ISSUE NO. 4, 2006
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in this issue ...

PAGE **2** **New SPC Council for 2006/2007**
Following the SPC AGM a new Council took office.

PAGE **2** **SPC London evening meetings**
The meetings in November to December 2006 are now fixed.

PAGE **2** **New Member**
SPC has another new Member.

PAGE **2** **SPC Roundtable 2006**
This year's Roundtable took place on June 29th.

PAGE **2** **Further contact with HMRC on administration of trivial pensions**

PAGE **3** **HMRC rules on dependants' pensions**
We have corresponded with HMRC on increases in dependants' pension under paragraph 16C of schedule 28 to the Finance Act, 2004.

PAGE **3** **Death in service only members of pension schemes and enhanced protection**
We have had some useful correspondence with HMRC.

PAGE **3** **Pension Tax Simplification Newsletter 11: Serious ill-health and DWP requirements**
We have corresponded with HMRC on the practical implications of the statement in Pensions Tax Simplification Newsletter 11 that, in order to satisfy DWP and HMRC requirements, schemes will need to ensure that contracted-out rights, retained to provide a survivor's pension, are clearly identified and held in a separate arrangement from those commuted into a serious ill-health lump sum.

PAGE **3** **Transfers under the new tax regime**
A look at transfers to and from registered pension schemes.

PAGE **6** **SPC response to DWP transfer value consultation**
SPC has responded to DWP's consultation document on possible approaches to the calculation of transfer values, following the announcement some time ago that DWP would take over from the Actuarial Profession the lead role in this area.

PAGE **6** **SPC response to White Paper**
The main points from SPC's White Paper response.

PAGE **7** **SPC response to Pensions Regulator on scheme report and accounts**
SPC has responded to the Pensions Regulator's discussion paper on the form and content of pension scheme reports and accounts.

PAGE **7** **DWP deregulatory review**
SPC has made its first submission to the review.

PAGE **8** **Summary funding statements and hybrid schemes**
SPC has sought clarification from DWP of the position of hybrid schemes under the requirements on summary funding statements.

PAGE **8** **Problems with the anti-age discrimination regulations and DTI guidance**
We have prepared a paper, summarising concerns and uncertainties about the regulations and guidance and sent it to DWP.

PAGE **8** **Pensions Regulator guidance on member-nominated trustees and directors**
On 15 August 2006, the Pensions Regulator published Guidance on member-nominated trustees and directors arrangements to accompany the "final draft" code of practice on the subject.

PAGE **9** **The "Trustee Toolkit": Defined benefit funding modules now available**
Modules on defined benefit schemes and the new scheme specific funding framework have been added to the "trustee toolkit", the Pensions Regulator's free online learning programme.

PAGE **10** **Pensions Regulator publishes first annual report on occupational scheme governance**

PAGE **10** **PPF risk based levy consultation proposal 2007/08**

PAGE **11** **SPC response to FSA consultation paper on organisational systems and controls**
SPC made a brief response to FSA's consultation paper on organisational systems and controls.

PAGE **11** **SPC response to Financial Ombudsman Service funding review**
SPC's response was broadly in favour of maintaining the existing FOS fee arrangements.

PAGE **11** **Government's review of gold plating of EU legislation**
We were pleased to note that the concerns raised by SPC featured in the review's interim summary of issues for consideration.

PAGE **11** **SPC obtains clarification on NISPI newsletters**

New SPC council for 2006/2007

Following the SPC AGM on May 22nd 2006, SPC's new Council took office.

The membership is as follows:-

Mark Ashworth	The Law Debenture Pension Trust Corporation p.l.c.
Jennifer Batty	Capita Hartshead
John Betts	Mercer Human Resource Consulting Limited
Robert Birmingham	Entegria Ltd
Terry Blackmore	Legal & General Group
Lindsay Davies	Hymans Robertson LLP
Stephen Dry	Scottish Widows Investment Partnership Limited
Ken Edis	Edis Partnerships Limited
David Fairs	KPMG LLP
Kate Flavell	HBOS Financial Services
Ian Gault	Herbert Smith
Mark Greenlees	Sacker & Partners
Sanjay Gupta	Watson Wyatt Limited
Liz Hinchliffe	Prudential
Duncan Howorth	Jardine Lloyd Thompson Benefit Solutions
Brian Huggett	Pearl Group Limited
Kevin LeGrand	Buck Consultants Limited
Roger Mattingly	HSBC Actuaries and Consultants Limited
Paul McGlone	Aon Consulting
Sir David Miers	SPC Chairman
John Quinlivan	Scottish Equitable plc
Karen Rhodes	Punter Southall & Co
Cathy Robertson	Standard Life Assurance
Jane Samsworth	Lovells
Martin West	Gissings
Kevin Willis	Norwich Union Life Services Limited
Deborah Wilson	MNPA Ltd

SPC London Evening Meetings

The SPC London evening meetings for November and December 2006 are now fixed and details are as follows:-

Date	Subject	Speaker	Venue
November 20 2006	"Employer Covenants and Funding: Giving Trustees Real Advice About What to do".	Donald Fleming (Gazelle Corporate Finance Limited)	Jardine Lloyd Thompson Benefit Solutions, 6 Crutched Friars, London EC3N 2PH
December 11 2006	"Investment Banks and their relationships with Pension Schemes"	Francis Fernandes (Citibank)	TBC

Both meetings are preceded by a cash bar at 5.00 p.m., with the meeting itself beginning at 5.30p.m.

