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THE BIMONTHLY NEWSLETTER OF THE SOCIETY OF PENSION CONSULTANTS

SPC News No. 4, 2007

If this issue of SPC News was forwarded to you, and you would like to receive a copy direct form us, please e-mail Eileen Damsell at SPC:

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SPC meets minister for pensions reform

Representatives of SPC, led by its Chairman, Sir James Hodge, met the Minister of State for Pensions Reform, Mike O'Brien MP, on 17 September.

The meeting allowed the Minister and SPC to exchange views on a number of current industry issues, just three months into the Minister's tenure of the job.

We welcomed the opportunity to share our ideas and opinions and we were able to have a full exchange of views with the Minister during a very productive discussion. We were pleased to hear the Minister stress the importance of early communication in connection with the introduction of personal accounts.

We were particularly glad that the Minister emphasised the need to communicate with employers as well as employees. It was timely also to be able to talk about the possible wider impact of the recent events in the money markets. ■

The next SPC London evening meeting takes place on **November 21st 2007**.

The speakers are **Anthony Maton** and **Mark Willis (Cohen Milstein Hausfeld & Toll)** and **Caroline Goodman (Institutional Protection Services)** and their subject will be **Class Actions and Pension Funds: What you Need to Know**. The meeting is hosted by **Buck Consultants** at 160 Queen Victoria Street, London EC4 and is also sponsored by them.

Refreshments are available at 5 o'clock and the meeting begins at 5.30 p.m.

For a copy of the booking form, please click here.

The handouts for the SPC London evening meetings on September 19th and October 25th are now available. The speaker in September was **Len Fawke** (who very kindly substituted at the last minute for June Mulroy, who was unavoidably prevented from attending). His subject was **Priorities for the Pensions Regulator**. The speaker in October was **Malcolm Fitzsimons (Partner, Baker & McKenzie LLP)**. His subject was **Conflicts of Interest**.

For a copy of the handouts, please click here and here. ■

Leadership of pensions summit draws nearer

This year's Leadership of Pensions Summit will once again be one of the most prestigious events of the year and will take place in one of the best central London conference venues, the Radisson Edwardian Hotel, London W1. Once again the Summit is organised in association with FT Business and the Cass Business School.

The Summit provides an opportunity to hear from, and debate with, business leaders, politicians, policymakers and leading pension specialists.

The full conference programme is available by clicking here.

There is a special ticket deal for SPC members. One complimentary ticket per SPC member organisation is available, compared with the standard delegate fee of £795 + VAT.

To obtain your special ticket deal, please visit the registration area accessible from the link above. The relevant promotional code is **SPC01**.

We strongly encourage you to book now for the Summit. ■

More on QROPS

When we met HMRC in April 2007, to discuss how the value to practitioners of the QROPS listing could be maximised, our understanding was that the current position was that schemes now had to actively indicate that they did **not** wish to be included in the listing on the HMRC website. We welcomed this.

We were therefore disappointed to see that question 3.11 in the new form APSS251 does not take this approach, but requires a yes/ no answer.

We asked HMRC to comment.

HMRC has now explained that the advice, which it has been given about its legal duty of confidentiality, makes it clear that it cannot assume a right to publish confidential information without agreement. So the form needs to provide an opportunity to give consent.

HMRC believes that it has done what it can to encourage consent, by making it clear in the APSS251 notes that the transfer process will be quicker and more straightforward if consent is given. It also arranged for more frequent updating of the list and the QROPS acceptance letter invites inclusion on the list unless the manager objects. ■

SPC Compliance Forum

The next meeting of the SPC Compliance Forum is due to take place on November 14th 2007, starting at 0900 with coffee.

The meeting will take place in the SPC's offices. Our guest will be Jackie Doyle-Price from FSA. Following her participation in the April 2006 Compliance Forum, she will give us an update on FSA's Treating Customers Fairly work.

We will be offering a sandwich lunch after the Forum breaks up (which is expected to be shortly after mid-day), for those who would like to stay.

We will prepare an agenda of points raised in advance by those attending and invite the person raising the point to briefly introduce it, before it is thrown open for discussion. We will have an Any Other Business slot for points coming up on the day.

