THE SOCIETY OF PENSION PROFESSIONALS

making pensions work

By email only: audit.consultation@beis.gov.uk

Department for Business, Energy & Industrial Strategy

1 July 2021

Dear Sir or Madam

SOCIETY OF PENSION PROFESSIONALS' RESPONSE TO DEPARTMENT FOR BUSINESS, ENERGY & INDUSTRIAL STRATEGY CONSULTATION ON RESTORING TRUST IN AUDIT AND CORPORATE GOVERNANCE

The Society of Pension Professionals (SPP) welcomes the opportunity to respond to the above consultation. Given the role and experience of the SPP, our response is limited to the elements of the consultation relating to Section 11.2: Oversight and regulation of the actuarial profession. We would be happy to discuss any aspect of this response further and if we can be of assistance, please do not hesitate in contacting us.

Executive Summary

We agree the need for an independent body to regulate the actuarial profession and broadly agree with the reasoning set out in the consultation for why ARGA is the most appropriate body, noting the issues raised in respect of the PRA in particular.

The reasoning for the strengthening of the oversight and regulatory regime of the actuarial profession, and the need to place such a regime on a statutory basis, was not immediately clear from the consultation document. Our view is that the existing regime is working well and there do not seem to be any clear failings. However the consultation proceeds on the assumption that ARGA should have much more control over actuaries than the FRC currently does. In the absence of a strong reason for such a change, in our view it would be better for ARGA to (at least initially) simply take over FRC's role in relation to actuarial regulation, but with additional resource and the benefit of a new mindset. It could then be established over the coming years whether or not there are issues that require, in the public interest, ARGA to develop its role as proposed including taking further powers away from the IFoA.

Alternatively we would need to understand further the rationale for the changes proposed, including supporting evidence for failures in the existing regime. It would also be useful to see some examples of where a new regulator's approach / actions under a new regime might differ to the current situation.

The Society of Pension Professionals
Kemp House, 152 – 160 City Road, London EC1V 2NX T: 020 7353 1688
E: info@the-spp.co.uk www.the-spp.co.uk

Our main specific concern with what is being consulted on is the proposal for technical standards issued by ARGA (such as the Technical Actuarial Standards) to be legally binding and the possibility for unintended negative consequences – such as advice becoming less helpful as a result of a (perceived or actual) requirement to include information that is not relevant; an increase in costs; and the potential for users to avoid actuaries and seek advice from other experts where possible as a result of these unintended consequences.

We also note the risks of reduced flexibility under statute compared to the current regime and the consequent need for the drafting of the statutory documentation to be carefully constructed and tested with the industry to avoid the risk of unintended consequences.

Detailed Response

Q80: Is ARGA the most appropriate body to undertake oversight and regulation of the actuarial profession?

We agree the need for an independent body to regulate the actuarial profession. We also agree with the issues raised in respect of the PRA in particular.

We note the comments about the FRC's actuarial team being under-resourced and so the answer to whether ARGA is the most appropriate body will of course depend on the resources and expertise that ARGA is provided with. It would therefore be useful to understand more about what is intended here. However in principle, ARGA would seem to be the most appropriate body.

Q81: Should the regime for overseeing and regulating the actuarial profession be placed on a strengthened and statutory basis?

The reasoning for the strengthening of the oversight and regulatory regime of the actuarial profession, and the need to place such a regime on a statutory basis, was not immediately clear from the consultation document.

Our view is that the existing regime is working well and there do not seem to be any clear failings. However the consultation proceeds on the assumption that ARGA should have much more control over actuaries than the FRC currently does. In the absence of a strong reason for such a change, in our view it would be better for ARGA to (at least initially) simply take over FRC's role in relation to actuarial regulation, but with additional resource and the benefit of a new mindset. It could then be established over the coming years whether or not there are issues that require, in the public interest, ARGA to develop its role as proposed including taking further powers away from the IFoA.

Alternatively we would need to understand further the rationale for the changes proposed, including supporting evidence for failures in the existing regime. It would also be useful to see some examples of where a new regulator's approach / actions under a new regime might differ to the current situation.

Q82: Do respondents support the proposed principles for the regulation of the actuarial profession? Respondents are invited to suggest additional principles.

The principles set out in the consultation document seem appropriate.

It might also be useful to include a principle around seeking to benefit the users of actuarial advice, through enhancing trust in that advice without disproportionately increasing costs or reducing clarity or quality.

For example we believe there is a risk that overly prescriptive, legally binding technical standards could lead to higher costs and/or additional information being included in advice even where it is not relevant.

