



**ISSUE No. 3, 2008**  
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## in this issue ...

- PAGE 2 SPC London Evening Meetings**  
Handouts are available for a number of SPC London evening meetings in 2008.
- PAGE 2 PADA Scheme Management and Trustee Advisory Committee**  
Mark Ashworth, the outgoing President, represented SPC at the first meeting of the Scheme Management and Trustee Advisory Committee, set up by PADA, on 28th April 2008.
- PAGE 2 Pensions Regulator Code of Practice 11: Internal Dispute Resolution**  
We have written to the Pensions Regulator about its Code of Practice 11 on internal dispute resolution, because there appears to be an error in the Code of Practice.
- PAGE 3 Draft PPF (Miscellaneous Amendments) (No. 2) Regulations 2008 Issued for Comment**  
We have been invited to comment on the draft PPF (Miscellaneous Amendments) (No. 2) Regulations, 2008.
- PAGE 3 The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008**  
The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 have been published and will come into effect on 1 October, as expected.
- PAGE 4 Government Consults on New "Moral Hazard" Powers to Increase Member Protection**  
The government plans to increase the so-called "moral hazard" powers requiring employers to provide contributions to a pension scheme if their actions could threaten the security of members' pensions.
- PAGE 5 PPF Consultation on GMP Equalisation**  
The consultation arises because PPF has received legal advice that it must pay equal benefits to comparable members.
- PAGE 5 PPF Consults on Guidelines for Trustees of Schemes during the Assessment Period**  
The proposed guidance is aimed at trustees of schemes going through, or likely to enter, an assessment period.
- PAGE 6 Final PPF Levy Details for 2008/09**  
The PPF has announced the final piece of its levy formula.
- PAGE 6 Committee of European Insurance and Occupational Pensions Supervisors Documents**  
The Committee of European Insurance and Occupational Pensions Supervisors has published two documents, which might be of interest.
- PAGE 7 Exposure Draft: Reporting Actuarial Information**  
The Board for Actuarial Standards has issued an exposure draft on reporting actuarial information.
- PAGE 7 CIPFA Survey on Local Government Pension Investment Regulations**  
With the encouragement of CIPFA, SPC has submitted a response to the CIPFA Pensions Panel LGPS Investment Regulations Survey.
- PAGE 7 Review of the Admitted Body Status Provisions in the Local Government Pension Scheme**  
Earlier this year, the Department for Communities and Local Government consulted on the operation of, and potential future arrangements for, admission bodies in the Local Government Pension Scheme, in the context of local government outsourcing.
- PAGE 7 Structure of New BAS Standards (and Implications for Adopted GNs): Consultation Paper**  
The Board for Actuarial Standards has issued a consultation paper on the structure of new BAS standards (and implications for adopted actuarial guidance notes).
- PAGE 8 Proposed Actuaries' Code and Supporting Standards**  
We have been invited to comment on the proposed Actuaries' Code and its supporting standards.
- PAGE 8 FRC Discussion Paper Promoting Actuarial Quality**  
We have been invited to comment on the Financial Reporting Council's discussion paper on promoting actuarial quality.
- PAGE 8 Financial Reporting Council/Professional Oversight Board Discussion Paper: Monitoring and Scrutiny of Actuarial Work**  
We have been invited to comment on the Financial Reporting Council's discussion paper on promoting actuarial quality.
- PAGE 9 Congratulations to Smithfield**
- PAGE 9 Anti-Money Laundering – Extension to Former HMRC Registration Deadline of 31 May**  
The deadline for trustees subject to the anti-money laundering regulations to register with HMRC has been extended again, from 31 May 2008 to a future date, as yet unknown at the time of preparing this issue of SPC News.
- PAGE 10 VAT and Pensions**  
In June 2007, the European Court of Justice (ECJ) gave its judgment in the 'Claverhouse' case. This case concerned whether the supply of investment management services made to a UK investment trust company was exempt from VAT.

# SPC News No. 3, 2008

If this issue of SPC News was forwarded to you, and you would like to receive a copy direct from us, please e-mail Carla Smidt at SPC

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## PADA Scheme Management and Trustee Advisory Committee

Mark Ashworth, the outgoing President, represented SPC at the first meeting of the Scheme Management and Trustee Advisory Committee, set up by PADA, on 28<sup>th</sup> April 2008.