The morning is accredited with 2½ hours under PMI CPD and those attending might also find the session appropriate to other bodies' continuing professional development requirements.

This event is close to being fully booked, but to secure one of the final places, or a place on the waiting list, please click here for a booking slip. ■

DWP consults SPC on development of personal accounts

SPC has had meetings with DWP as the latter prepares a Bill on personal accounts, which will probably be published towards the end of this year.

Drawing on the wide range of expertise available among SPC's membership, DWP has sought our views on exemption for contract-based schemes from auto-enrolment into personal accounts; defining a "good" scheme for the purposes of exemption from the requirement to auto-enrol into personal accounts; re-enrolment arrangements for schemes exempt from the requirement to auto-enrol; whether there should be a higher first year contribution cap for personal accounts (SPC considers this to be a needless complication); avoiding tax payer subsidy for personal accounts; policing the system (particularly in respect of individuals with broken work histories); safeguarding members at decumulation; interaction of personal accounts with means-tested benefits; and the role of the Personal Accounts Delivery Authority. ■

E-mandation for pension schemes

We expect that SPC Members, who need to know, will already generally know that HMRC introduced e-mandation on October 16.

HMRC has, however, requested that we assist it in ensuring that this information is as widely available as possible.

Specifically, it has asked that we draw to your attention two updated fact sheets

http://www.hmrc.gov.uk/pensionschemes/scheme-administrator-facts.pdf
http://www.hmrc.gov.uk/pensionschemes/simplification-factsheets.htm

and a new user guide to its online service

http://www.hmrc.gov.uk/pensionschemes/online-user-guide.pdf ■

SPC response to deregulatory review report

SPC has submitted comments to DWP on the deregulatory review of pensions legislation, which it commissioned from the independent external reviewers, Chris Lewin and Ed Sweeney, and published on July 25th. For a copy, please click here.

SPC generally supports the recommendations arising from the review and agrees with the emphasis of encouraging employers to provide new risk sharing pensions schemes.

We also support the abolition of mandatory indexation for pensions in payment. At the very least, this should be abolished for cash balance schemes which, at the point of annuitisation, are no different from money purchase schemes. Ideally, the rules on mandatory indexation should be removed altogether. There needs to be a real incentive if employers are to be encouraged to share the risks of pension provision with employees; otherwise, the trend to money purchase will undoubtedly continue.

Other changes that the SPC would particularly like to come out of the review are:

- Statutory overrides for 'unhelpful' scheme rules, so that all employers can, if they wish, make full use of any deregulatory measures.
- Surplus - The current provisions should be amended to make refunds to the employer more straightforward.
- Employer debt - simplification of the provisions, particularly for multi-employer schemes (the current draft amendments to the employer debt regulations provide an early opportunity to simplify in this area).
- Trivial Commutation - Changes are needed to the HMRC rules as quickly as possible. ■

Pensions Regulator consults on revised clearance guidance

The Pensions Regulator has invited our comments on the revised guidance on its "clearance" process. This is the process which involves the Regulator issuing a statement, giving assurance, based on the information provided to the Regulator, that it will not issue a contribution notice or a financial support direction in respect of a particular event, such as a corporate transaction.

For a copy of the draft revised guidance, please click here.

We are currently considering the draft revised guidance. ■

SPC comments on the future development of the pension protection levy

In August the Pension Protection Fund issued a consultation document on proposals for the development of the Pension Protection Levy over a number of years, beginning with 2008 to 2009. The overall aim of the proposals is to provide greater stability and certainty for levy payers. These were two issues recently raised by SPC with the PPF and reported on in **SPC News No. 3, 2007**.

PPF has decided to move away from the approach it has taken to consultation to date (consulting on one year's levy calculation at a time). This document therefore contains proposed changes to the way the levy is calculated for the next three years, as well as early thoughts on the direction of travel for 2010/11 and beyond.

PPF is proposing to maintain a stable levy estimate (allowing for indexation) for the next three years, subject to there being no significant change in long-term risk exposure.