We look forward to seeing you at one or more at these meetings.

At the time of preparing this issue of SPC News the December meeting remained available for hosting or sponsorship by SPC members. For details of what this involves please click here.

The latest new member of SPC

- Lane Clark & Peacock LLP

SPC Round Table 2006

This year's SPC Roundtable for members took place on June 29th. The subject was "Can there be a halfway house between defined benefit and defined contributions?"

Our scene setting guest was Rob Collinge (until recently GSK), who stimulated a thought provoking and wide-ranging discussion, which benefited from the views of a broad cross-section of SPC's membership – actuarial, administrative, legal and provider.

Further contact with HMRC on administration of trivial pensions

While we recognise that in the short run there is very unlikely to be any change in HMRC rules on commutation of trivial pensions, we have had a final detailed exchange on the subject.

Our letter is available by clicking here.

HMRC's response is available by clicking here.

HMRC rules on dependants' pensions

We have corresponded with HMRC on increases in dependants' pensions under paragraph 16C of schedule 28 to Finance Act 2004.

For a copy of the correspondence, please click here.

Pensions Tax Simplification Newsletter 11: Serious ill-health and DWP requiremments

We have corresponded with HMRC on the practical implications of the statement in Pensions Tax Simplification Newsletter 11 that, in order to satisfy DWP and HMRC requirements, schemes will need to ensure that contracted-out rights retained to provide a survivor's pension are clearly identified and held in a separate arrangement from those commuted into a serious ill-health lump sum.

For a copy of the correspondence please click here.

Transfers under the new tax regime

This article looks at HMRC rules on transfers into and out of registered pension schemes. It includes a section on how transfers affect transitional protection and sections on transfers of pensions in payment, block transfers, partial transfers and in specie transfers.

Transfers Out

Transfers to other registered schemes

A transfer from a registered pension scheme to another registered pension scheme (including a s.32 buy-out policy) is a "recognised transfer". This means that it is an authorised payment. A transfer made to an employer financed retirement benefit scheme (i.e. unregistered pension scheme) is an unauthorised member payment.

There is no test against the lifetime allowance when benefits are transferred to another registered pension scheme, as this is not a Benefit Crystallisation Event. This is because the benefits will be tested against the lifetime allowance when the individual dies or retires.

There remains a DWP requirement, that any transfer of contracted-out rights can only be made to a scheme able to hold those rights.

If the receiving scheme is insured, there is a £3,000 penalty payable by the scheme administrator or insurer if the money is not transferred directly to the scheme administrator or insurer of the receiving scheme.

A transfer value may be split and each part transferred to separate schemes (but see later for the position under enhanced protection).

Effect on the annual allowance

Transfers between registered pension schemes have no impact on the individual's annual allowance.

Transfers to overseas schemes

For details on this subject, please click here.

Transfers in

A transfer may be received from another registered pension scheme.

The tax legislation is silent on the treatment of transfers from employer financed retirement benefits schemes.

However, page 14104010 of the Registered Pension Schemes Manual explains that such transfers are allowed and any investment income or gain in relation to the funds in the receiving scheme is free of income tax and capital gains tax. When the member takes their benefits, there will be a Benefit Crystallisation Event, and the benefits will

Death in service only members of pension schemes and enhanced protection

We have had some useful correspondence with HMRC about what we viewed as the potential loss of enhanced protection where a transfer is made in respect of a death in service only member.

You can read the correspondence by clicking here and here.

be tested against the lifetime allowance in the normal way. No increase is given to the member's lifetime allowance.

The link above also gives details on transfers from overseas schemes.

Transfers under enhanced protection

Enhanced protection will be lost when a member transfers benefits, which have enhanced protection, unless the transfer is a permitted transfer. If the transfer is not a permitted transfer, any protected tax-free cash will revert to 25% of the standard lifetime allowance unless the benefits remain protected under scheme specific tax-free cash protection (see later).

What is a permitted transfer?

A transfer is a permitted transfer if:

- All the benefits under the scheme are transferred at once. (A partial transfer is NOT a permitted transfer).
- The transfer is made to a money purchase arrangement. (Any type of scheme may transfer to a money purchase arrangement).
- A transfer from a cash balance scheme or a defined benefit scheme which is winding up is made to another cash balance scheme or defined benefit scheme of the same employer.
- The funds being used to pay a scheme pension under a scheme which is winding-up are transferred to an insurance company.
- The amount transferred from a defined benefit or cash balance scheme to a money purchase scheme is, 'in applying normal actuarial practice', equivalent before and after the transfer.

All the rules relating to enhanced protection then apply to the receiving arrangement. This means the receiving scheme will need to be told whether or not enhanced protection applies to the benefits being transferred.

Transfers of pension credits under enhanced protection

A transfer of a pension credit to an ex-spouse or registered civil partner as part of a divorce settlement or on termination of a registered civil partnership does not affect enhanced protection.

Under a money purchase arrangement, lost pension rights cannot be rebuilt as the payment of contributions would be classed as 'relevant benefit accrual' and would therefore breach the rules on enhanced protection.