The Committee is a formal Advisory Committee of the Board of the Personal Accounts Delivery Authority.

The purpose of the Committee is:

- To provide advice and expert support, backed by evidence, to the Board on a range of matters, which will be of interest to the Trustee Corporation of the Personal Accounts Scheme
- To provide input to ensure that very high quality standards of administration, accounting, reporting and overall scheme governance arrangements have been put in place for the Trustee Corporation.
- To provide guidance, expert support and quality assurance to the Authority's work in developing the scheme provision and to provide insight from a scheme management and trustee perspective.
- To advise the Board from the perspective of the future trustee corporation and future members of the scheme. ■



Handouts are available for the following meetings:-

Date	Subject	Speakers
January 21 2008	<a href="#">Pensions De-regulation</a>	Chris Lewin (former DWP independent external de-regulatory reviewer)
February 28 2008	<a href="#">Public Sector Pensions: Do the reforms go far enough?</a>	Mark Belchamber (Hymans Robertson)
April 1 2008	<a href="#">Pension Buy-Outs and their Alternatives</a>	Roger Mattingly & Jonathan Sarkar (HSBC Actuaries and Consultants)
May 1 2008	<a href="#">Personal Accounts</a>	Tim Jones (Chief Executive, PADA)
May 29 2008	<a href="#">Active Cash Management</a>	Gareth Quantrill (Scottish Widows Investment Partnership)
June 16 2008	<a href="#">I Wanna Live For Ever: The Challenges of Longevity for Pension Schemes</a>	Jane Beverley (Punter Southall)

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

## Pensions Regulator Code of Practice 11: Internal Dispute Resolution

We have written to the Pensions Regulator about its Code of Practice 11, on internal dispute resolution, because there appears to be an error in the Code of Practice.

Paragraph 8 states that *"Trustees or managers must provide a statement with their decision that notifies the applicant of the services of the Pensions Advisory Service and Pensions* ➔

➔ *Ombudsman.* This replicates the statement in the draft Code issued for consultation last year, but does not take into account that the draft regulations were subsequently altered.

The actual legal requirement (set out in regulation 2 of SI 2008/649) is that:

The applicant has to be notified earlier about the services of the Pensions Advisory Service. This has to be done "as soon as is reasonably practicable" once a complaint application has been

received by the trustees or managers (in a one-stage process) or by the "specified person" (in a two-stage process). In essence, therefore, before a decision is reached.

As a consequence, only notification of the services of the Pensions Ombudsman has to be given when the trustees or managers notify the applicant of their (final) decision.

In addition, we are unsure about the intended meaning of paragraph 11

of the Code. This states: "*However, the Pensions Regulator would not normally expect an application received within the specified reasonable period to be refused*". If members are told that they need to apply within six months of ceasing to be a member, for an application to be valid, and this timescale is met, how can the trustees then refuse to consider the application?

We have asked the Pensions Regulator for clarification. ■

## Draft PPF (Miscellaneous Amendments) (No. 2) Regulations 2008 issued for comment

We have been invited to comment on the draft PPF (Miscellaneous Amendments) (No. 2) Regulations, 2008.

For a copy of the draft regulations, please click [here](#). ■

# The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008

The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 have been published and will come into effect on 1 October, as expected.

When the date of the statement of entitlement is before 1 October, transfer values should follow the current regulations. If it is on or after 1 October, the transfer values should follow the new regulations.

The basic principle in the draft regulations, that a transfer value should be the best estimate of the cost to the scheme of providing the

alternative deferred benefit, is retained. The best-estimate requirement applies to the overall basis, not to individual assumptions. As expected, responsibility for setting the basis passes from the actuary to the trustees.

The discount rates must "have regard to the long-term investment strategy the scheme has adopted in the light of the nature of its membership"

The final regulations contain a section on reducing transfer values in the event of under-funding which was not in the draft regulations.

There has been no addition to the regulations to cover the treatment of transfers-in (apparently because there is no corresponding primary legislative power). However, the Pensions Regulator is due to publish a guidance note for trustees, which may cover this.

