SPC news

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The Bimonthly Newsletter of the Society of Pension Consultants

New Chairman for SPC

SPC's new Chairman is **Sir James Hodge**. He succeeds Sir David Miers who stepped down in early January after more than eight years in the role.

Sir James said of his new appointment: "I am delighted to have been given the opportunity to serve as SPC Chairman. The whole question of pensions is now at the centre of public debate - rightly so, because what is involved is of vital importance to everyone.

"The SPC has a reputation second-to-none among pensions professionals. I look forward to working with the excellent SPC team further to ensure that the key issues involved are presented to, and understood by, all stakeholders – including, crucially, Government. Because pension decisions taken today will resonate well into the future, it's vital that decision-takers are well-informed."

Sir James is a former British diplomat. His 37-year Foreign Office career concentrated on trade and economic issues. Much of his time overseas was spent in East Asia. As well as postings to Tokyo and Beijing, he served as Ambassador to Thailand and to Laos, and as Consul-General at Hong Kong and Macao.

Married, with three grown-up daughters, Sir James lives in London. A member of the Central Council of the Royal Over-Seas League and a Deputy Chairman of Asia House, he is also an adviser to the Mansion House Scholarship Scheme.

The Mansion House Scholarship Scheme exists to fund scholarships for students and young business executives from overseas to travel to the UK to study for a short course or undertake training or work experience in financial and related business activities for about a month. Awards are made at the personal discretion of the Lord Mayor and are limited to the countries which the Lord Mayor visits in any one year. ■

SPC London Evening Meetings

Details of forthcoming meetings are as follows:

Date	Subject	Speaker	Venue
April 25 2007	Personal Accounts – Where will the journey end?	Steve Folkard (Axa and ABI)	Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG
May 31 2007	Improving the sponsor covenant: an alternative to buying-out	Eric Viet (Aleva)	Jardine Lloyd Thompson Group plc, 6 Crutched Friars, London EC3N 2PH

We are grateful to Lovells and JLT Benefit Solutions for hosting these meetings.

Handouts are available for the following meeting:-

Date	Subject	Speakers
February 12 2007	Scheme Governance, including Risk Management and Internal Controls	Mark Smith and Andrew Evans (PricewaterhouseCoopers)
March 27 2007	"Anti-Age Discrimination and Pensions"	Jennifer Bell and Kate Richards (Nabarro Nathanson)

We are grateful to Pinsent Masons for hosting this meeting and to Xafinity Consulting for sponsoring it.

You can obtain a copy of the handouts by clicking on the subject. ■

SPC Administration Network

The SPC Administration Network has announced its programme of meetings for 2007. Meetings are planned for June 12th, September 11th and November 13th in conjunction with the SPC Administration Committee.

The background to the Administration Network is that a number of in-house pension scheme administrators expressed interest in the work of the SPC Administration Committee. SPC membership is not available to in-house administrators and we therefore set up the Administration Network, to enable them to keep in touch with and influence the work of one of the key bodies in the pensions world, focusing not just on scheme administration, but broader risk management and governance issues. ■

The latest new members of SPC

- **Citigroup Global Capital Markets**, London E14
- **Gazelle Corporate Finance**, London W1 ■

NEW
MEMBERS

New material on the SPC website

We have added some new material to the Archive Section of the SPC Website. The following is now available:-

- SPC Committee papers for 2006
- SPC News Issues for 2006. ■

BCE3 and Dependants' Scheme Pension Rules

Following the Chancellor of the Exchequer's pre-budget report in December 2006, HMRC issued a consultation document, seeking to identify improvements which could be made to the new pension taxation regime in connection with one of the life time allowance tests (benefits crystallisation event 3) and the dependants' scheme pension rules. *For a copy of the consultation document please click here.*

We have now responded to the consultation document. *A copy of our response is available by clicking here.* ■

HMRC decides not to automate certain of its current manual form processes

HMRC has reviewed the volume of paper forms received in the period since 6 April 2006 for contracting-out of the State Second Pension and claims for increased lifetime allowances. The volumes for these are low and not expected to rise significantly.

HMRC has therefore decided not to provide an online facility for schemes to elect to contract-out or for individuals to claim an increased lifetime allowance. HMRC will focus its resources on ensuring the online forms - Event Report and Registered Pension Scheme Return - when delivered are reliable and user friendly. ■

Tax free cash and assignment

HMRC proposes to extend tax free cash protection, so that protection of pre A-Day rights is maintained where an existing insurance policy is assigned to a member on the winding up of an occupational pension scheme. We have sought clarification of whether this will also apply where a policy is assigned on leaving.

HMRC answered on the assumption that we were referring to situations where an individual voluntarily ceased to be a member of a scheme, and a policy was assigned to that individual on departure. HMRC does not intend to provide continued protection in such circumstances.