While volatility of individual bills is innate to a risk based approach, PPF proposes a number of actions aimed at reducing the volatility in the short term, including:

- Setting a stable levy estimate for the next three levy years;
- Collecting an amount each year closer to the levy estimate, and

- Changing the levy distribution parameters to manage the level of cross-subsidy between stronger schemes and weaker schemes.

PPF is keen to share principles and ideas concerning the evolution of the levy, improving the fit between the way the total levy estimate is distributed between all eligible schemes and the theoretical levy produced by the Long Term Risk Model. This is intended to lead to:

- Greater alignment between the levy estimate and levy distribution formula;
- Fairer allocation of levy costs to stronger and weaker credit quality schemes and those with higher or lower asset volatilities relative to liabilities;
- Reduced volatility of individual levies year on year, and
- A more stable scaling factor.

For the full text of the consultation document, please click here.

In our response we commented that some of the changes proposed are not insignificant, but there is really not enough information at this stage (e.g. in relation to the potential range of scaling factors, and how the individual elements of the new levy formula will be calculated) for us to be able to fully assess the impact, and therefore to state definitively whether we think the proposals are suitable or otherwise.

We also have some concerns in relation to the proposed change in measurement date and the fact that this would create such a lag between a scheme/company taking action to reduce the levy, and actually receiving any credit for it, that the scheme's/ company's situation could change completely. Further, we need to wait until the autumn for the detail of the proposals, which is when the PPF has indicated that the draft Determination will be published. Given the 31 March 2008 measurement date, this does not give schemes much time to analyse the impact on expected levies or to organise any levy reduction steps.

However, we welcome recent reports that the PPF is now considering bringing forward the calculation date for levies as planned, but allowing deficit reduction contributions to be submitted up the start of the levy year.

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

SPC comments on draft transfer value regulations

In **SPC News No. 3, 2007** we reported that DWP was consulting on draft regulations on the calculation of pension scheme transfer values.

The regulations were intended to come into force in April 2008. Rather than referring to actuarial guidance the principles underlying certain paragraphs currently contained in that guidance (GN11) are to be placed in regulations.

We have now responded to the draft regulations.

We welcome some aspects of the draft regulations. In particular we agree that there should be no requirement for the employer to agree to the cash equivalent (CETV) basis. CETV calculations fundamentally differ from scheme funding, and trustees cannot effectively pay out more than a share of the fund without the agreement of the employer.

We also agree that there should be no requirement to disclose the assumptions underlying the CETV calculation, as these should not really matter to most members. It is what the member can do with the CETV that is important.

The draft regulations seem overly prescriptive in a number of areas (e.g. insufficiency reports). Given current attempts at 'de-regulation', we would hope that there is scope for considerable simplification before the regulations are laid. Perhaps, some of the detail could be covered in guidance.

Also, their application to non-statutory transfers is unclear.

Most importantly, the timescale for implementation is very tight. It is necessary to have at least six months following finalization of the regulations, to make updates to systems and procedures. We therefore welcomed the government's announcement that it has decided to delay bringing the regulations into force until October 1st, 2008.

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

Amendment of the Occupational Pension Schemes (Employer Debt) Regulations 2005

DWP has issued a consultation document seeking views and further information on the proposed changes to the Occupational Pension Schemes (Employer Debt) Regulations 2005 by the Occupational Pension Schemes (Employer Debt) (Amendment) and Pension Protection Fund (Multi-Employer and Entry Rules) (Amendment) Regulations 2007. The changes are at both a substantive and technical level and are designed to make the

regulations easier to operate, more flexible and provide better protection for scheme members.

Section 75 of the Pensions Act 1995 places a debt on an employer where a scheme has commenced winding-up, the employer has an insolvency event or in the case of a multi-employer scheme, the employer withdraws from the pension scheme. The Employer Debt Regulations came into force on 5th April 2005 and from 2 September 2005 further provisions were added by amending regulations. The Employer Debt Regulations set out the requirements on employers where a debt is treated as due. The employer's debt is calculated at full buy-out level (i.e. the level an actuary judges appropriate to buy out the benefits through the annuities market).