It is expected that there will be no guidance from the Board for Actuarial Standards on transfer values under the new regulations. The guidance on the current regulations, GN 11, will be withdrawn. ■

# Government consults on new “moral hazard” powers to increase member protection

The government plans to increase the so-called “moral hazard” powers requiring employers to provide contributions to a pension scheme if their actions could threaten the security of members’ pensions. The changes, when effected, will give the Pensions Regulator stronger powers to protect members’ interests in certain corporate activity situations. The proposed core changes are due to be effective from 14 April 2008 and one change is to be further backdated to 27 April 2004.

DWP states that its aim is to have an impact only on “risky” situations. It does not intend to affect the vast majority of pension schemes, nor to place onerous burdens on employers.

The new powers will add to the current so-called “moral hazard” provisions in the Pensions Act 2004.

These are anti-avoidance powers, intended to prevent employers and corporate groups from distancing themselves from unfunded pension deficits. The powers allow the Regulator to issue Financial Support Directions (FSDs) or Contribution Notices (CNs) in certain situations. An FSD is a direction, which requires a parent company or other associated company or person to provide financial support to a scheme, the sponsor of which is either under-resourced or a service company. The Regulator may issue a CN, requiring a contribution to the pension scheme, if there is behaviour aimed at avoiding a debt to the pension scheme or preventing such a debt from becoming due.

In more detail the proposals are:

- Extension of the situations in which a CN may be issued, to include situations “where the effect of an act is materially detrimental to a scheme’s ability to pay members’

current and future benefits”. This change would mean that the Regulator would no longer need to prove intent on the part of a party to avoid funding the scheme, but rather that the effect of an act or course of conduct posed a materially detrimental risk to members’ benefits.

- Removal of the existing provision, which states that a CN may not be issued where a party has acted in good faith, but their actions have had the effect of preventing a debt becoming due.
- The changes to the CN powers will also seek to ensure that they cannot be frustrated by a bulk transfer of members between pension schemes.
- The legislation will be clarified to reflect the policy intention, that the issue of a CN can be triggered by a series of acts, and not just a single act aimed at avoiding the debt to a pension scheme (this is the change which it is proposed to backdate in effect to 27 April 2004); and
- As far as FSDs are concerned, the legislation will be clarified. This is to reflect the policy intention, that the resources of the whole group of companies may be considered when the Regulator judges whether to issue a FSD in a situation of an under-resourced employer – rather than, as now, requiring TPR to identify one single person which is sufficiently resourced to enable the issue of a FSD.

The Regulator has issued a complementary statement saying:

“The Regulator wishes to reassure applicants for clearance that the DWP proposals do not change our

established clearance process, which already focuses on potential detrimental effect on the security of members’ benefits. We will continue to operate this process in a pragmatic, proportionate and responsive manner. Clearance is appropriate for ‘type A events’, which are described in our Clearance Guidance.”

DWP’s consultation document is available by clicking [here](#).

At the time of preparing this issue of SPC News, we were preparing our detailed response, but in our initial comments we expressed considerable concern, that the powers of the Pensions Regulator would be able to be extended by regulation, rather than through primary legislation. We believe that this is bound to limit the scrutiny, which can, and ought to, be given to any proposals to extend the powers.

We are also concerned at the retrospective nature of the changes now proposed. Our understanding is that it is a principle, when legislating retrospectively, that it is clear what the effect of the retrospective legislation is. It is certainly not clear what the detailed effect of the current proposals would be.

Our final major initial concern, was that the proposals make the test, of whether the Pensions Regulator’s extended powers should be applied, the effect of a particular course of action and not the purpose. Contrary to the government’s belief, our concern is that this would surround transactions with a considerable degree of uncertainty because it enables transactions carried out entirely in good faith to be retrospectively challenged if they have unintended effects. Clearance may, in effect, become mandatory. ■

# PPF consults on guidelines for trustees of schemes during the assessment period

The proposed guidance is aimed at trustees of schemes going through, or likely to enter, an assessment period.

There is no legal requirement to follow the Guide but the Pension Protection Fund will closely monitor schemes which

fail to comply. If a scheme continually performs badly, PPF will, in extreme circumstances, seek to remove trustees. It will also report on trustees' conduct to the Pensions Regulator, which will take this into account when making future independent trustees appointments. The Guide sets out five key principles which the PPF expects trustees to adhere to during the assessment period. These are:-

- **Accountability**

PPF will hold trustees ultimately responsible for their advisers' actions. Examples of good practice include where advisers admit when they have missed a deadline and explain the delay and where both the trustees and the advisers raise issues even if they reflect badly on them.