HMRC views the general principle as being that the only rights protected are those in existence under a particular scheme immediately before A-Day. If a member decides to leave that scheme after A-Day then that individual is voluntarily abandoning the protected position. By contrast, members will usually have little or no control over the winding up of their scheme, and HMRC considers that it would be unfair if protection were lost in such circumstances.

We are pursuing this matter, pointing out that assignment on leaving is normally a requirement under scheme rules, not an option exercised by the member. ■

New tax rules and regulator's guidance on enhanced transfer values and cash inducements

In recent months there has been considerable interest in various strategies designed to encourage members of defined benefit schemes to agree to reduced benefits in return for a cash inducement and/or enhanced transfer to a money purchase scheme.

HMRC has now issued a statement, asserting that where cash payments are made to members, these will be subject to tax and national insurance, based on existing tax law. This is a different position from the one previously taken in response to some scheme-specific enquiries with individual tax inspectors. This is acknowledged by creating an exemption for offers already made or paid on the back of scheme-specific advice.

In parallel the Pensions Regulator has issued guidance covering the issues involved and the actions it expects to be taken by employers, trustees and members. *For a copy of the guidance,*

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➥ *please click here.* This does not define specific boundaries on acceptable or unacceptable behaviours, but sets out a range of issues which need to be considered.

In particular, trustees are expected to be engaged with any offer process, and to ensure that members' interests are being protected in areas such as being advised of the risks involved and the benefits of independent financial advice. This may extend to the trustees issuing their own communications to members if they are not satisfied with the employer's material. Trustees also need to be aware of their obligations under the Data Protection Act and to have considered these before releasing member information to a company or its advisers. ■

Increased PPF levy rates for 2007/08

The Pension Protection Fund published a further consultation document in December 2006, adding to the information provided in its September consultation. This includes the actual levy estimate of £675 million to be collected (risk-based element £540 million, scheme-based element £135 million), more than double the amount now expected to be collected for 2006/07. This means substantial increases in levy for the majority of schemes. The key features include:

- Changes to the scaling factor. The final figure will not actually be disclosed until April 2007, but the PPF's estimate, based on insolvency and under-funding information available to it as at 31 October 2006, is for a scaling factor of 2.02, an increase of almost fourfold from the 2006/07 factor of 0.53. All other things being equal the under-funding related element of the levy could therefore be expected to increase by 281% (2.02/0.53 - 1). However, there will be other factors in practice.
- The document sets out the precise formula and methodology for calculating the levy scaling factor – essentially the 2.02 will be adjusted to allow for the effects of any other new information collected by PPF in relation to deficits and risk levels, but this is its current "best guess".
- Because of market movements and changes in the liability valuation basis, most schemes could expect a lower deficit as at 31 October 2006 compared to the 31 March 2006 figure used for this year's deficit. But the increase in the scaling factor will more than offset this if the deficit is significant. It will also increase the incentive to pay additional contributions – the levy saving per pound of extra contribution for a scheme in deficit could increase by 281%.
- A similar procedure will be used by PPF to determine the scheme based multiplier, which is applied to total liabilities regardless of surplus or deficit. Again based on October 2006 information, the expected value will be 0.0195%, up from 0.014% in 2006/07.
- The market conditions, by reference to which scheme under-funding will be calculated for 2007/08, will be those applying at 31 October 2006. This is designed to minimise the risks of collecting either too little levy (if markets improve), or too much (if markets decline), thereby ensuring PPF collects a levy closer to its estimate than in 2006/07, where market improvements after the levy was set (amongst other factors) contributed to a major undershoot. It will also provide more certainty to schemes.
- PPF will still adjust the amount to be collected, taking into account deficit reduction contributions and contingent assets certified in the 12 months before 30 March 2007. (In 2006/07, these are estimated to have reduced the levy collected by £60 million, i.e. around 20% of the total.)
- An increase in the cap on the risk based levy from 0.50% to 1.25% of PPF liabilities. The increase is designed so that approximately 5% of schemes will continue to benefit from the application of the cap; without the increase the number so benefiting could have been as high as 20%.
- PPF will use the same assumed probabilities of insolvency for the 2007/08 levy year as were used for 2006/07.
- PPF is proposing a revised approach to the weighting applied to County Court Judgements by its credit information provider (D&B) for sponsoring employers within the PPF scheme universe. It would thus appear that no other major D&B model changes are currently contemplated.
- As previously intimated, a weighted average probability of insolvency for multi-employer schemes is now automatically applied. Data collection is now incorporated into the annual scheme returns (as opposed to being collected on a voluntary basis). This effectively removes the choice of determining the Failure Score which would apply in multi-employer situations, which was previously available to some schemes. Where previously the largest employer had a better credit standing than the employers collectively, this will tend to lead to a levy increase.
- Revised standard documentation for Type C contingent assets (i.e. letters of credit and third party guarantees) as previously intimated.
- A revised approach to the inclusion of insured liabilities within Section 179 valuations, again as already intimated.