The current Employer Debt Regulations make provision for an employer in a multi-employer scheme to not pay the full debt but instead enter into an Approved Withdrawal Arrangement. These arrangements allow an amount less than full buy out to be paid, provided there is a guarantee up to the full buy out level. They must be approved by the Pensions Regulator. In many multi-employer schemes, which have the appropriate rule, there is the option of apportionment. In such cases the employer exits a multi-employer scheme with its debt apportioned to the remaining employers in accordance with the rules of the scheme.

The Amending Regulations make many amendments, but there are three main amendments to existing provisions in the Employer Debt Regulations. These are to:

- the operation of Approved Withdrawal Arrangements and the test used by the Regulator when approving them;
- the definition of employment-cessation events;
- the operation of apportionments of scheme shortfalls in multi-employer schemes. This change is intended to frustrate employers who try to abandon their schemes through apportionment but support those employers who use apportionment for corporate restructuring purposes.

The Amending Regulations introduce new concepts and the main two are:

- the introduction of Cessation Agreements (a simplified form of Approved Withdrawal Arrangement);
- setting out that the default method for calculating an employer's share of the difference between assets and liabilities in a multi-employer scheme is the liability share, unless any of the following three options apply: apportionment share, cessation agreement share or withdrawal arrangement share.

For a copy of the consultation document, please click here.

While in our response we identified some serious problems with the regulations as drafted, we emphasised at the outset that, overall, these draft regulations are welcome, provided that these problems are resolved.

We welcome the intention to introduce greater flexibility, and potentially less cost, for employers seeking to withdraw from a scheme with the approval of the Pensions Regulator. Although this adds to the detail of the regulations, we therefore welcome the proposals for various ways in which an employer's share of a debt is to be calculated and apportioned. It is welcome that the draft regulations permit apportionment agreements, where a scheme can meet its technical provisions and the remaining employers are strong, as well as where a scheme is in deficit and the remaining employers are weak.

We would however caution against the proposed removal of the option to apportion debt in accordance with the scheme rules. If the intention is to promote flexible and cost effective approaches to the treatment of debts, we suggest that this is an option which should be retained.

We also welcome the clarification that it will not be necessary to produce new scheme accounts or to undertake a fresh valuation in order to determine an employer debt.

The first major difficulty with the proposals relates to the circumstances in which an employer debt would be triggered. Subject to a period of grace, the draft regulations indicate that a debt will be triggered once an employer has no more active members. This means that a debt could be triggered when there is a corporate restructuring, even if the employer covenants are as strong as previously and the employers are as committed to the scheme as previously.

We very much welcome DWP's clarification that this is the unintended product of drafting. Otherwise, it would be a critical impediment to employers who remain committed to pension provision, but wish to organise it differently, and the scheme being closed for future accrual remains well supported by the employer.

Our next major concern is that making a scheme paid up (i.e. ceasing all accrual where there is no scheme wind-up or employer insolvency) should not be an employer debt trigger in a multi-employer scheme, where such an event is not a trigger in a single employer scheme. There is no justification for such an anomaly. Again, we welcome the clarification that this is as a result of drafting and not a reflection of a policy intention.

Finally, we strongly question whether it would be appropriate to bring these regulations into force in December 2007. Given the need to resolve the questions raised above, among others, and that the consultation period ended only on October 1st, this is likely to leave a very short period for trustees, employers and their advisers to prepare to operate under the new regulations. ■

Update on scheme returns

The Pensions Regulator has updated us on its plans for scheme returns, following the meeting which it had with members of the SPC Administration Committee in June. That meeting focused on the intended new requirement for earmarked money purchase schemes to include asset values in scheme returns. At the time of going to print, a final decision was still outstanding, but imminent.

The Regulator has re-addressed the scheduled delivery dates for the 2007/2008 scheme return and will now be issuing scheme return notices for small (2-11 member) money purchase and large defined benefit schemes from

November 2007. Large money purchase schemes will be issued with scheme return notices from the end of January through to February 2008.

The Regulator has supplied us with a set of answers to the most frequently asked questions arising in its meetings with SPC and others in June and July.

Who does the Pensions Regulator consider to be the 'administrator' of a scheme?

The administrator is the person who performs the day-to-day services for the trustees. This includes communicating with new members, administering scheme transfers and processing the retirement of members to ensure the smooth running of a scheme.