Such an additional principle would of course also benefit the actuarial profession as well as the users of their advice.

It is worth noting that we consider that the status quo would also meet these principles.

Q83: Are the proposed statutory roles and responsibilities for the regulator appropriate? Are any additional roles or responsibilities appropriate for the regulator?

We believe the proposals are appropriate, subject to our responses below.

Q84: Should the regulator continue to be responsible for setting technical standards? Should these standards be legally binding? Should the regulator be responsible for setting technical standards only?

As previously noted we have a concern here around unintended consequences.

We believe that proportionality when complying with the technical standards should remain a key principle, and we are concerned that a legally binding set of standards – especially where the scope of such standards is drafted very broadly – could cause actuaries to seek to "gold plate" any advice that they give, which would increase costs to users. It may also lead some actuarial advisers to include information in their advice that is not relevant in the fear that not doing so would risk falling foul of legally binding standards. We regularly receive feedback from users of actuarial work that they prefer shorter documents that contain the key points. Including additional items - "just in case" the standards require them - could reduce the quality and clarity of the advice given. Indeed this could also cause conflict with other requirements, for example the actuaries code requirement to "ensure that any communication…contains an appropriate level of information".

There is then a consequent risk that users avoid seeking advice from actuaries and instead turn to other experts where possible. We do not believe this would be in the best interest of users of actuarial advice or the actuarial profession. There is also a danger that actuaries who do not work in traditional actuarial firms or roles (for example in-house actuaries, or those working in less traditional fields) feel the need to renounce their actuarial title to be outside the disciplinary regime. This would also be an unfortunate outcome.

A possible alternative would be to draft legally binding standards with a very specific scope. However this would also create challenges of its own – most notably that there would be (perhaps many) areas of actuarial work that would not be covered by such standards, and also there would be a risk of bringing into scope other areas outside of the original intention, with negative consequences. For example standards drafted to apply to 'funding advice' primarily targeting the process of advising Trustees during a valuation, could very easily unintentionally catch work for corporate actuaries advising sponsors where the needs and requirements are necessarily very different.

It would therefore be useful to understand further what is intended here and what is meant by such standards being "legally binding", noting these potential unintended consequences and the difference between providing advice in theory versus practice. For example the recent IFoA thematic review on advice relating to actuarial factors found many examples of advice not necessarily "ticking all boxes" in all circumstances, but there was not any overarching concern around poor quality advice being given to users. It would be useful to understand whether in such circumstances the actuaries involved would be found to be in breach of the legally binding technical standards and what consequences would follow.

We do not believe it would be appropriate for the regulator to set ethical standards and agree this should remain within the remit of the IFoA.

Q85: Should the regulator be responsible for monitoring compliance with technical standards? Should it also consider compliance with ethical standards if necessary?

It would be useful to understand further the case for ARGA to monitor compliance rather than the IFoA. We are not aware of any failings in the current system and indeed we believe the IFoA's recent thematic review of actuarial factors was an example of effective monitoring, noting they have indicated that further similar exercises will be forthcoming.

We also note compliance monitoring by ARGA could result in dual loyalty of actuaries to the IFoA and ARGA which may have unintended consequences, for example there may be situations where the respective organisations disagree about whether the standards (technical or indeed ethical) have been complied with.

In any case it would be useful to understand further what is intended here. For example, it would not seem appropriate for additional monitoring or "spot-checking" of actuarial advice, even in cases where no concerns have been raised, to be carried out to such an extent that it leads to additional costs with no benefit to end users of advice.

Q86: Should the regulator have the power to request that individuals provide their work in response to a formal request - and to compel them to do so if necessary?

In principle the power to request provision of work would seem appropriate, however again we question whether this power sits better with the IFoA rather than ARGA, and we are concerned about unintended consequences.

For example, in many consultancy firms the investment advisory teams will include both individuals who are members of the actuarial profession and individuals who are not. If the power to compel information to be provided applied to actuaries but not other professionals providing similar advice, would this lead to employers preferring work to not be carried out by an actuary?

We also note that in certain situations the information provided could be confidential and/or commercially sensitive – hence there would need to be a compelling reason for it to be provided. The risk that confidential information could need to be provided to a third party might also make users less willing to share such information with actuarial advisers in the first place, which could lead to further negative unintended consequences. Contracts would need to be reviewed, and perhaps revised, to enable actuaries to share such content.

Q87: Should the regulator have the power to take appropriate action if work falls below the requirements of the technical standards? What powers should be available to the regulator in these instances?