The decision to implement an additional special rule in respect of D&B's Failure Score methodology (there were already two relating to the removal of negative tangible net worth and 'parent at risk' over-rides) means that there will now be more cases where a company's standard Failure Score will not be the same as that used for PPF levy calculation purposes. However, employers are able to monitor their PPF scores on a weekly basis from 2 January 2007 by e-mailing D&B at: customerhelp@dnb.com or calling the helpline (0870 850 6209).

The PPF consultation document is available by clicking here. ■

Further developments on age discrimination

We reported in **SPC News No. 6 2006** that we planned to produce a comprehensive note for the government, setting out areas where we considered that the revised guidance on the pensions aspects of the Age Discrimination Regulations, which came into force on December 1st 2006, is unclear or could be improved.

We have since submitted this note. *For a copy click here*.

We have also taken part in discussions with DWP on the impact of the new regulations on flexible retirement. As yet, these have yielded no concrete outcome, but we expect to have further meetings on this subject.

A recent on-line poll of SPC members suggests that the new age discrimination legislation will have a widespread but generally manageable effect on scheme benefit structures.

Members were asked:-

"What impact do you think the new age discrimination legislation will have on scheme benefit structures?"

The response was:

Moderate impact:	88%
Wholesale changes:	12%

No responders thought that there would be no impact.

Commenting on the result, Roger Mattingly, Chairman of the SPC Public Relations Committee, which commissioned the poll, commented:-

"The feedback we received from those voting suggested that it will be some time before we have a full picture of the impact of the legislation, not least because in some areas it is still not completely clear what the legislation requires. At this stage it looks as if the effect of the legislation will be widespread. Many schemes will need to take some action, although the changes required will often be moderate." ■

PPF consultation document on whether to include investment risk as a risk factor in the risk based levy

In December 2006 PPF issued a consultation document on whether to include investment risk as a risk factor in the risk based levy. *A copy of the consultation document is available by clicking here*.

The proposal in the consultation document was that it would not be proportionate to introduce an investment risk factor in the risk based levy.

We welcomed this decision, which was in line with our views previously put to PPF. ■

Pensions Regulator discussion paper on abandonment of defined benefit pension schemes

Also in December 2006 the Pensions Regulator published a discussion paper intended to draw the issue of the potential abandonment of pension schemes to the attention of trustees of defined benefit schemes.

For a copy of the consultation document please click here.

In our response we welcomed the paper. It highlights some important areas for discussion and consideration by all parties to a pension scheme on a relevant topic.

Generally, we view the discussion paper as having a similar tone to the Regulator's position on clearance, which has been proportionate. Whilst we appreciate that it would be a matter of some sensitivity, it would undoubtedly be helpful if the Regulator published, now or later, some examples of cases in which it had decided not to intervene in circumstances which could be construed as abandonment.

The discussion paper is correct to suggest that there will be cases where, on any reasonable view, it ought to be apparent to the trustees that the scheme is indeed being abandoned as a result of transparent introduction of a much weaker or nominal employer covenant and a reduced level of funding of benefits. In these cases abandonment is an event, rather than a process. These black and white situations are easiest to recognise and generally the easiest for trustees to tackle head-on, to the extent that they actually have power to tackle them. Much more difficult are cases where trustees are confronted with shades of grey rather than black and white, possibly manifested in a series of steps taken by an employer which gradually weaken its commitment to the scheme and which it might be difficult in practice for the trustees to detect. In these cases there needs to be a clear recognition by the Regulator that there are limits to the ability of the trustees to influence matters.

For a copy of our full response, please click here. ■

Pensions Regulator consultation on regulating money purchase schemes

In November 2006 the Pensions Regulator issued a consultation document on its plans for regulating money purchase schemes in relation to risks to members.

For a copy of the consultation document please click here.

We welcomed the Regulator's review as timely. As the statistics within the consultation document itself demonstrate, defined contribution provision in various forms is playing an increasing part in UK pension provision and will soon, on some measures, equal or surpass defined benefit provision.

The form which this increased defined contribution provision will take is, however, uncertain. The regulatory stance of the Pensions Regulator will play an important part in shaping the environment.

We need to bear in mind why defined contribution provision is supplanting defined benefit. One of the main reasons (alongside a period of poor investment returns and increasing longevity) is that, over time, defined benefit schemes have, usually through the best of intentions, been progressively changed by legislative and regulatory intervention, so that they have become ever less like the scheme which the employer originally volunteered to set up. Substantial commitments and costs were added, which the employer never intended to take on. A move to defined contribution provides an exit route for employers.

If the Pensions Regulator and others create an environment where the same concerns about a creeping regulatory burden start to arise with defined contribution schemes, employers will again look for exit routes. If sponsoring a trust-based scheme becomes problematic, because the regulatory costs of operating a trustee body become too high or because finding trustees becomes too difficult, they will move to contract-based arrangements or to auto-enrolment into personal accounts. If involvement with a contract-based scheme is viewed as still too onerous, again, personal accounts will offer employers an alternative.

