sent to you in or around the third week of October. It goes without saying that this event also makes an important contribution to SPC's funds and the valuable work it does on behalf of your industry.

For a booking form, please CLICK HERE.

What's being read on the SPC website?

CLICK HERE for the latest summary of hits on the SPC website, presented to the PR Committee.

Who's writing about SPC?

CLICK HERE for the latest summary of SPC press coverage, also presented to the PR Committee.

New Members

The latest new Members of SPC are **Berkeley Burke & Co.**, Leicester and **KKW Pensions Management Ltd**, London SW19.

SPC London Evening Meetings

Details of our forthcoming SPC London evening meeting are as follows:

Date	Speakers	Subject	Venue
21 September 2011	Stewart Cowley (Old Mutual Asset Managers)	Gentlemen Prefer Bonds - Investment Challenges over the Next Ten Years	Old Mutual Asset Managers, 2 Lambeth Hill, London EC4V 4AD

Please click on the speaker names below for a copy of their handouts at the June joint SPC/APL evening meeting.

Date	Speakers	Subject
16 June 2011	Jonathan Hilliard (Wilberforce Chambers) for APL - the trustee perspective and Fraser Smart (Buck Consultants) for SPC - the employer perspective	Recent Important Pensions Cases

SPC contacts

SPC has had a meeting with officials from DWP and the Pensions Regulator, to discuss the inter-play between the legislation prohibiting inducements to opt-out of auto-enrolment and flexible benefits.

SPC Online Poll result

Our most recent online poll question was:-

"Is the Government's decision, that no administrative charge should be billed to members, for paying the Annual Allowance tax liability via the scheme, unrealistic and unfair?"

Yes – schemes should be given the discretion to bill the member and recover costs, so being consistent with other administrative actions such as pension sharing orders.	**94%**
No – individuals should not be charged for discharging a tax liability.	**6%**

HMRC seeks SPC comments on various draft regulations

HMRC has invited our comments on various draft regulations published to accompany provisions in the current Finance Bill. For details, please CLICK HERE and CLICK HERE.

At the time of preparing this issue of SPC News, we had the draft regulations under consideration.

Annual Allowance Charge

Following our earlier correspondence with HMRC on the annual allowance (for details, please CLICK HERE) we have had further correspondence with HMRC, partly directly relating to the correspondence and partly relating to matters not directly connected with it.

For a copy of our letter, please CLICK HERE and for a copy of HMRC's response CLICK HERE.

Restructuring of RPSM

SPC attended a meeting at the end of March 2011, hosted by HMRC, to consider the possibilities for restructuring the Registered Pension Schemes Manual.

Primary Protection and the Reduction in the Lifetime Allowance

We have corresponded with HMRC on primary protection and the reduction in the lifetime allowance.

We noted that HMT/HMRC confirmed in "Restricting Pensions Tax Relief through Existing Allowances: Response to the Consultation on draft Legislation" that protected cash would be based on 25% of the individual's protected lifetime allowance, where the member elects for fixed protection:

"2.13 The consultation on the draft legislation also raised a number of frequently asked questions on the operation of lifetime allowance transitional protection that HMRC has sought to clarify. For people who elect for fixed protection, some respondents were not sure whether the general 25 per cent of lifetime allowance upper limit on tax-free lump sums that can be paid out by a tax-relieved pension scheme is 25 per cent of the new reduced lifetime allowance of £1.5m or 25 per cent of an individual's protected lifetime allowance of £1.8m. HMRC has confirmed it is the latter (25 per cent of £1.8m)."

We assume that paragraph 14(4) (Part 2, Schedule 18 to the Finance Act, 2004) is intended to provide the legislative backing for this response. That paragraph simply states that, for the purposes of Part 4 of the Finance Act 2004, the standard Lifetime Allowance (LTA), for those with Fixed Protection, is read as the greater of the standard LTA and £1.8m. This presumably is reflected in the cash calculation, although that does not appear to have been made explicit.

Given the change in the LTA, and its impact on the cash allowance for those who opt for Fixed Protection, we are concerned that regulations do not seem to have a provision for revoking Primary Protection, as they do for Enhanced Protection. Individuals with Primary Protection, but no protected cash, will have their Pension Commencement Lump Sum calculated by reference to the reduced LTA. Therefore some individuals would now prefer Fixed Protection, in view of the impact on the lump sum.

In light of the changed circumstances, which could not have been envisaged, when Primary Protection was originally chosen, we asked whether it is HMRC's intention to allow a one-off revocation of Primary Protection in favour of Fixed Protection.