Under a defined benefit or cash balance arrangement, it may be possible to rebuild pension rights, providing the value of benefits crystallising does not breach the 'appropriate limit' which applies to enhanced protection under these types of arrangements. If the rebuilding of pension rights results in relevant benefit accrual, enhanced protection will be lost.

Transfers under primary protection

An individual keeps their increase to their personal lifetime allowance (their 'enhanced lifetime allowance') if they transfer their benefits to another registered pension scheme. There is no requirement for a member to notify the scheme administrator when he or she has registered for primary protection. However, schemes will be required to ask members whether they have any type of increased personal lifetime allowance when benefits are taken. The member will then be asked for a copy of his or her HMRC certificate giving an increased personal lifetime allowance.

Transfers of pension credits under primary protection

Primary protection may be lost or reduced where part of the member's fund is transferred to an ex-spouse or registered civil partner as part of a divorce settlement on or after A-Day.

The member's increased personal lifetime allowance (their 'primary protection factor') will be recalculated and they will be given a new reduced personal lifetime allowance. The calculation effectively deducts the pension debit from the value of rights on 5 April 2006 registered with HMRC. If the member's fund is reduced to less than £1.5 million, primary protection will be lost altogether.

An example is given in page 03103020 of the Registered Pension Schemes Manual.

Transfers where scheme specific tax-free cash protection applies

A member of an occupational pension scheme, old code scheme, statutory scheme, s.32 buy-out or Parliamentary scheme with tax-free cash rights worth more than 25% of his or her fund before A-Day may have the tax-free cash protected under that scheme.

If their benefits are transferred out, the member's right to more than 25% cash will be lost unless the transfer is a block transfer.

If the transfer is not a block transfer, the protection is lost. The member's lump sum entitlement reverts to a maximum of 25% of the standard lifetime allowance for the tax year in question.

Transfers where a member has a protected retirement age

A member with:

- A protected low pension age under a personal pension (including a stakeholder pension) or a s.226 retirement annuity contract, or
- A protected low normal retirement age under an occupational pension scheme, s.32 buy-out, old code scheme, statutory scheme or Parliamentary scheme

loses that protection if they transfer out of their scheme, unless the transfer is a block transfer.

If the transfer is not a block transfer, the member will be subject to the Normal Minimum Pension Age (50 until 5 April 2006 inclusive; 55 from 6 April 2006).

What is a block transfer?

A block transfer is one where all the benefits relating to the member, and at least one other member in the same scheme, are transferred in one go to the same scheme. The transfer may be made to separate s.32 buy-outs if the scheme is winding-up. The member must not have been a member of the receiving scheme for more than 12 months before the transfer. However, if the receiving scheme is a personal pension scheme, any period of membership before A-Day is ignored if the membership consisted only of contracted-out rights.

At the time of writing, HMRC interpretation of the legislation is that protection no longer applies when a scheme is wound-up and the members have been given an assigned policy instead of a s.32 buy-out or the insurer continues to administer the policy under 'direct obligation'.

The block transfer rules also apply if there is a scheme reorganisation or a transfer of undertakings under TUPE (Transfer of Undertakings Protection of Employment) during the period 10 December 2003 to 5 April 2006.

A block transfer cannot be made from a s.226 retirement annuity contract because there are not at least two members of the scheme to transfer out. It would appear that a block transfer can be made from a s.32 buy-out, even though the it is also a one-man scheme, because the regulations allow a block transfer from a s.32 buy-out in existence on 5 April 2006, providing it is

made on winding-up and the transfer is to another s.32 buy-out.

A block transfer may be made into any type of arrangement. However, schemes are not obliged to offer scheme specific tax-free cash protection or protected low retirement ages. Their rules will need to cater for this if they choose to do so. This means that any arrangement receiving a transfer will need to ask whether the transfer is part of a block transfer and there is a protected low normal retirement age or scheme specific tax-free cash protection.

A protected retirement age or scheme specific tax-free cash protection will be lost on any subsequent transfer unless that is also a block transfer.

Partial transfers

There is nothing in the tax legislation to prevent a partial transfer of benefits.

However, the following points will need to be considered:

- A partial transfer of a member's benefits under a scheme is not a permitted transfer for the purposes of enhanced protection. This means that enhanced protection will be lost if there is a partial transfer of the member's benefits. (Note that enhanced protection is maintained under a block transfer).
- Once the benefits have crystallised, a partial transfer cannot be made.

Transfers of pensions in payment

Transfers of lifetime annuities

A lifetime annuity already in payment may be transferred from one insurer to another. The transferred funds must be used to buy a new lifetime annuity; otherwise the transfer is an unauthorised payment. The transfer is not a Benefit Crystallisation Event, as the funds will have been tested against the member's personal lifetime allowance when the first annuity was set up. There is no second tax-free cash sum. Annuity instalments under both the original and new scheme are deducted from the purchase price under the original scheme to calculate any annuity protection lump sum death benefit. But there is no requirement for the annuity to be on the same basis (e.g. monthly, in advance) as the previous lifetime annuity.

Transfers of short-term annuities

A short-term annuity may be transferred from one insurance company to another. The transfer will be treated as an unauthorised payment if the new insurance company does not pay the money out as a short-term annuity. Again, there is no requirement for the new short-term annuity to be set up on the same basis as the previous one.