We should also consider that in the defined contribution environment extra regulatory costs are likely to have a direct impact on the member's retirement pot.

From a member's point of view personal accounts will carry virtually all the risks raised in the consultation document, but an employer will be much less associated with the risks because personal accounts will be a quasi-state arrangement, to which it will simply contribute and in respect of which it will bear only some of the administrative overheads.

It is therefore welcome that, as far as we can see, the Regulator intends to operate within existing legislation and is not proposing new provisions.

The consultation document tends to focus on the responsibilities of employers and trustees. We do not at all dispute that both do have very important responsibilities, but it is important not to overlook that in practice both groups are bound to rely heavily on various advisers and service providers, who themselves are subject to extensive regulation, aimed not least at protecting their clients and members of schemes, which their clients sponsor.

The consultation document offers a thorough description of the risks associated with defined contribution provision and therefore provides a good starting point for addressing the risks. There is a welcome recognition of the degree to which defined contribution schemes are already regulated and of the existing involvement of other parties in safeguarding members. We have in mind in particular the Financial Services Authority. It is important that the Pensions Regulator does not duplicate existing regulatory activity. In contract-based schemes in particular FSA already plays a significant role. Indeed from many points of view it makes little sense for the Pensions Regulator to publish a position on regulation of defined contribution schemes independently of FSA and we would strongly support the publication of a joint Regulator / FSA document. We were also surprised to see no reference to the Pensions Ombudsman, who has for some time taken a keen interest in the administration of defined contribution schemes and has not hesitated to make known his views where he perceives there to be shortcomings. In this area a coordinated approach with the Pensions Ombudsman is essential.

We agree that one of the early successes of the Pensions Regulator has been its development of e-learning for trustees. We also agree with the Regulator's view, that one of the key protections for members should be that they understand better how defined contribution schemes work and where the risks to them lie. We suggest that a fundamental part of the Regulator's approach should therefore be to build on its success in developing e-learning for trustees by developing the explanatory material for members.

This could certainly be routed through trustees, employers and providers, but it would also be desirable to place it on the Regulator's website and seek to ensure that members are aware of its presence there.

For our response in full, please click here. ■

Leavers with less than two years service from money purchase schemes

Under section 101AB of the Pension Schemes Act 1993, a cash transfer sum is defined as the cash equivalent at the date on which a member's pensionable service terminates.

However, in practice, in a money purchase scheme, it would be difficult to disinvest a member's units at their date of leaving, as there is often an interval between that date and the

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employer notifying the trustees and the administrators of that date. Fund managers might also set deadlines for disinvestments.

Accordingly, in such a scheme the disinvested proceeds will usually either exceed or fall short of the value at the date of termination. In the latter situation, it is not clear who would make good the shortfall, given that all the scheme assets may be actually or notionally allocated to individual members, so that there are no unallocated funds available for the top-up; moreover, it is not clear that any shortfall would become an employer debt (and in any case the employer may no longer exist).

It seems to us that section 101AB needs to be amended to explicitly recognise the environment in which money purchase schemes operate. Namely that the "cash transfer sum" in relation to such schemes should be re-defined as being the cash equivalent as at the date of payment.

There will also be a consequential need to amend section 101AC(3)(a) of the Pension Schemes Act 1993 in relation to money purchase schemes, as this currently requires the amount of the cash transfer sum to be quoted when notifying the member of the available options.

We suggest that the requirement should instead be to quote a sum based on prices at the date of the quotation, with a statement to the effect that the actual cash transfer sum, where taken, would reflect the disinvestment proceeds. The quotation statement would therefore need a warning that the value shown can go up or down, so could change by the date of payment.

It would also be necessary to consider corresponding changes where money purchase benefits arise under hybrid schemes.

We have asked DWP to change the legislation in line with our suggestions. ■

Paul Thornton's review of the institutions involved in the regulation and protection of work based pensions

In January 2007 the government announced that Paul Thornton had been appointed to lead an external review of organisations involved in the regulation and protection of work based pensions.

Paul Thornton is Managing Director of Gazelle Corporate Finance and a previous President of the Institute of Actuaries.

The review is to consider how the responsibilities of the Pensions Institutions, such as the Pensions Regulator, the Pension Protection Fund and the Financial Services Authority, are arranged, to ensure that they support existing government policy and fit the government's proposals for changes to the pension system and developments in the pensions market.

Paul Thornton is due to present the findings and recommendations of his review in Spring 2007.

For full details of the review please click here.

In summary, our initial response was as follows:-

Comments on the Institutions Covered by the Review

The Pensions Regulator

The Pensions Regulator is still a relatively new body and it is too early to form more than provisional views about its performance of some aspects of its role.