- **Communication**

PPF expects trustees to ensure that they resolve issues proactively by initiating dialogues with all concerned. Examples of good practice include holding face to face meetings at least once a month (more regularly if needed) and the chair of the trustees actively managing advisers and contacting those who fail to meet deadlines.

- **Competence and proficiency**

PPF expects trustees to only appoint advisers who can demonstrate that they have the skills needed to handle schemes through assessment.

- **Proportionality**

PPF expects the trustees to take a proportionate approach to decisions during the assessment period and suggests that 'proportionality' should be agreed between the trustees and the PPF. This could include seeking investment advice in a timely fashion and, where necessary, rearranging the assets to more closely match the liabilities of the scheme. ➔

## PPF consultation on GMP equalisation

The consultation arises because PPF has received legal advice that it must pay equal benefits to comparable members. Since the GMP formula applies differently to men and women, even though a scheme's benefit formula does not differentiate between otherwise identical men and women, when scheme members become deferred or pensioners, the benefits paid can become different because of their GMP entitlements.

PPF's obligation to provide equal benefits to comparable members arises under section 171 of the Pensions Act 2004. Trustees have a similar obligation, under section 62 of the Pensions Act 1995, but it has never been made clear how they are supposed to comply with this provision in regard to GMPs.

PPF's position is relatively simple: provided the compensation on entry to the PPF is equal, all the compensation it pays will be equal, since the calculation formula it uses does not depend on GMP rules. GMP equalisation is more problematic for trustees of schemes outside the PPF: they are still subject to the GMP formula and so, even if they calculate equalised benefits at one point in time, in the future differences can still emerge.

Schemes winding up generally take some action to equalise benefits in respect of GMPs, following advice given

by the trustees' lawyers. However, there has been no consensus as to the most appropriate course of action – the result of the only court case on GMP equalisation was inconclusive. Consequently, the proposals in PPF's consultation document are not directly relevant to open schemes.

The effects of the PPF's proposal are that:

- compensation paid by the PPF must be equalised upwards and so, on average, it will pay higher benefits than it did previously;
- the trustees of schemes which enter an assessment period must ensure benefits are equal as at the start of the assessment period;
- the cost of paying higher benefits to a small group of members is likely to be met by increased levy payments (although this point is not raised by the consultation document).

PPF states that it does not expect its proposals to affect open schemes (apart, presumably, from a higher levy). However, it brings the issue of GMP equalisation to the fore.

You can obtain a copy of PPF's consultation document by clicking [here](#).

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

## ➔ • Working in partnership and with transparency

Trustees and the PPF caseworker should be open in all they do. For example, trustees are expected to bring potential conflicts of interest to the attention of the PPF case worker.

The Guide mentions the key skills, which the trustees need to take a scheme through assessment. In particular, lay trustees are urged to consider carefully what is required as they are expected to know something about the legal environment during the assessment period. If lay trustees are unable or unwilling to carry out the relevant duties and responsibilities, the PPF caseworker or the Regulator can help to appoint an independent trustee to work alongside and support the scheme. The key skills (which are not exhaustive) are:-

- Project management
- Relationship management
- Financial management
- Communications
- Knowledge and understanding

PPF expects trustees to give the caseworker an updated project plan each month, which includes highlights of which deadlines have been missed. The Guide comments that, ideally, the trustees should have a pre-agreed policy for handling conflicts.

PPF proposes to evaluate the performance of lay trustees and independent trustees every six months. Independent trustees will be given an overall score which takes into account all the schemes they have under management during the evaluation period.

The Guide encourages Trustees to use the toolkit module on winding up a defined benefit scheme with an insolvent employer, which is being developed by the Regulator.

For a copy of PPF's Guide please click [here](#).

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

# Final PPF levy details for 2008/09

The PPF has announced the final piece of its levy formula.

Employers and trustees should now have all the information necessary to calculate the levy they will expect to pay during 2008/09.

The outstanding pieces of information were the scaling factor required to calculate the risk based levy and the multiplier applied to the value of the protected liabilities to calculate the scheme based levy. PPF decided to defer publishing these factors until it had analysed the section 179 valuation information submitted by schemes by 31 March 2008, to reduce the risk of under-collection. PPF is concerned that, although funding levels have increased, over the longer term, the risk to which it is exposed has not declined.