Transfers of scheme pensions

A member's or dependant's scheme pension in payment may be transferred to an insurance company.

The transferred funds must be used to set up another scheme pension; otherwise it is not a recognised transfer (and hence it is an unauthorised payment). In respect of a dependant's scheme pension, the transfer is not a recognised transfer (and hence will be treated as an unauthorised payment) unless the transferred funds are used to provide a new dependant's scheme pension.

A scheme pension payable by an insurance company may be transferred to another insurance company to provide a scheme pension.

The transfer is not a new Benefit Crystallisation Event. There is no second tax-free cash sum entitlement. The rate of the scheme pension must not be less than that payable under the original scheme except for any reduction to reflect reasonable administration costs of the transfer. This is because scheme pensions can only reduce in prescribed circumstances. On death, where the scheme pension continues to be paid until the end of a fixed period (i.e. a term certain), that term must end on or before the date it would have ended under the original scheme.

Transfers of unsecured pension funds and alternatively secured pension funds

The following types of pensions are capable of being transferred to another registered pension scheme and being regarded as a recognised transfer:

- Member's unsecured pension.
- Member's alternatively secured pension.
- Dependant's unsecured pension.
- Dependant's alternatively secured pension.

This also applies where entitlement to an unsecured or alternatively secured pension exists but no payments of pension are actually being drawn under the transferring scheme.

The transfer is only a recognised transfer (and hence not treated as an unauthorised payment) if the funds are transferred to a new arrangement which does not already hold any funds. This is to ensure that the unsecured pension year which applied under the old arrangement is adopted under the new arrangement. This means that the aggregate income withdrawals from both the old and the new arrangement must not exceed the maximum annual income withdrawal for the unsecured pension year in which the funds are transferred. The transfer is not treated as a Benefit Crystallisation Event (other than in respect of any new funds added).

In specie transfers of assets

There is nothing in the tax legislation about in specie transfers of assets. HMRC has previously advised that this is because the legislation is built around the concept of contributions. It therefore advised that an in specie transfer of assets should be possible if the individual declares the contribution he or she wants to pay and then asks for an asset to be taken into the scheme as payment of that contribution.

However, page 14101720 of the Registered Pension Schemes Manual states that:

'Subject to the rules of the pension schemes concerned, either assets (which includes insurance policies) or cash funds, or a combination of the two, can be transferred provided they represent the full value of the member's rights to be transferred.'

The position should become clearer as the new pension taxation regime is put into practice.

Reporting transfers to HMRC

There is no requirement for a scheme to report a transfer in or out to HMRC unless HMRC ask the scheme administrator to complete a Registered Pension Scheme Return.

The scheme administrator must report the following information concerning transfers to HMRC on the Return:

- The amount transferred to other pension schemes that tax year
- The amount received as transfers from other pension schemes that tax year.

The Return must be received by HMRC by 31 January following the tax year it relates to. ■

SPC response to White Paper

SPC has submitted a response to the government's White Paper **"Security in Retirement: towards a New Pensions System"**. The main points in the response were:-

1. The government's proposals on personal accounts represent a major initiative to address concerns that an estimated 46% of those in work are not contributing to a private pension. The government suggests that the proposals should mean that people see a greater return from their private savings than they would under today's system. We suggest that the government exercises a great deal of caution before allowing generalisations such as this to appear in any future material promoting the new system of personal accounts. It is reasonable to envisage that eventually the new system might lead to lower charges, but it does not automatically follow at all that the result will be consistently better returns than available today. We should keep very much in mind the risk to confidence in the system of the government being perceived as having "mis-sold" it.
2. We are concerned that the government still appears to be hedging its commitment to return to linking state pension increases to increases in earnings. The White Paper still talks in terms of this change being introduced subject to affordability, but, if the change is not introduced, it calls into question the whole architecture within which the new system of personal accounts is intended to operate.
3. We welcome the statement, that personal accounts are intended to complement, and not replace, existing pension provision from employers. We are, however, very concerned that the intention appears to be that, if an employer already offers a suitable alternative scheme, they will be able to seek exemption from the personal accounts scheme. We believe that making the starting point seeking exemption will greatly increase the likelihood that the process for carrying on with an existing scheme, and the legislation underlying it, will be bureaucratic and complicated. This would mean that many employers would not consider it worth the trouble of carrying on with their existing scheme, even if it is a more than suitable alternative. We suggested a system of self-certification.
4. The White Paper is much less clear than the final report of the Pensions Commission on the need for special support for smaller employers. There needs to be clear confirmation that there will be such support.
5. The private sector has a great deal of experience of setting up and running money purchase schemes and the likelihood of the government's new scheme of personal accounts being introduced and operated on time and on budget will be much increased by maximising the involvement of the private sector. The government should, however, provide substantial assistance with the set up costs.
6. It is essential that the provision of personal accounts does not constitute an actual or a virtual monopoly. The impact on the system, if a dominant provider in an over-concentrated market produced poor returns or, even worse, got into difficulties, would be disastrous, both from the point of view of the impact on account holders and on confidence in the system.
7. The clear reluctance of the government to implement the recommendations of the Government Actuary on contracting-out rebates for salary related schemes for the period 2007-2012 sends a very negative message, when one of the government's key aims is to generate confidence that the pension system is fair. Rebates at the level currently proposed by the government are in effect a tax on defined benefit schemes, since the contracting-out rebates would not match the expected cost of replacing state benefits.
8. We are very disappointed that the White Paper does not propose the establishment of a standing Pensions Commission to exercise a strategic oversight of the pensions system. Whatever system emerges from the debate engendered by the White Paper, we would see an extremely useful role for a standing commission in monitoring high level areas, such as the appropriateness of investment options and strategies under the new system of personal accounts.