We welcome the Regulator's preparedness to make its views known at a relatively early stage on emerging issues, for example most recently on inducements to transfer and scheme abandonment.

We have some concerns about whether in the long term the Pensions Regulator will be able to attract and retain sufficient suitably qualified staff to both exercise an active regulatory role, keeping pace with emerging issues, and to deal as efficiently as it currently generally does with routine queries and concerns raised by trustees and those providing services to them. At present it is making intelligent use of secondees from the pensions industry.

We also perceive the Regulator to be generally open to comment from bodies such as SPC, for example in drawing up its policy on monitoring of the new scheme funding requirements.

The Regulator had had to assimilate considerable volumes of legislation and produce a significant number of codes of practice and has achieved these tasks, although some of its publications, including codes of practice, are of intimidatory length, certainly for the lay trustees, who are meant to be a key reader group.

The Regulator had yet to use its powers in a major way, for example on clearance. So far its general standing and perceptions of how it might exercise its powers, if it felt obliged to do so, seem to have been sufficient to obtain its desired outcome in most situations.

It appears to be sticking to its brief to operate as a risk-based regulator. Given its relatively limited resources, this is an approach which from the Regulator's point of view, as well as from that of the pensions industry, is to be highly recommended.

The Regulator's risk-based approach seems to be focusing on the right schemes. This might become a more difficult task if economic conditions became significantly less benign than at present.

The Regulator could, if it got its approach wrong, accelerate the demise of defined benefit provision. At present it is neither accelerating nor delaying its demise.

In our view the main interactions of the Pensions Regulator are with the Pension Protection Fund and FSA. On a day to day level, our experience suggests that the roles of the Regulator and the Pension Protection Fund are sometimes subconsciously merged into one among practitioners, although there is no evident support within SPC for actually merging the two organisations. It is, however, desirable that their operation (our Members have referred specifically to data gathering) is as coordinated as possible.

There is a potential conflict between the Regulator's duty to protect members' interests and to protect PPF, in exercising oversight over scheme funding. Where funding is unarguably too low, there would be no actual conflict, but where the position is marked by shades of grey rather than black and white, the Regulator will need to tread a more careful path between improving funding levels for members and tipping the scheme into the Pension Protection Fund.

Smooth interaction between the Pensions Regulator and FSA is particularly important in respect of money purchase schemes, not least because in the money purchase environment extra regulatory costs are likely to have a direct impact on the member's retirement pot.

If the Regulator takes too heavy handed an approach, it could tilt money purchase provision into contract-based arrangements, rather than trust-based, or make it irresistibly attractive for employers to avoid the difficulties of being involved in sponsoring a scheme, by allowing their employees to be auto-enrolled into personal accounts.

The Regulator has demonstrated that it can operate proportionately in the money purchase field. An example is its approach to contribution monitoring.

It is important that the Pensions Regulator does not duplicate existing regulatory activity. In contract-based schemes in particular FSA already plays a significant role. Indeed from many points of view it makes little sense for the Pensions Regulator to take a position on regulation of money purchase schemes independently of FSA and we would strongly support the publication of joint Regulator / FSA documents in relevant cases. (Additionally, the Pensions Ombudsman has for some time taken a keen interest in the administration of defined contribution schemes and has not hesitated to make known his views where he perceives there to be shortcomings. In this area a coordinated approach with the Pensions Ombudsman is essential.)

Money purchase investment is one area already heavily regulated by the FSA to ensure "best advice" and clear communication of investment risk to customers. Appointed advisers already carry a responsibility to monitor investment performance on behalf of clients. For example, providers' annual statements and renewals are often channelled through an adviser to facilitate an annual scheme review.

Money purchase charging is another area where FSA has a significant role. Product charging structures have had to be transparent for some time. Advisers are already heavily regulated, in terms of performing client fact finds and making financial recommendations. There is also robust regulation where advisers recommend products with no "Stakeholder equivalent" charge cap.

The Pension Protection Fund

In terms of its interaction with bodies such as SPC and its Members, we consider that the Pension Protection Fund has made an impressive start. It generally communicates well, makes efforts to maintain good working relationships and genuinely consults.

There are clearly question marks about the longer-term financial viability of the fund as currently constituted, but the resolution of these questions lies in the political field.

Financial Services Authority

We suggest that consideration should be given to whether there are in practice, or ought to be, priorities within FSA's statutory objectives. For instance, FSA appears to devote relatively small resources to improving financial capability, although if the population as a whole was better equipped to deal with financial issues it would be easier to avoid regulatory problems.

Another objective is to promote and support the financial services industry. In practice, however, the emphasis is virtually entirely on protecting investors. The responsibilities of regulated firms to investors are usually defined in considerable detail, whereas FSA seems to hardly recognise the possibility that there might be responsibilities in the opposite direction.

Another area, which we believe warrants attention, is the approach to implementing regulation from the EU. We referred to the Insurance Mediation Directive, the Capital Requirements Directive and MiFID, where we believe the approach is too complicated.