It would be useful to understand the process and responsibility for determining whether work has fallen below the requirements of the standards. In our view such determination would be better done by the IFoA in the first instance with escalation to the regulator where needed.

Where there have been clear failings as determined by the IFoA, we agree the regulator should have the power to take appropriate action, and the actions and remedies included in the consultation document would seem sensible where used appropriately. However, their use would need to be proportionate.

Q88: Do respondents agree with the proposed scope for independent oversight of the IFoA? In which ways, if any, should the scope be amended?

The SPP makes no comment.

Q89: Should the regulator's oversight of the IFoA be placed on a statutory basis? What, if any, powers does the regulator require to effectively fulfil this role?

It would be useful to understand further the reasons for the proposed changes to the oversight of the IFoA, for example where the existing MoU process is not working.

However in principle we do not have any specific concerns with a statutory oversight regime, other than our overarching comment about the risks of reduced flexibility under statute compared to the current regime and the consequent need for the drafting of the statutory documentation to be carefully constructed, and tested with the industry to avoid the risk of negative unintended consequences.

Q90: Does the current investigation and discipline regime remain appropriate? Should it be placed on a statutory basis? What, if any, additional powers does the regulator require to fulfil this role?

In our view yes the current regime remains appropriate.

Q91: Do respondents think that the regulator's remit should be extended to actuarial work undertaken by entities? What would be the appropriate features of such a regime, including the appropriate enforcement powers for the regulator?

It would be useful to understand further what is intended here. Our first thoughts were that in principle it would seem appropriate to extend the regulator's remit in this way, and we would expect similar enforcement powers for entities when compared to individuals would be appropriate.

However, the difficulty will arise in determining what is 'actuarial' work. How will ARGA decide what is actuarial work? If actuarial work is defined as work that an actuary did, then applying at entity level is no different to applying to individuals. If actuarial work is expanded to include any work where an actuary was involved, then this is likely to disincentivise firms using an actuary if a non-actuary can carry out the work. Again we note the example of investment advisers performing the same work, where some individuals are members of the actuarial profession and some are not, and not wanting to incentivise employers to use actuaries less or indeed disincentivise individuals from joining the actuarial profession. Similarly actuaries in less traditional roles and/or in-house actuaries at larger firms or pension schemes may feel the need to renounce their actuarial title to be outside the disciplinary regime, and/or such organisations may opt against employing actuaries where roles could be carried out by non-actuaries.

This distinction is likely to be particularly challenging in firms where a substantial portion of work is actuarial, but there are other lines of business. Because of the number of actuaries employed, there are likely to be a number of actuaries employed in non-actuarial roles. Conversely, if an in house pension administration department were to employ one actuary as the pensions manager, again not an unusual set up, would that mean that ARGA would have remit over all the administration work carried out?

Further, many firms that employ actuaries are already subject to regulation by another regulator such as the FCA, at least for part of their business. We suggest that only one regulator should apply at an entity level, or business line level, not least to avoid conflicting requirements.

In conclusion, we suggest that ARGA's remit is restricted to work carried out be actuaries, but that work 'signed' by the entity should be considered as work done by an individual.

Q92: Should the regulator's independent investigation and discipline regime for matters that affect the public interest also apply to entities that undertake actuarial work? Should the features of the regime differ for Public Interest Entities?

As above this would be appropriate only if, as noted above, it was possible to come up with a practical determination of what would constitute actuarial work for this purpose.

Q93: Does the regulator require any further powers in relation to its regulation and oversight of the actuarial profession?

We do not have any immediate comments on additional powers required. However it would be useful to understand further the rationale for the changes proposed and the failures of the existing regime in order to consider this question more fully. We would note that the addition of any powers would require careful thought and further consultation with the industry.

Yours Faithfully

Jon Forsyth
Defined Benefit Committee, SPP

Fred Emden
Chief Executive, SPP

INTRODUCTION TO THE SOCIETY OF PENSION PROFESSIONALS (SPP)

SPP is the representative body for the wide range of providers of advice and services to pension schemes, trustees and employers. The breadth of our membership profile is a unique strength for the SPP and includes actuaries, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and specialists providing a very wide range of services relating to pension arrangements.

We do not represent any particular type of pension provision nor any one interest-body or group. Our ethos is that better outcomes are achieved for all our stakeholders and pension scheme members when the regulatory framework is clear, practical to operate, and promotes value and trust.

Many thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds. The SPP's membership collectively employs some 15,000 people providing pension-related advice and services.