- The scaling factor will be 3.77, as compared to 1.6 indicated in the consultation document. All other things being equal, the risk based levy could increase

by more than 100% relative to the expected amount.

- The scheme based multiplier, which is applied to the total value of the protected liabilities, regardless of surplus or deficit, will be 0.0165%. This compares with last year's figure of 0.016%. Based on this, the PPF appears to have estimated the total s179 liabilities of eligible schemes as at 30 October 2007 as £818 billion.

PPF has confirmed that the ceiling applied to the risk based levy in 2008/9 is fixed at 1.00% of the scheme's protected liabilities.

Once the PPF has set the total levy amount it expects to receive over any particular levy year, which is constrained by legislation, it has wide discretion over the levy formula. Provided it undertakes a consultation process before revising the formula, the way the levy is distributed between different schemes could vary considerably from year to year. ■

## Committee of European Insurance and Occupational Pensions Supervisors documents

The Committee of European Insurance and Occupational Pensions Supervisors has published two documents, which you might find of interest:

- Initial review of key aspects of the implementation of the IORP Directive
- Survey on fully funded, technical provisions and security mechanisms in the European occupational pension sector.

For copies please click [here](#). ■

## Exposure Draft: Reporting Actuarial Information

The Board for Actuarial Standards has issued an exposure draft on reporting actuarial information.

For a copy please click [here](#).

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

## CIPFA survey on local government pension investment regulations

With the encouragement of CIPFA, SPC has submitted a response to the CIPFA Pensions Panel LGPS Investment Regulations Survey. The aim of the survey was to gauge local authorities' experiences on operating the regulations, so as to ascertain whether there are any aspects on which it might be appropriate to suggest changes to the government.

Our response was prepared by the SPC Investment Committee.

For a copy of the response, which includes the survey questions, please click [here](#). ■

## Review of the admitted body status provisions in the local government pension scheme

Earlier this year, the Department for Communities and Local Government consulted on the operation of, and potential future arrangements

for, admission bodies in the Local Government Pension Scheme, in the context of local government outsourcing.

The consultation paper is available by clicking [here](#).

We responded to the consultation and our response is available [here](#). ■

## Structure of new BAS standards (and implications for adopted GNs): consultation paper

The Board for Actuarial Standards has issued a consultation paper on the structure of new BAS standards (and implications for adopted actuarial guidance notes):

You can obtain a copy by clicking [here](#).

BAS is currently in the process of finalising the conceptual framework and

implementing a plan for the transition from existing actuarial technical standards to a new book of actuarial standards. This paper addresses the second task, ie the planning for the transition to a new book of standards.

BAS aims to produce generic standards, applying across the main areas of actuarial practice. This is primarily

intended to address the finding of the Morris Review, that the existing actuarial standards, as a body, are inconsistent between different practice areas and lack coherence.

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

## Proposed actuaries' code and supporting standards

We have been invited to comment on the proposed Actuaries' Code and its supporting standards.

For a copy, please click [here](#).

Last year, the Actuarial Profession published the draft of The Actuaries' Code and eight supporting Standards (one each for each of the principles in the Code) for consultation.

The consultation attracted a good degree of comment from actuaries and other interested bodies. The Profession has therefore produced a reworking of the original draft Code and supporting Standards, to produce a Code structured around five principles namely;

- Conduct
- Competence
- Client Interests
- Compliance
- Communication

The Profession intends to bring forward a new Actuarial Profession Standards framework comprising of;

- The Actuaries' Code,
- Actuarial Profession Standards (AP Standards), and
- Information and Assistance Notes (IANs) where appropriate.

At the time of preparing this issue of SPC News, we have the draft Code and supporting standards under consideration. ■

## FRC discussion paper promoting actuarial quality

We have been invited to comment on the Financial Reporting Council's discussion paper on promoting actuarial quality.

For a copy, please click [here](#).

The discussion paper has been issued by the Financial Reporting Council (FRC) - in conjunction with an accompanying paper by the Professional Oversight Board (an operating body of FRC) on "Monitoring and Scrutiny of Actuarial

Work" - to describe current actuarial practice, and seek views on the drivers, threats, checks and balances relating to quality in actuarial work.