Looking to the future, FSA currently has a rule based system and is planning a more principle based system. Our fear is that in practice we will end up with the worst of both worlds – a set of principles, which will be vague and enable enforcement action on the basis of vague principles, combined with a substantial body of detailed rules which will also need to be complied with.

Financial Ombudsman Service

There are a number of areas which require clarification following the bringing of pensions administration into the scope of the Financial Ombudsman Service by the Insurance Mediation Directive.

The activities carried out by pension administration firms, and potentially covered by FOS, include:

- assisting in the administration and performance of contracts of insurance. This includes assisting members of GPPs, SIPPs, SSASs and group stakeholder schemes on making claims (in relation to claim forms, annuity purchase etc); and
- arranging for a scheme member to acquire rights in investments. This includes arranging for individuals to become new members of GPPs, SIPPs, SSASs and group stakeholder schemes.

Activities in relation to defined benefit occupational pension schemes are not, it appears, within the remit of FOS and should continue to be referred to the Pensions Ombudsman if appropriate.

In relation to money purchase occupational pension schemes, the trustees hold the policies on behalf of the members. It is possible that the trustees could have a complaint about the administrator, which could relate to contracts of insurance, and hence fall under the FOS remit – but this is not clear cut, as the trustees could also refer to the Pensions Regulator.

Before the implementation of the Insurance Mediation Directive, pensions administrators were not regulated at all. Any complaints would have been referred under the internal dispute resolution requirements, via the Pension Advisory Service and the Pensions Ombudsman.

Now that administrators are authorised and regulated by FSA for certain administration activities, it is no longer clear to whom complaints should be referred. By virtue of authorisation, administration firms would fall under one of the FOS fee groups. However it is not clear whether there would be any complaints which fell under FOS jurisdiction.

The current Memorandum of Understanding between FOS and the Pensions Ombudsman is silent on this topic, as it was drafted before the IMD came into force.

Other Bodies Involved In Regulation

Although in a different way since the introduction of the new pension taxation regime, HMRC remains a regulator of pension schemes, and it appears that the regulation will in practice be considerably more detailed than anybody envisaged at the outset of the pension simplification exercise.

It is important that the pension taxation regime and DWP requirements interact consistently. As an example, the DWP protected rights regulations need to be amended to mirror the relaxations in the Finance Act 2006, in money purchase schemes providing a scheme pension.

Looking at DWP itself, there is currently a deregulatory review, which we would like to believe could significantly lighten the existing regulatory burden on pension schemes. We must wait to see the outcome of the review, but the fact that the still recent Pickering Review in the same field had very little practical impact, unfortunately leaves us with modest expectations.

European Regulation

With regard to Europe, we suggest that government departments, regulators and the pensions bodies need to re-double their efforts to identify at the earliest stages the potential impact on UK pensions of measures proposed by the European Commission. We would refer to two recent instances where measures originating in the Commission have been far more disruptive to UK pension schemes than they needed to have been:-

The Insurance Mediation Directive effectively brought third party pension administrators within the scope of FSA regulation. As far as we know, this was not the intention of the European Commission, or of the Treasury or FSA, but by the time the consequences of the Insurance Mediation Directive had been analysed in detail, and it had become clear that the Directive did have this effect, it was too late to challenge the position.

Anti-Age Discrimination Regulations. At the outset the view of the UK government was that the Anti-Age Discrimination Directive would have only limited impact on UK pension provision. Discussions over the past year or so between DTI, DWP and the pensions bodies on the regulations required to implement the Directive have demonstrated that the impact has in fact been widespread.

We are pleased to note that DWP has consulted frequently and in detail with pension bodies as it negotiates on the proposed EU Portability Directive. Whilst we appreciate that this does not guarantee a satisfactory outcome to the negotiations from our point of view, it is very unlikely that DWP will not be fully aware of the implications of all potential aspects of the Directive for UK schemes.

Looking further forward there is a need for vigilance on the development of the "Solvency 2" requirements in the insurance field, given their potential knock-on effects on the UK's funding requirements for defined benefit schemes.

Other Comments

It would be extremely helpful if there were fewer changes in, and additions to, the legislation which governs pension schemes. At present, if employers are involved with a scheme, or contemplating becoming involved, they must face the prospect of having to adapt the scheme which they set up to meet a regular flow of new legislation. Depending on the type of scheme and the legislation, this involves one or more of directly increased benefit costs, administration costs and implementation costs. Part of the solution to this problem of regulatory creep might be a standing pensions commission, which could express a view on emerging trends and concerns in the pensions field and on whether legislation or regulation could play a useful part in addressing them. It would also be helpful for the State pension and benefit system to be simplified. At present it is very difficult for low to modest earners to decide whether it is in their interests to join an employer's pension scheme. The problem is compounded by the fact that, while they could probably benefit from advice on the matter, that advice would be subject to regulation and it would therefore generally be uneconomical to provide it at the income levels in question.