The full text of our response is available by clicking here.

The White Paper is available by clicking here.

SPC response to DWP transfer value consultation

SPC has responded to DWP's consultation document on possible approaches to the calculation of transfer values, following the announcement some time ago that DWP would take over from the Actuarial Profession the lead role in this area.

In our response we stated our overall preference for a scheme specific approach to the calculation of transfer values, focusing on a best estimate of the cost to the scheme of the benefits to be transferred. We believe that this strikes the best balance between treating members fairly and protecting the position of remaining members and the finances of a scheme.

You can obtain a copy of our detailed response by clicking here. ■

SPC response to Pensions Regulator on scheme reports and accounts

SPC has responded to the Pensions Regulator's discussion paper on the form and content of pension scheme reports and accounts. We made two general comments.

Firstly, in our view, the value of a set of scheme report and accounts hinges on whether they provide information, which at least some of the scheme members are interested in reading and basically understand when they do so. The fundamental reason for having reports and accounts is so that the trustees can report to the members on their stewardship of the scheme in the year just past. Effectively, the members ought to be satisfied that the trustees have properly looked after the pension fund in the period immediately preceding.

Paragraph 3.10 of the discussion document very largely encapsulates what we view as the fundamentals which should underlie the preparation of reports and accounts.

We view the discussion paper as a whole, however, as largely unsympathetic to our view of the fundamentals. It gives too little attention to what is needed to make the report and accounts an annual document which scheme members actually want to read and can understand. The paper goes too far in the direction of meeting the requirements of the Regulator for information from the trustees and the views of pensions professionals on what scheme members ought to want to read.

For instance, we do not believe that the place to tell members of defined benefit schemes about how well-placed the scheme is to meet the liabilities as they fall due (as suggested in paragraph 2.7) is the scheme report and accounts. That is the role of the summary funding statement, which schemes have already committed significant resources to preparing for. The same paragraph refers to scheme reports telling members how well the overall investment portfolio has performed. Normally, members of defined contribution schemes will not have a single portfolio of investment choices which can be reported on in overall terms in a report and accounts. They are more likely to have a range of different portfolios, on which reporting is more appropriate at individual member level. Additionally, the disclosure on investment performance in the report and accounts would need to be coupled with warnings that past performance is not necessarily a guide to the future (which ought to be what matters to scheme members) and this would inevitably negate the perceived value of the information.

Furthermore we do not believe that the scheme report and accounts is the appropriate place for statements on the employer covenant and the funding position. Again, these would be much more appropriately dealt with in the summary funding statement.

The overall effect of proceeding along the lines suggested in the discussion paper would be to make the report and accounts a bigger document, with more detail, which scheme members are less likely to want to read and to understand if they do. We are also concerned that an expanded report and accounts might not be the best way of meeting the needs of the Regulator.

Our second general comment related to the contribution of the discussion paper to deregulation. We support deregulation. By deregulation we mean that where there was previously legislation or a regulatory requirement there is now none. Although the discussion document speaks in terms of deregulation, we view it as, in fact, setting its goal no higher than leaving unchanged the net burden of regulation. If anything, the effect of the proposals could be to add to the burden on schemes by concentrating more items into the report and accounts timetable.

The discussion paper comments that some of the best run schemes have already adopted its proposals. We do not accept that this justifies imposing what some schemes might view as best practice on all schemes, particularly schemes which do not have the resources to implement them.

We see little likelihood that the proposals will lead to less but more meaningful disclosure.

You can obtain the full text of our response by clicking here.

The Pensions Regulator's discussion paper is available by clicking here. ■

DWP deregulatory review

We reported in **SPC News No. 3 2006** that DWP was undertaking a deregulatory review and that SPC was participating in the advisory group steering the review.

Ahead of the first meeting of the advisory group we submitted a paper, setting out our initial views on the ground which the review could cover.

Before committing significant effort to this review, we would like to have a reasonably clear indication of DWP's views on possible outcomes. The Pickering review produced a set of proposals for very significant simplification and deregulation in the pensions area, most of which were not acted upon. Given this new impetus for deregulation, we have asked which parts of the Pickering recommendations DWP now considered would have a realistic chance of implementation.

It would be best to take deregulation literally, i.e. we should seek to identify areas in which there will be no legislation. We are sceptical, on the basis of experience, whether "light touch" regulation is achievable. The norm appears to be that, if an area is deemed to need legislation, it will inevitably be dealt with in considerable detail, either (a) in primary legislation and/or regulations or (b) in primary legislation / regulations supplemented by a code of practice.