Will small self administered schemes be required to complete the return?

Yes, any small self administered scheme (now known by the Regulator as SROPS) with 2 or more members is required to complete a scheme return.

Will earmarked money purchase schemes be required to complete the return?

Yes, these schemes are required to complete a scheme return as they are registrable occupational schemes. The removal of the requirement for earmarked defined contribution schemes to complete the return was only ever temporary in nature.

How will The Pensions Regulator enforce the completion of scheme returns by trustees?

It states that its approach is pragmatic and proportionate. It would much rather work with schemes and offer them help to complete their return rather than punish them. However, the Pensions Regulator does have the power to fine trustees who reject this offer and persistently fail to submit the required information. Such instances would be considered on a case by case basis by the Regulator's determinations panel.

Will a paper version of the scheme return be available?

Once a customer has registered and has associated with their scheme it will be possible for them to print out a copy of the scheme return form. However, this is to be used for information gathering purposes only. The Regulator will not accept forms submitted in this way. Paper forms will only be available in exceptional circumstances.

Is the Pensions Regulator considering only accepting the submission of forms online?

It will not be introducing this policy for the 2007 / 2008 scheme returns, but it is reviewing its position.

Will I have to repeat the individual insurer or administrator's details if I have already entered them on the system?

No, you will be able to indicate that the insurer is also performing the administration role.

Can the trustee field also include a company name?

The system allows for trustees to have a citizen or an organisation name dependent on whether the trustee is corporate or individual.

Why the requirement for schemes to list all participating employers since 1975? Is there flexibility around this field?

This information is registrable (Pensions Act 2004) and as such there is a legal requirement for the Regulator to collect all the previous participating employers in a scheme since 1975. The Regulator is also required to collect the previous names of previous employers. The information is required for the Pensions Tracing Service. However, following the feedback gained during its research period, the Regulator will not be asking for previous names of previously participating employers as it is able to collect these from alternative sources. The Regulator does still, however, require the previous participating employers where known.

Not all schemes have pensioner members; will the pensioner membership field be flexible?

The system will allow the user to enter a value for pensioner members or leave blank if there are currently no such members.

When will the requirement for the notification of wind up via 'so many' forms be dropped and when will the wind up facility be available on the self maintenance system?

The Regulator aims to enable schemes to use on-line scheme maintenance for "winding up" (PR10) and "wound up" (PR12) before end of this business year.

Will the Pensions Regulator be targeting group personal pension schemes? Are there other types to be targeted?

The Regulator is not targeting group personal pensions at employer level, but the provider of a main personal pension scheme will be required to complete a scheme return.

What time frame will schemes be given to complete their scheme return?

At present the plan is for all schemes to be given a 30 working day timeframe for completion.

How will I access the system?

Customers will be required to register with the Regulator online by entering their details and their own password and memorable phrase. Once registered they will associate with the scheme using the Pension Scheme Registry number and unique scheme key which will be stated on the scheme return notice. Multiple users can associate to a scheme if required.

Can I change my password?

Yes, customers will select their own password and can change it at any time.

Will the insurers' policy field be able to take multiple numbers?

The Regulator will be encouraging provision of one identifier for the whole scheme (e.g. scheme number). However, the policy number field can take multiple numbers.

The Regulator has also asked us to bring to your attention an article in its media centre about the new system. To read the article, please click here. ■

DWP plans for draft regulations and consultations in 2007-2008

DWP has provided us with a list of forthcoming draft regulations and consultations planned for the rest of 2007 and 2008.

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

SPC attends latest pensions regulator's advisory panel

SPC was represented by the Chairman of its Legislation Committee (John Wilson, HSBC Actuaries and Consultants) at the meeting of the Pensions Regulator's Advisory Panel held on August 2nd.

The Regulator gave a briefing on its plans to publish data on scheme specific funding and recovery plans; on its intention to consult on new clearance guidance and guidance on conflicts of interest; and on the main points to emerge from its latest governance survey. ■

FSA Round up

SPC had one of its regular liaison meetings with FSA during the summer and we summarise below some of the points which came out of the meeting.