Paul Thornton has now issued a consultation document, requesting comments on some specific possible outcomes from his review, which at the time of going to print we had under consideration. ■

DWP announces its conclusions on the calculation of transfer values

In June 2006 DWP consulted on the future approach to the calculation of transfer values, following its decision that the calculation would in future governed in legislation, rather than in actuarial guidance.

In January 2007 DWP issued its response to the consultation. This indicated that the government intends to regulate on the basis of transfer values being calculated on the expected costs to the scheme of providing the alternative deferred pension benefits. This was the approach which SPC favoured in its response to the earlier consultation.

For a copy of DWPs response please click here. ■

NAPF reviews institutional investment in the UK

When it concluded its 2004 progress review of the Myners Principles, the Treasury invited NAPF to undertake a further review in 2007.

NAPF has now published a discussion paper "Institutional Investment in the UK - 6 years on".

For a copy please click here.

At the time of preparing this issue we had the discussion paper under consideration. ■

PRAG consults on revision of SORP on pension scheme accounts

The Accounting Standards Board has asked the Pensions Research Accountants Group to consult on the revision of Statement of Recommended Practice 1 on financial reports of pension schemes.

PRAG has issued an exposure draft of a revised SORP, *a copy of which you can obtain by clicking here.*

At the time of preparing this issue, we had the exposure draft under consideration. ■

Update on NISPI shared workspace

Since the end of 2005 SPC has been co-operating with HMRC (National Insurance Services to the Pensions Industry) in the development of its Shared Workspace.

The closure / wind-up of an occupational pension scheme can be a complex and lengthy process. Most of the data, which passes between NISPI and scheme administrators is on paper, i.e. membership lists, queries and submission of forms. NISPI has revised its processes to be more streamlined and its communications to be electronic whenever possible. These changes are intended to be brought about by its new system – Shared Workspace.

Currently, NISPI has eight administrators signed up and using the system. These are –

- Legal and General
- Mercer
- Scottish Life
- AON
- AXA
- Higham Dunnett Shaw
- Jardine Lloyd Thomson
- KPMG

NISPI also has a list of other administrators who have expressed an interested in using Shared Workspace. However, NISPI has limited the number of administrators and schemes on the system, during pilot testing, in order to ensure that it has a robust and fully tested IT platform. NISPI reports that pilot testing is now complete and wider use of the system is now planned.

NISPI has introduced a paragraph in its initial letter to customers telling them about the system and asking them to come on board. The letter encourages all parties to meet at the start of the cessation process in order to set out clear milestones. NISPI has asked that we assist in the recruitment process, by advising our members of the progress and by encouraging you to consider using its new system. This we are happy to do.

NISPI points out that there are manual processes involved in setting up an administrator's "e-room" and putting data onto the system, which limit the number of schemes it can load on a daily basis.

If you would like to know more about Shared Workspace or would like to see a demonstration of the system, please contact Dan Wilson at NISPI (0191-225 9954). ■

SPC meets pensions minister

In January 2007 SPC and the other members of the Occupational Pension Schemes Joint Working Group had a meeting with James Purnell, the Pensions Minister.

The issues discussed were the new contracting out rebates for salary related schemes from April 2007, which SPC and the other members of the Joint Working Group view as seriously inadequate and the government White Paper "Personal Accounts": A New Way to Save" Specific aspects covered were the initial restriction on transfers into personal accounts, the maximum annual contribution to personal accounts, financing for the set up and initial costs of personal accounts, the interaction of personal accounts on eligibility for means-tested State benefits, and the need to keep in mind the importance of consistency with existing government initiatives with a bearing on money purchase schemes, for example the Pensions Regulator's development of its regulatory regime, DWP's Disclosure Review and the Retail Distribution Review. ■

National Audit office review of the pensions regulator

At the request of the National Audit Office, SPC met it in December, as part of its value for money study on the Pensions Regulator.

In 2002 the National Audit Office issued a critical value for money report on OPRA, the then pensions regulator. The National Audit Office is now undertaking a follow up study, looking at whether the new Pensions Regulator is taking appropriate and timely action in response to the recommendations of the Public Accounts Committee in 2003.

NAO expects to publish its report in autumn 2007/2008.

NAO indicated that its current study is not a sign that there are perceived difficulties at the Pensions Regulator. NAO's main areas of interest are in the Regulator's risk-based approach, the appropriateness of its powers and objectives and its guidance for trustees.

We told NAO that, in our view, the Regulator had made a promising start.

The Regulator had had to assimilate considerable volumes of legislation and produce a significant number of codes of practice and has achieved these tasks, although some of its publications, including codes of practice, can be of intimidatory length, certainly for the lay trustees, who are meant to be a key reader group.