The full text of our paper is available by clicking here. ■

Summary funding statements and hybrid schemes

The Summary Funding Statement requirement was introduced by Schedule 3, paragraph 2 (3)(b) of the Occupational Pension Schemes (Scheme Funding) Regulations (2005/3377), which inserted a new paragraph (12ZA) into regulation 5 of the 1996 Disclosure Regulations (1996/1655). This paragraph stated that the Summary Funding Statement would be a requirement for all members and beneficiaries of schemes to which Part 3 (the scheme funding provisions) of the Pensions Act 2004 applied. This part of the Act applies to 'every occupational pension scheme other than- (a) a money purchase scheme, …'.

Because of this wide definition, it would appear that hybrid pension schemes with both defined benefit and money purchase benefits are caught, regardless of how such schemes are structured. Hybrid schemes take a number of different forms; they can be schemes which have completely separate defined benefit and money purchase categories, where members can only be in one or the other category. They can be schemes where members are accruing defined benefit and money purchase benefits at the same time. They may be primarily defined benefit, but with a money purchase underpin element, or indeed vice versa.

We have suggested to the Pensions Regulator that it would be more appropriate if the requirement for Summary Funding Statements was based on the nature of the member's benefits rather than on the general category of the scheme. There is an exemption from the Summary Funding Statement requirement for money purchase schemes because members of such schemes are not affected by funding issues. For the same reason, we believe there should an exemption for pure money purchase categories of membership under hybrid schemes. The only exception to this, we suggest, would be where the money purchase benefits under a hybrid scheme were not ringfenced from the defined benefit assets.

A further possible exemption to consider would be money purchase sections which operate a notional defined benefit underpin. The regulations could be amended to introduce a similar relaxation to that which was introduced for Statutory Money Purchase Illustrations, whereby such illustrations do not need to be produced for members with money purchase underpins where, in the opinion of the trustees, the defined benefit underpin is unlikely to bite.

In summary, we asked:

- Does the Regulator agree that at present pure money purchase members of hybrid schemes are required to be provided with a Summary Funding Statement?
- On the assumption that this is the case, we have given some thought to what information such a statement could contain, which would be relevant in a money purchase context. It has not proved easy to identify suitable items. We note that the example statements on the Regulator's website relate to defined benefit members only and would be irrelevant to a pure money purchase member, where the money purchase assets are ringfenced. Furthermore, where money purchase sections take expenses out of members' funds, it is particularly important that the information contained in Summary Funding Statements represents a worthwhile use of funds. We asked the Regulator for its views on what a Summary Funding Statement aimed at pure money purchase members of hybrid schemes should contain.
- Could consideration be given to altering the regulations, to exclude pure money purchase only members of hybrids with ringfenced assets from having to be given statements? Similarly could consideration be given to allowing trustees discretion not to issue statements for money purchase members with defined benefit underpins where the underpin is unlikely to bite. We addressed this third point with DWP.

The Regulator has referred us to the guidance now on its website, but this does not deal with our points on schemes with a defined benefit underpin. ■

Problems with the Anti-Age Discrimination Regulations and DTI guidance

We summarised the anti-age discrimination regulations in **SPC News No. 2 2006**.

We have now prepared a paper, summarising concerns and uncertainties about the regulations and guidance and sent it to DWP.

For a copy of the paper, please click here.

Pensions Regulator guidance on member nominated trustees and directors

On 15 August 2006, the Pensions Regulator published Guidance on member-nominated trustees and directors arrangements to accompany the "final draft" code of practice on the subject.

The Guidance sets out which requirement applies to certain schemes, the commencement date of these requirements and transitional arrangements for schemes which had arrangements under the Pensions Act 1995 (such as for current MNT/MNDs continuing in their role).

The Guidance is helpful in that it sets out the Regulator's approach. However, it does not carry as much weight as the code of practice, as a court or tribunal will not take it into account when deciding whether legal requirements have been met.

For a copy of the guidance, please click here.

The "Trustee Toolkit": Defined benefit funding modules now available

Modules on defined benefit schemes and the new scheme specific funding framework have been added to the "trustee toolkit", the Pensions Regulator's free online learning programme.

The toolkit was designed with the aim of helping all trustees of occupational pension schemes, whatever the size and nature of their scheme, to meet the requirements of the 2004 Pensions Act, namely:

- To possess an appropriate level of knowledge and understanding of trusts and pensions law, and the principles of funding and investment; and
- To be conversant with their own scheme's documents.

Using the programme

The programme consists of a series of modules, each of which allows users to work through a variety of realistic situations, in which they join a trustee board and participate in decision-making. Each individual situation – for example, resolving a dispute with a scheme member – links to more detailed tutorials covering the learning objectives in greater depth, and is supported by real-life case examples illustrating how the principles under discussion have worked out in practical terms.

Users of the trustee toolkit soon find themselves immersed in a range of issues. For example, who receives what share of the benefits when a scheme member dies suddenly? What should be done about a member who is threatening to take her problem to the Pensions Ombudsman? At what point should the trustees tell the Pensions Regulator about administrative errors they have uncovered? And how should the board respond when the employer says the scheme is no longer affordable?

The Regulator's aim is that, in working through a broad spectrum of realistic situations, trustees will develop a clearer understanding and deeper knowledge of their role and powers.