Third Money Laundering Directive

We asked about the implementation of the Third Money Laundering Directive. We were concerned, in particular, that the Directive might be implemented in a way which would apply increased and onerous identification requirements to beneficial owners of rights under occupational pension schemes.

The Directive has now been implemented by the Money Laundering Regulations 2007 (SI 2007/2157), which were made by the Treasury on 24 July.

These regulations now state that pension products, which allow assignment under Section 44 of the Welfare and Pensions Act 1999 and Section 91 of the Pensions Act 1995, now qualify for Simplified Due Diligence, i.e. there is no requirement to identify the beneficial owner. Regulation 13 (7) (c) in the final Regulations refers.

The effects of pensions illustrations on the PAYE tax rate changes

We asked about the impact of the PAYE tax changes due next April on pensions quotations and illustrations. FSA considers that the key issue here is the materiality of the information concerned. It is for firms to take a view on how this applies in specific cases.

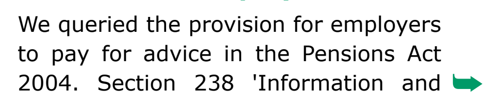
FSA has discussed this issue with the Board for Actuarial Standards (BAS). (The reason for involving BAS is that it has taken over responsibility for producing the Technical Note governing the production of the annual statutory money purchase illustrations.) BAS has said it will consider this further, but its initial reaction is that it is for firms to consider their relative positions and make appropriate statements to investors. FSA suggests that it is in firms' own interests to try to ensure that clients maintain contributions at levels which would ensure no worse a funding position at retirement than if the tax change had not taken place.

From a materiality perspective, a new contract being entered into from next April will generally produce a fund which is 2.5% lower than if the rate of tax relief had not been changed. FSA suggests that this is the message which product providers and financial advisers ought to be able to give to prospective investors before changes to quotations systems are implemented.

For contracts which have already been entered into, the materiality will be somewhat less than this, depending on the outstanding term to maturity.

Power for employers to pay for advice to employees

We queried the provision for employers to pay for advice in the Pensions Act 2004. Section 238 'Information and



advice to employees', of the Pensions Act 2004 states:

"(1) Regulations may require employers to take action for the purpose of enabling employees to obtain information and advice about pensions and saving for retirement".

This part of the Pensions Act has not been commenced by DWP and FSA does not believe there are any current plans to bring it into force. However, FSA is not the "owner" of this piece of legislation, so this would need to be explored further with DWP.

FSA's use of Transfer Value Statistics

We sought clarification about the FSA's use of transfer value statistics, why this information is collected and what it is used for. We raised this question because, since the taxation regime no longer obliges providers to distinguish between occupational pension schemes (all schemes are now registered – or not), gathering the data in a form suitable for disclosure to FSA is no longer as much a by-product of other processes as it used to be.

FSA explains that it gathers product sales data from providers of personal pension schemes. This includes data on 'pension transfers', including the identity of the distribution firm. It does not gather similar data from adviser firms, so FSA needs providers to tell it where their business is coming from. This enables FSA to know which IFAs are active in the pension transfer market and whether they are doing business with particular providers. FSA uses this data to look out for potential problem areas, whilst recognising that there could well be good reasons for concentrations if and where these do exist.

Treating Occupational Pension Trustees as Professional Clients

Under MiFID (the Markets in Financial Instruments Directive), which takes effect from November 1st 2007, FSA rules will create three categories of client-expert counterparties, professional clients and retail clients.

Under the rules, for a party to be defined per se as a professional client, it has to be "authorized or regulated." FSA has clarified that occupational pension scheme trustees are regarded as regulated by virtue of regulation by the Pensions Regulator under the Pensions Act.

Under the new rules trustees may be treated as professional clients, removing the need to identify and monitor their financial assets, and this may be viewed as an improvement on the current position. However, one would need to bear in mind the requirements on notifying the trustees that a move from private client to professional client status might results in a loss of protection in comparison with their previous position. ■

SPC response to discrimination law reform

As reported in **SPC News No. 3, 2007**, the government published a consultation paper on June 12th 2007, entitled **"Discrimination Law Review – Framework for a Fairer Future: Proposals for a Single Equality Bill for Great Britain"**.