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Primary Protection and the Reduction in the Lifetime Allowance

Alternatively, would HMRC contemplate allowing the cash to be calculated by reference to the old protected LTA figure, without disturbing the Primary Protection status?

HMRC has confirmed our assumption that paragraph 14(3) of Schedule 18 provides that, for those with fixed protection, references in Finance Act 2004 to the standard lifetime allowance are read as the greater of the standard lifetime allowance and £1.8m. Therefore, for those with Fixed Protection, in the permitted maximum for a Pension Commencement Lump Sum as set by paragraph 2 of Schedule 29, Finance Act 2004, references to the current standard lifetime allowance would also be the greater of the standard lifetime allowance and £1.8m.

HMRC also confirms that those who have existing primary protection cannot give this up and therefore are not able to apply for fixed protection. There are no plans to change this. HMRC states that these individuals have had protection from the lifetime allowance charge since A-day and will continue to receive this benefit.

There are also no plans to allow those with primary protection, but without a protected lump sum, to be entitled to a lump sum of greater than 25% of the standard lifetime allowance.

HMRC and Treasury Consultation: Employer Asset-backed Pension Contributions

HMRC and The Treasury have published a consultation document on employer asset-backed pension contributions.

The consultation document is available CLICK HERE.

At the time of preparing this issue of SPC News, we had the consultation document under consideration.

Draft Annual Allowance Information Requirements

We have responded to HMRC on its draft annual information requirements regulations reported in **SPC News no. 3, 2011**.

For a copy of the response, please CLICK HERE.

SPC responds to DWP on workplace pension reform regulations

We have responded to DWP on its informal consultation document on draft regulations on workplace pension reform regulations.

The response is available CLICK HERE.

The consultation document is available CLICK HERE.

PPF confirms new levy framework

This article is derived from Mercer Select, Mercer's subscriber service offering news and analysis of UK pension developments on-line and by email. For further information please CLICK HERE.

This article was correct on May 16th 2011.

PPF has published a policy statement on the new levy framework, which will take effect from 2012/13. The proposals set out in the consultation have largely been adopted.

- The levy parameter will be fixed for three years from 2012/13 to 2014/15 under normal circumstances. Details of the levy parameter will be published in autumn 2011 together with the draft Determination.
- A smoothed funding level will be used to determine underfunding. Assets and liabilities will be smoothed by PPF using its "roll forward mechanism", by rolling forwards (or backwards) the section 179 information submitted before the measurement date (which, for the 2012/13 levy year, will be March 31st 2012) using five year average values, instead of using index values at a single reference date.
- Investment risk will be included in the formula for calculating the risk-based levy, using a form of stress testing as proposed. A revised set of indicative asset and liability stress factors has been published in the confirmed policy, although these factors are still subject to review. Final figures will be published in the levy Determination in December 2011.
- Schemes with liabilities over £1.5 billion will have to provide a scheme specific risk analysis to PPF, and smaller schemes will have the option to do this also.

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PPF confirms new levy framework

- As proposed in the consultation, insolvency risk will be measured using the 'smoothed' and 'banded' approach. However, there will be 10 risk bands instead of six originally proposed, to avoid cliff edges between bands and the need for any transitional protection. D&B failure scores will be assigned on the last working day of each month, and the average over the 12 months preceding the measurement date will be used to allocate each employer to a PPF levy band. The first measurement date for the 2012/13 levy year was April 28th 2011. The table below summarises the new levy bands and the probability of insolvency assigned to each.

PPF levy bands

PPF levy band	1	2	3	4	5	6	7	8	9	10
Corresponding D&B Failure score	100-99	98-96	95-92	91-87	86-73	72-66	65-46	45-38	37-30	29-1
Levy rate %	0.18	0.28	0.44	0.69	1.10	1.60	2.01	2.60	3.06	4.00

- Schemes will still be able to submit deficit reduction certificates, contingent asset certificates and full block transfer certificates, but there will be changes to how they will be taken into account. There will be no requirement to provide information about partial block transfers. PPF has confirmed the following deadlines for submitting these certificates:
  - Certification and recertification of contingent assets – 5 pm March 30th 2012
  - Certification of deficit reduction contributions – 5 pm April 10th 2012
  - Certification of full block transfers – 5pm June 30th 2012

PPF has issued a consultation document on its draft guidance for carrying out bespoke investment risk analysis for large schemes. The consultation closed on June 24th 2011. For a copy, please CLICK HERE and for SPC's response, please CLICK HERE.