The programme recommends certain modules, depending on whether the user's scheme is defined benefit or money purchase. In addition, each module includes a diagnostic check, enabling participants to work through the material in the way most appropriate to their needs. Although the Regulator collects aggregate data about use of the trustee toolkit, it never monitors any individual participant's use of the system; users are free to dip in and out of the material, repeat or skip parts of the material, and can work at whatever pace suits them.

New Modules

Introductory modules on pension schemes and the role of trustee were released earlier this year, followed by modules dealing with pensions law and the four major asset classes.

At the end of July 2006, two new modules on scheme specific funding were added. These deal with the practical implications of the new funding framework for defined benefit schemes. The modules tackle areas such as:

- The powers and responsibilities of trustees in the area of funding defined benefits, and the role of the regulator;
- The nature of the employer/trustee relationship, and the effect of pension liabilities on sponsoring employers;
- The nature and strength of the "employer covenant" (the employer's ability and willingness to meet the costs of members' benefits);
- Consultation with the scheme actuary, valuing liabilities, and establishing a funding target appropriate to the scheme; and
- Developing a workable recovery plan if the scheme is in deficit.

Making progress

The programme automatically keeps a record of which areas the user has worked through, and displays this information on a page entitled "Your toolkit". (This record is available only to the user, and cannot be accessed by anyone else.) This means that users can easily return to the relevant point of the programme following a break. It also allows participants to print progress reports, showing which topics have been successfully completed.

Each module ends with a section entitled "Question time" enabling users to assess their understanding of the material. The programme provides the option of obtaining a certificate of successful completion when the "Question time" section has been completed and passed for all relevant modules. This certificate will only be available once all the modules are in place; further modules, relating both to defined benefit and to money purchase schemes, will be released in the course of the year.

As already mentioned, the programme is very flexible and users can work at their own pace. Typically, however, the Regulator would expect a novice user who accessed the toolkit for about an hour a week to be able to complete the entire programme in under five months.

Find out more

Although the programme has been developed to meet the learning needs of trustee, it is freely available to everyone. The Regulator believes that a great many of those involved in pension provision will find it useful, including administrators, advisers, employers and members.

Even where training is already available, the Regulator believes that learners are still likely to find the Regulator's programme useful for induction purposes, and can supplement the programme with more advanced training material where applicable.

The e-learning programme covers the ground set out in the Regulator's "scope guidance" documents, which list the topics which constitute the relevant areas of knowledge and understanding. There are two versions of the guidance: one for trustees of defined benefit schemes which include money purchase arrangements, and a subset of this for trustees of money purchase schemes only. All trustees might find it helpful to look at the scope guidance documents (available on the Regulator's website) and use them as a checklist to help identify any gaps in their current knowledge.

To register for the e-learning programme, please visit http://www.trusteetoolkit.com. ■

Pensions Regulator publishes first annual report on occupational scheme governance

On 5 September the Pensions Regulator published Occupational Pension Scheme Governance. This is the first of the Regulator's proposed annual reports on the topic.

Its key findings are:

- There are clear links between trustee training and good governance. Schemes with trustees, who had in the last 12 months taken advanced training seemed, to have more regularly reviewed their investment strategy and updated scheme rules, and had a high standard of member communication. Their trustees had greater confidence in the trustee board's performance in general. Advanced training is defined as training on detailed aspects of trustees' responsibilities.
- Large schemes tend to be better governed than smaller schemes.
- Trustees assess themselves as performing well at governance. The Regulator comments that, to the extent to which it is possible to compare self-assessment with actual practice, schemes most confident in their performance did appear justified in that opinion.

However the survey report highlights what the Regulator views as significant gaps in schemes' governance:

- 70% of defined benefit schemes do not have a policy to manage conflicts of interest (written or otherwise). Even among the largest schemes (over 5000 members) a fifth had as yet taken no action to monitor and manage conflicts of interest.
- 37% of defined benefit schemes do not regularly review the employer's credit rating or the employer covenant. This is despite trustees claiming to be confident that they can conduct effective negotiations with the employer in relation to scheme funding requirements. The Regulator does make the point that this is an area on which the trustees have only recently been obliged to focus, which may explain the low findings at this stage.
- 20% of schemes which use a third party administrator do not have a service level agreement with it.

The survey covered 1235 schemes, but excluded schemes with fewer than 12 and 5 members in, respectively, money purchase and defined benefit schemes, and non-trust-based arrangements. It involved "screening" interviews with all the schemes surveyed and more in-depth telephone interviews with 500 of those. For the 500 interviews, the Regulator required that the interviewee be a trustee experienced to comment on the scheme's trusteeship. This meant that often the chairman or the most experienced trustee was interviewed and the survey results are therefore likely to reflect the highest rather than typical levels of trustee knowledge.

A wider spread of schemes was surveyed in respect of particular issues, such as composition of trustee boards and compliance with member-nominated trustee requirements. The survey results suggest that there is sharp divide as regards meeting the member-nominated trustee requirements. Of schemes surveyed for this purpose, over 50% claim to have at least one third MNTs, but 38% have none at all (- these are schemes which are not relying on the continuation of opt-out provisions).

Around 10% of schemes surveyed had a professional trustee, which tends to correlate with above average standards of governance in certain areas.