This sets out the government's proposed strategy for consolidating all discrimination and equality laws into a single act, harmonising and simplifying the law where possible, and making a number of improvements in areas where the current law falls short.

We commented on **chapter 9** of the paper - **Age Discrimination Beyond the Workplace**. To view chapter 9, click here.

We agree that the three tests set out in paragraph 9.5 are appropriate tests for any legislation to pass. From our point of view the fundamental test should be that any legislation is a proportionate response to a real problem.

Paragraph 9.33 refers to a number of areas in which specific exemptions might be needed, should the government decide to legislate. The exemptions relevant to SPC are age differences in the calculation of annuities and insurance premiums and benefits and the ability of insurance companies to design and provide products for specific market segments.

The insurance market is competitive and flexible in seeking to offer products and services across the age range and we believe that there are no real problems in this area which justify legislation.

As the paper itself recognises, it is important to accommodate the use of age as a factor in the calculation of annuities, premiums and benefits. We would strongly caution against legislation to require that the recognition of age differences is reasonable and based on objective evidence of the underlying risk. It is, for example, clear that age is a key determinant of life expectancy and we suggest that a likely outcome of legislating, when it is not necessary to do so, would be to create uncertainty over what is or is not permissible, where there is currently no uncertainty. ■

Actuarial Standards Board's consultation paper "Towards a conceptual framework"

We reported on our response to the Actuarial Standards Board's consultation paper in **SPC News No. 3, 2007**.

The Board has now provided some brief feed-back on its consultation. Three key points to emerge from consultation were that the Board needs to:

- Do more work on the distinction between information and advice.
- Provide case studies / examples of how the framework's principles would apply.
- Increase capacity to deal with current issues in parallel with framework development.

The Board will be developing a fuller and more formal feedback paper for publication later in the year, together with all the (public) responses it received. A final consultation paper is due this autumn. ■

SPC meets Financial Reporting Council on actuarial oversight

This article summarises a meeting in August between the SPC Actuarial Committee and Paul Kennedy and Jon Thorne.

Paul Kennedy is Head of Actuarial Oversight of the Professional Oversight Board of the Financial Reporting Council. His current position involves him in reviewing the extent to which the actuarial profession has taken on board the recommendations of the Morris Review of the actuarial profession and the meeting took place in the context of that review.

Jon Thorne is an accountant on second-ment to the Professional Oversight Board from the Pensions Regulator. He is the Project Manager for the Professional Oversight Board's review of monitoring and scrutiny of actuarial work.

The Professional Oversight Board is the common oversight body for the actuarial, accountancy and audit professions. Its relationship with the actuarial profession is governed by a memorandum of understanding. It has no formal powers over the actuarial profession but the memorandum specifies that the profession should either accept or publish a reasoned rejection of its recommendations.

One of the Morris Review's recom-mendations was that, working with the actuarial profession and the statutory regulators, the Financial Reporting Council should satisfy itself that appropriate monitoring of actuaries' compliance with actuarial standards and independent scrutiny of actuarial advice was occurring, whether through direct supervision by the Regulator, audit or external peer review. To this end, the Oversight Board announced in December 2006 that it would undertake such a review during 2007. A report is expected later this year.

Morris noted that scrutiny on the life side of the actuarial profession has been significantly tightened following the introduction of audit and the institution of the post of Reviewing Actuary.

Morris also raised the possibility of introducing the equivalent of an audit inspection unit for the actuarial profession. The audit inspection unit reviews a sample of audits of FTSE100 companies. However, it is recognised that there would be practical obstacles to this. Whereas there are generally few fundamental differences between large company audits, actuarial work is much more diverse in its nature and therefore much less straightforward to review in a more or less standardised way.

The review has had useful discussions with individual firms of actuaries

and with life offices which offer actuarial consultancy, focusing on quality assurance and peer review. Quality assurance in principle spans straightforward calculation work and advice, but the review is being carried out on the assumption that there will be no problem with technical aspects and the focus was closely on advice.

The review has sought input from the Financial Reporting Council's external Actuarial Stakeholder Interest Group, which has produced a report on the needs of non-executive insurance directors and pension trustees. This has provided a useful reference point in contact with actuarial firms themselves. The impression which the review has gained is that senior management and directors are most comfortable in understanding and engaging with actuaries on their advice, but that trustees, particularly lay trustees, are much less confident.