The Pensions Regulator settles with target to issue Contribution Notice

This article is derived from Mercer Select, Mercer's subscriber service offering news and analysis of UK pension developments on-line and by email. For further information please CLICK HERE.

This article was correct on June 10th 2011.

Following an extensive process, begun in 2010, the Pensions Regulator has issued its first contribution notice (CN), in relation to the Bonas Group Pension Scheme. This is the first CN issued by the Regulator, since its so-called 'moral hazard' powers were introduced in 2005. Originally, the Regulator's intention was to issue a CN for £5 million. This was challenged by Michel Van De Wiele NV (VDW), the Belgian parent of the scheme sponsor Bonas UK Limited and the target of the CN. The settlement reached is that a CN should be issued for £60,000.

The Regulator sought to impose the CN against the target, on the grounds that VDW had taken action, one of the main purposes of which was to avoid or limit pension funding liabilities due as a debt from the employer. (These CN grounds relate to intent; a second type of CN can be triggered by judging negative impact on the scheme without considering intention, under the "material detriment" test – introduced after VDW's actions took place.) It also sought to issue a CN to Charles Beauduin, a director of both companies. In considering whether the CNs should be issued:

- The Regulator's Determinations Panel (DP) found VDW to have deliberately avoided involving the Regulator and the scheme trustees before the event, so as to avoid the cost of a negotiated settlement.
- The DP also held that VDW had deliberately sought to separate the pension liabilities from the assets and business of Bonas, by putting it into "pre-pack" administration in 2006. This was on the grounds that VDW subsequently formed a new subsidiary, which purchased Bonas's business and some assets at undervalue, but did not take on the pension liabilities.

The DP decided (in May 2010) that a CN should be issued for £5m to VDW, but that a CN should not be issued against Mr Beauduin. The £5m was approximately the value of the scheme's shortfall on the PPF basis.

VDW sought to have the CN struck out in the Upper Tribunal. This was rejected in January 2011, but the Tribunal President, Warren J, noted his "serious reservations" regarding the "excessive" amount sought by the Regulator. He questioned the DP's reasoning in valuing the amount of the CN as the PPF deficit, particularly since:

- VDW had no direct liability towards the pension scheme and, arguably, could not be said to have drawn any advantage from it, since Bonas had not been a profitable concern since VDW had purchased it; and

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The Pensions Regulator settles with target to issue Contribution Notice

- In the absence of the pre pack, the trustees could not reasonably have expected to collect a sum as large as £5 million, for example, had a section 75 debt been triggered.

The judge said the CN should aim to compensate the Scheme for the detriment caused, rather than impose a penalty: on the facts of this case, he preferred that the CN should seek only the difference between the business's market value and the price paid under the pre-pack. The case would have proceeded to a full hearing, at which the correct method of valuing the amount of the CN would have been explored. However, the Regulator has decided that it was appropriate to reach a settlement with VDW, and announced on June 9th that it had agreed a CN of £60,000.

The Regulator asserts in its press release that, with the settlement of the CN, the total amount recovered from Bonas's insolvency in respect of the Scheme will be over £1 million, and that settling in this case "does not signal any change in our approach to avoidance activity". In an accompanying report, the Regulator clarifies that its approach to future CN claims will not be to restrict their value to compensation for the detriment in all cases, in line with Warren J's remarks; it notes that the judge's comments on the method of valuing the CN were side remarks rather than part of the decision on the strike-out application, and were made upon the particular facts of this case.

About SPC

SPC is the representative body for the providers of advice and services needed to establish and operate occupational and personal pension schemes and related benefit provision. Our Members include accounting firms, solicitors, life offices, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. Slightly more than half the Members are consultants and actuaries. SPC is the only body to focus on the whole range of pension related functions across the whole range of non-State provision, through such a wide spread of providers of advice and services. We have no remit to represent any particular type of provision.

The overwhelming majority of the 500 largest UK pension funds use the services of one or more of SPC's Members. Many thousands of individuals and smaller funds also do so. SPC's growing membership collectively employ some 15,000 people providing pension-related advice and services.

SPC's fundamental aims are:

(a) to draw upon the knowledge and experience of Members, so as to contribute to legislation and other general developments affecting pensions and related benefits, and

(b) to provide Members with services useful to their business.

THE SOCIETY OF PENSION CONSULTANTS

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