The Regulator has yet to use its powers in a major way, for example on clearance. So far its general standing and perceptions of how it might exercise its powers, if it felt obliged to do so, seem to have been sufficient to obtain its desired outcome in most situations.

It appears to be sticking to its brief to operate as a risk-based regulator. The risk-based approach seems to be focusing on the right schemes. This might become a more difficult task if economic conditions became significantly less benign than at present.

A coming challenge for the Regulator is its approach to money purchase provision. If it took to heavy handed an approach, it could tilt money purchase provision into contract-based arrangements, rather than trust-based or make it irresistibly attractive for employers to avoid the difficulties of being involved in sponsoring a scheme, by allowing their employees to be auto-enrolled into personal accounts.

In the money purchase field, any increase in regulatory costs would have a directly adverse effect on members' benefits.

The Regulator will need to work closely with FSA. ■

ASB best practice reporting statement

The Accounting Standards Board has published the reporting statement issued in draft form at the same time as the exposure draft proposing amendments to the disclosure requirements of FRS 17. The reporting statement sets out best practice. It is not a mandatory requirement. ASB expects the statement to be considered by companies using international GAAP (IAS 19) as well as those using FRS 17.

The statement sets out the same six principles listed in the original draft, although there are some changes to the clarifications given under each principle. In particular, in the section of the statement about enabling users to understand the method of measurement, the proposed requirement to "disclose the cost of buying out benefits at the balance sheet date with a suitable insurer" has been changed so that this need only be considered where the cost of buying out benefits has been made available to trustees. The same section also refers to the "accumulated benefit obligation", defined as the projected unit liability with no allowance for future salary growth, as an alternative measure of liabilities which could be used to help explain how liabilities are measured.

As in the original draft, the statement recommends the disclosure of the number of years after retirement, for which members are assumed to receive pensions – an indication of assumed mortality rates. It is recommended that a sensitivity analysis is included for mortality and the other principal assumptions.

The statement is effective immediately. ■

Member protection on employer insolvency - European Court decision in Allied Steel workers case

ASW Limited was the subject of insolvency proceedings in 2002. When its final salary pension schemes were wound up, some non-pensioner members found their benefits were substantially reduced. Two members, whose benefits were reduced to 49% and 20% respectively, brought a compensation claim against the UK government, for failure to protect their pension rights in the event of the insolvency of their employers. The claim was brought under Article 8 of the European Union Insolvency Directive which provides that:-

> *"Member States shall ensure that the necessary measures are taken to protect the interests of employees and of persons having already left the employer … at the date of the … employer's insolvency in respect of rights conferring on them entitlement to old-age benefits … under … company pension schemes "*

The case was referred to the European Court of Justice (ECJ) which has decided as follows:

1. Accrued pension rights do not have to be funded by the Member States themselves or be funded in full by the employer. The words used in the Directive gave Member States some latitude as to how to protect members' benefits, with the aim of reconciling the interests of employees with the need for balanced economic and social development.

2. Legislation which results in, as in this case, less than 50% of the promised pension benefits payable following the employer's insolvency, fails to achieve the level of protection required by the Directive.

3. The ECJ was asked whether the UK government was directly liable in respect of shortfalls in benefits not adequately secured because of a failure to properly transpose the Directive into domestic law. It determined that the liability of the UK government would depend on whether it was found by the UK High Court to have behaved with manifest and grave disregard in deciding how to implement the Directive.

The Court's ruling indicates that, whilst a compensation system does not have to provide full cover for pension losses from employer insolvency, it is not good enough if certain groups receive less than 50% cover. However, it did not specify what an appropriate minimum level of cover would be, raising the question of whether Pension Protection Fund (PPF) protection - which is typically about 60-70% for non-pensioners, although headlined at 90% - would be considered adequate.

One issue highlighted by the Judgment is that the protection system has to provide adequate protection for all members - it does not appear to be acceptable to provide poor cover for minority groups. One such group amongst potential beneficiaries of PPF contains those with pensions bigger than the PPF cap, who have not reached normal pension age. PPF caps payments to non-pensioners at £26,050 per year (in 2006/7, for those with a normal pension age of 65), so, for example, someone with a pension of £50,000 per year receives less than 52% protection. The Judgment appears to rule this unacceptable. ■

Discount for SPC members at pension buy-outs event 20th-21st June 2007, London

This interactive event will hand Pension Funds practical guidance and advice on all the major issues that matter to them, including:

- How to tackle longevity risk
- The expansion of the buy-outs market and advancements in products including partial buy-out options
- Affordability - the cost at which it is viable for pension funds to offload their liabilities
- Guaranteeing protection of your scheme members' entitlements throughout the buy-out process

SPC Members receive a 10% discount on the normal delegate rate of £1499 + VAT.

Click here to register.

(Quote booking reference 918SPC when registering)

Alternatively, email mariame_lindell@osneymedia.co.uk for a PDF brochure. ■

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.

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