The SPC Actuarial Committee commented that trustees were perhaps most likely to encounter difficulties where senior management had felt obliged to step back from the trustee body to avoid conflicts of interest.

The guests explained that at present the review is listening to what firms have to say on the subject of quality assurance, rather than evaluating the practical reality of their approach. In due course it will pull this work together and make recommendations to the actuarial profession.

The Committee questioned whether professional indemnity insurers might in effect be exercising much the same oversight of quality assurance as the review. The review expects there to be some overlap and is endeavouring to liaise with the relevant insurers.

Part of the review concerns how firms deal with potential conflicts of interest in acting for both trustees and the sponsoring employer. The guests indicated that most, but not all, of the larger firms consider that they can often deal with potential or actual conflicts using Chinese walls. Smaller firms tend to view this as far less feasible and often make a virtue of being prepared to act only for one of the sponsoring employer and the trustees.

On peer review, the guests commented that within the last year mandatory external peer review had been introduced in Ireland, with the Regulator having power to nominate the reviewer. In the UK there is very little external peer review.

The Committee commented that, if external peer review is voluntary, one consequence of submitting to it is that one is voluntarily allowing actual or potential competitors access to one's intellectual capital. The guests suggested that some firms seem to view peer review by another office of the same firm as a halfway stage between full external review and in-house review.

The guests commented that one of the areas on which they would need to form a view was on whether current in-house peer review is rigorous enough.

The Committee emphasised that it was important that arrangements for peer review were proportionate with the risks in specific circumstances.

The guests asked the Committee what it viewed as the greatest risks, current or emerging, to actuarial quality.

The Committee commented that at least perceived problems with the quality of actuarial advice could arise from the fact that the client might not fully understand the message which advice sought to convey. Giving clients clear messages is not helped by the fact that so much is required to be included in reports. It is not difficult for the recipient to be unclear as to the essence of the content.

Another area where problems are increasingly arising is life expectancy. Nobody could reasonable expect an actuary, or anybody else, to guarantee the position of a given investment market at a particular time, but there seems to be a mistaken belief that actuaries have a uniquely infallible ability to predict how long a group of people will live. The guests commented that their work with stakeholders seemed to suggest that actuaries were often viewed as being too conservative. The Committee suggested that views in this area were perhaps cyclical. When defined benefit schemes had often been in surplus, actuaries had often been characterised as too conservative. When the surpluses were replaced by deficits, they were much more frequently criticised for being over-optimistic.

The Committee commented that, in giving advice, actuaries were probably influenced by the very strong emphasis now given to the fact that it was scheme trustees who were the decision makers. Furthermore, if actuaries felt constrained to act only for one of the trustees and the sponsoring employer, they were much more likely now to clearly advise from the perspective of whichever party they were advising, in contrast with the position where they advised both parties, where advice might be more aimed at balancing both sets of interests.

The Committee also commented that there was often much less risk to actuaries in advising conservatively. If actuarial advice led to more money than necessary going into a scheme, the outcome would be a surplus, which, while it might bring its own problems, was far less problematical than advice which was perceived to have led to underfunding and serious financial strains.

The guests asked for the Committee's views on suggestions, which were sometimes made, that actuaries dabbled in legal advice. The Committee suggested that actuaries by and large took great pains to emphasise that, if clients wanted formal legal advice, they could not give it. It was not always clear that clients understood the position. Actuaries' experience often enabled them to help clients with their understanding of parts of the scheme rules which were relevant to the actuarial services which they provided. They could also often comment with a high degree of confidence on whether a proposal on funding would be likely to give an outcome which would be at best of dubious legal water tightness. Actuaries would not regard this as legal advice, but their clients might.

This led the Committee to ask whether their review was focused on actuarial advice or advice given by actuaries.

The guests indicated that this was an important question. So far the review had focused on entities, rather than the services they provide, and had invited firms themselves to offer their own definition of what they regarded as actuarial advice. But it was clearly an issue the Board would need to address in its report. ■

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