The paper seeks to define and describe what is meant by actuarial work and aims to understand and develop descriptions and drivers of actuarial quality in the round, based on the development, use and interpretation of actuarial models. ■

## Financial Reporting Council/Professional Oversight Board discussion paper: monitoring and scrutiny of actuarial work

We have been invited to comment on the Financial Reporting Council/Professional Oversight Board discussion paper on monitoring and scrutiny of actuarial work.

You can obtain a copy by clicking [here](#).

This is one of two discussion papers which have been published by the Financial Reporting Council (FRC) and its operating bodies, seeking views on the drivers, threats, checks and balances relating to quality in actuarial work. The first paper, "Promoting Actuarial Quality", has been issued by the FRC itself and considers the

nature of actuarial practice, and seeks views on the drivers of actuarial quality and the threats to those drivers, in life insurance, general insurance and pensions.

The Professional Oversight Board has issued this accompanying paper on "Monitoring and Scrutiny of Actuarial Work" in response to the Morris Review of the Actuarial Profession, which recommended that FRC should satisfy itself that appropriate monitoring of actuaries' compliance with professional standards and independent scrutiny of actuarial advice is occurring →



→ through either direct supervision by the regulator, audit or external peer review.

The paper aims to provide detail of the checks and balances available on actuarial quality. It then develops strategies and detailed options for discussion in order to enable FRC to make recommendations which will promote actuarial quality through appropriate monitoring and scrutiny of actuarial work.

The paper refers to a number of gaps remaining, specifically in the pensions field, and it sets out a range of options falling within four strategies, which the Profession might adopt:

- **Strategy 0** (no proposed changes to existing arrangements) - reliance on existing arrangements for monitoring compliance with actuarial standards and scrutiny of actuarial work;
- **Strategy 1** (regulatory support) - additional support for existing external regulatory and market practices for monitoring and scrutiny;
- **Strategy 2** (professional requirements) - supplementing this regulatory support with imposition of the Profession's own professional quality assurance requirements (such as peer review) on individual actuaries, recognising the practice environment in which they work;
- **Strategy 3** (active monitoring) - supplementing these requirements with monitoring and scrutiny of firms and individual actuaries by the Profession or independently. ■

# Anti-money laundering - extension to former HMRC registration deadline of 31 May

**The deadline for trustees subject to the anti-money laundering regulations to register with HMRC has been extended again, from 31 May 2008 to a future date, as yet unknown at the time of preparing this issue of SPC News.**

According to an HMRC announcement on its website, the new deadline for registration will be at least four weeks from the date (not yet announced) on which HMRC publishes its planned updated guidance on the issue.

The original deadline for registration was 1 April 2008, but HMRC extended this to 31 May, to allow it to clarify its trustee guidance, as there was confusion on who needed to register. The guidance was not published in April as planned, so HMRC has extended the deadline again.

The HMRC announcement suggests that

- Trustees in doubt as to whether they need to register may wish to defer doing so until the HMRC guidance is published.
- Trustees who have already registered do not need to do anything and HMRC will contact them when the guidance is published if it affects them. ■

## CONGRATULATIONS! to Smithfield

We congratulate SPC's PR advisers, Smithfield, on winning the PR Consultancy award at the UK Pensions Awards in May. ■

# VAT and pensions

In June 2007, the European Court of Justice (ECJ) gave its judgment in the 'Claverhouse' case. This case concerned whether the supply of investment management services made to a UK investment trust company was exempt from VAT.

In European law, the management of 'special investment funds' is exempt from VAT. Which funds fall into this category is determined under local legislation – for example, in the UK it has been established that the definition includes authorised unit trusts and

open ended investment companies. JPMorgan Fleming Claverhouse Investment Trust plc argued that investment trust companies should also belong to the class of 'special investment funds' and ECJ agreed. Therefore, the UK government has had to review its definition of 'special investment funds'.

Its decision was announced in the 2008 Budget. With effect from 1 October 2008, the existing VAT exemption will be extended to cover the investment management of UK-listed investment funds (including investment trust

companies, venture capital trusts and overseas funds with a UK listing).

In parallel with this development, NAPF is launching a legal challenge against the UK government, arguing that occupational schemes themselves should be exempt from VAT on investment management services.

It is also worth noting that the European Commission has launched a review of the existing legislation regarding VAT and financial services. However, it is unclear what changes might emerge, and when. ■

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## 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.