For a copy of the report, please click here. ■

PPF risk based levy consultation proposal 2007/08

The Pension Protection Fund has published its consultation on the proposal for the 2007/08 risk based levy. The structure of the levy broadly remains unchanged, although there are some changes such as:-

- revised standard documentation for contingent assets;
- a revised approach to the inclusion of some insured liabilities within a section 179 valuation;
- revised guidance on PPF valuation calculations including changes to yield assumptions. Under the revised guidance, pre-1997 liabilities are valued on a more stringent basis and post-1997 benefits on a less stringent basis.
- PPF is working with Dun & Bradstreet to consider whether aspects of the D&B methodology such as the weighting applied to County Court Judgments and the application of the methodology to certain types of employers, such as large employers and the not-for-profit sector, need to be adjusted.

PPF considers the proposals to be firm, although it will consider comments received, and publish the final proposal in mid-November 2006. It will set out the levy estimate and any changes to the scaling factor in a separate consultation document to be published before the end of 2006. Much of the data needed will be collected from revised on-line scheme returns to be issued in November 2006.

PPF intends to undertake a comprehensive review of all aspects of the levy calculation in February 2007 in respect of the 2008/09 levy.

Please click here for a copy of PPF's proposals. ■

SPC response to FSA consultation paper on organisational systems and controls

SPC made a brief response to FSA's consultation paper 06/9 on organisational systems and controls. For a copy please click here.

This consultation paper proposes rules and guidance to implement the organisational and systems control requirements contained in MiFID and the Capital Requirements Directive. ■

SPC response to Financial Ombudsman Service funding review

In our response to the Financial Ombudsman Service / FSA consultation of funding for the former, we stated a clear view in favour of maintaining the existing fee arrangements. We consider that the balance of the arguments set out in the discussion paper points to keeping the existing arrangements.

Our only other comment is that there should be a lower rate of case fee in relation to cases which the Ombudsman can deal with quickly because a firm has made a reasonable officer of settlement. ■

SPC obtains clarification on NISPI newsletters

A number of SPC members expressed concern at an article in the June 2006 NISPI Newsletter, on requests for the return of age related rebate payments. The concern related to the statement that it is the responsibility of the scheme, to whom HMRC made the payment, to return the overpayment, whether or not it can recover it from the importing scheme.

We think that this is unreasonable if the original scheme sent in the correct notification at the time of transfer.

We suggested that HMRC should deal directly with the importing scheme. We could understand the position in the newsletter, in respect of schemes which send in transfer notifications late, or fail to send them in at all, but, if the original scheme completed and submitted the notification in a timely manner, we do not consider it reasonable to involve the original scheme in recovering the overpayment.

An obvious defensive response to the statement in the newsletter would be to return to HMRC all rebates received after a transfer is made. We think that this would be undesirable from every point of view because in the great majority of cases no overpayment would in fact be involved and the most efficient way of proceeding is for the rebate to go straight to the importing scheme.

We raised these concerns with NISPI.

In its response NISPI provided some background information on why the article appeared in the NISPI newsletter.

The relevant area of NISPI deals directly with scheme administrators providing

Government's review of gold plating of EU legislation

We reported SPC's response to the government's review of gold plating of EU legislation in **SPC News No. 3 2006**.

We were pleased to note that the concerns raised by SPC featured in the review's interim summary of issues for consideration. ■

contracted out Appropriate Personal Pension and Stakeholder policies to members of the public who do not have access to, or decide against, joining an occupational pension scheme. Part of this responsibility is the payment of age related rebates (ARRs) based on policyholders earnings, and the recovery of ARRs when they are no longer applicable to the policy in question.

When a policyholder decides to transfer their plan to another provider the exporting scheme is obliged to submit a transfer notification form to NISPI. It is from this form that NISPI learns of the termination/transfer date and the details of the importing scheme, and it uses this to update the person's contracting out record held on its computer systems. This is to be done within five weeks of the transfer taking place and, should it be completed correctly, will inhibit any payment of ARR to the exporting scheme.

In some instances, this process does not always take place on time, with the result that NISPI does not update the person's record until after a further payment of ARR has been made. This latter payment effectively falls outside of the contracting out period and should not be included in any transfer to the importing scheme. The NISPI article refers to this situation.

Problems have arisen when NISPI has approached a pension provider for the return of these ARRs, and it emerges that they have (incorrectly) been included in the transfer. This situation should never arise as the exporting scheme should have a note of the tax year of termination on their own records. Further, each payment of ARR, which NISPI makes clearly shows the tax year to which it relates.

NISPI agrees that the content of the newsletter should only apply to those schemes that send in transfer notifications late, or not at all.

When writing to the exporting scheme, NISPI gives the option of submitting a revised form with a termination/transfer date encompassing the ARR it requires to be returned. In a considerable number of cases, the exporting scheme takes up this alternative. This approach cannot be taken by the importing scheme. ■

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

St Bartholomew House
92 Fleet Street
London EC4Y 1DG
TELEPHONE: **020 7353 1688**
FACSIMILE: **020 7353 9296**
EMAIL: **john.mortimer@spc.uk.com**
WEB: **http://www.spc.uk.com**

SPC News Editorial Committee:
Chairman, Secretary,
Chris Bellers (Friends Provident)
and contributors from Mercers

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