



THE SOCIETY OF PENSION
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SPP response to consultation on The Occupational and Personal Pension Schemes (General Levy) Regulations review 2023.

Executive Summary

We welcome the opportunity to respond to this consultation.

Among the three options, we prefer option 2, as option 1 is not viable given the current levy funding situation. Option 3, which appears to be DWP's preferred choice, raises significant concerns, especially regarding the £10,000 premium for "small" schemes with memberships under 10,000.

The premium of £10,000 would be excessively penal to small schemes that do not need, cannot or would need extra time to consolidate. The premium takes no account of whether the scheme is well governed. It is also important to note that not all schemes can or should consolidate. Some schemes provide advantageous benefits to members such as guaranteed annuity rates or investment returns that would likely be lost on consolidation. The premium would also impact small self-administered schemes (SSAS) that are designed specifically to allow investment in more illiquid assets that are often connected to the members' business and so may not be easy to sell. Indeed, SSAS are exempt from some regulatory requirements. Given they are subject to a lighter regulatory regime, it seems difficult to justify why they should be subject to the premium.

Our view is that Option 3 would also have a disproportionate impact on DB schemes, particularly considering that the premium is more difficult to avoid through consolidation as this process is significantly more complex and expensive in the DB environment and may not always be in the

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members' best interests.

The additional premium's most concerning impact, however, is its negative effect on members. In the DC environment, the premium may be deducted from members' accounts or result in a reduction in resources for contributions and other enhancements. In DB, the premium may reduce funds available for governance improvements, member communications, and/or benefit security.

We have suggested a further option for the calculation of the levy, which aims to simplify the levy structure without applying a penal element for small schemes.

Finally, we question the idea that schemes must cover all costs of entities funded by the levy. MaPS and TPO activities provide benefits to society as a whole, so at least some funding from public funds should be considered. Also, as said in our response in 2020, we think that representative oversight of spending and accountability to levy payers become increasingly important.

Detailed Response

1. Which option do you prefer?

We prefer option 2 of the three available options, as we regard option 1 as a non-starter given the levy funding situation, and we have severe reservations about option 3.

That stated we suggest that a further option based around fewer membership bands with higher minimum (flat-rate) payment levels should be considered, as well as a reasonable solution to balance both levy funding and encourage further consolidation, at least in the DC space.

Additionally, we suggest that the Government remodel the projected resources making an assumption as to continued consolidation – again, at least regarding DC schemes. It is far more challenging and expensive to consolidate DB schemes for a whole variety of reasons. Indeed, the fact that, five years in from when DB pension scheme consolidation consultation was prepared and published, there is still no superfund consolidator that has completed the transfer-in of a pension scheme, highlights that DB consolidation is not a quick and easy process.

It does not seem unreasonable to assume – particularly in light of legislative and regulatory measures that are explicitly intended to accelerate consolidation in the market – that the number of schemes will reduce. Whilst this has been factored into the Government's revenue forecast for Option 3, it has not been for Option 2 (or Option 1), and we feel strongly that it should. We appreciate that it is unlikely to shift the numbers markedly (as the individuals will still be members of the levy universe), but it currently looks odd not to do so.

We query whether the proposed Option 3 (the DWP's preferred option, as stated, e.g. in paragraph 29 of the consultation document) could be open to challenge from a complainant who tries to argue that it is an improper use of the public powers granted by legislation to raise the levy. The purpose of the levy-making power, as stated in section 175 Pension Schemes Act 1993, is to meet expenditure. However, as it reads in the consultation paper (e.g. paragraph 40), it appears the intention is to use the additional levy included in Option 3 as a driver to push smaller schemes towards consolidation.

Although ostensibly not part of the current consultation, we also note the comments in the document on the funding of automatic enrolment ("AE") compliance activities and have some

concerns about this. The consultation document states that the funding for AE compliance is “not recovered by the levy” (paragraph 12, footnote 1). However, the document also states that, as the pensions industry has benefited from AE, “the Government, therefore, accepts that the sector, rather than the taxpayer, should pay for the employer compliance regime”, noting a consultation to follow on the matter (paragraph 46 of the consultation document). AE policy is a policy that benefits UK society as a whole and not only the pensions industry. The social benefits of increased retirement savings, and the unrecognised cost to the pensions industry of supporting small and micro-pots for public policy reasons, warrant a discussion on whether the regulatory costs should remain fully funded publicly rather than placing the burden on the industry. We would hope that the consultation will reflect both considerations. This issue is also referenced in our response to question 2.

2. In respect of your answer to Question 1, why do you support your preferred option?

We accept that Option 1 – to do nothing – is not appropriate based on the Government’s assertion that this would result in a burgeoning deficit by the end of 2030-31.

We alight upon Option 2 as our favoured approach as we find Option 3 to be unacceptable in principle – for reasons that we explain below.

However, as mentioned in response to question 1, we believe that there is another approach that the Government should consider, which is to simplify the existing levy system.

Rather than continuing to adopt a system whereby the General Levy is determined by a combination of member numbers and bands where the per-member rate decreases as scheme size increases, we believe the Government should consider a flat-rate fee for the smallest of schemes. This would cover what is currently the first three bands – that is, it would encompass all schemes with fewer than 1,000 members.

TPR’s “data to support the Pensions Dashboards Regulations Consultation”, published in January 2022, states that there were a total of 32,145 schemes (presumably including contract-based and public sector schemes), of which over 30,700 have fewer than 1,000 members (25,800 have fewer than 12).

Under the existing system, schemes with between 2 and 12 members already pay a flat amount – currently determined by the type of scheme (i.e. DB/hybrid, DC (non-MT), DC (MT) and PP). Our proposal would be to extend this principle to all schemes with fewer than 1,000 members and set the levy at a minimum flat rate. Whether this is £200, £500, £800 or some other figure is something Government should determine. However, we do not think this should be set at a penal level. Furthermore, whether it continues to be appropriate to differentiate between categories of schemes should also be (re)considered. We can understand the rationale for differential pricing (at least in relation to meeting the costs of TPR – but probably not those of MaPS and TPO), but we wonder whether the balance should tip further towards simplification.

To give some focus and structure to this thinking, we make the following suggestion.

- The simplified band would apply to at least all DB and DC schemes of up to 999 members and would require a minimum fee of £800.
- The one area of exception would be DC schemes that qualified for an exemption to the legislation on charges and governance, which would pay only £100.
- There could also be a per-member rate based on the suggested Option 2 DB per-member rates for 100-999 members (which, for ease of reference, we list here as £4.88 in 2024/25,

£5.19 in 2025/26 and £5.53 in 2026/27). The per-member rate would only apply where the amount exceeded the £800 minimum (so for schemes with more than 164 members in 2024/25, 155 members in 2025/26 and 145 members in 2026/27).

Please note, however, that the proposal above has not been commented upon by the full SPP membership. The SPP represents a wide range of providers of advice and services who will have differing professional interests as regards the General Levy. However, SPP offers this proposal with the aim of providing a more balanced approach.

As stated earlier in our response, we find Option 3 unacceptable.

In addition to questioning below the projected revenue of £101.5m (from the 'additional fee' of £10,000 per small scheme), we do not support the notion of setting a flat fee at anything approaching this quantum. Whilst we consider that a (much more modest) minimum fee might be attractive in the interests of simplification, the current Option 3 proposal is that this would apply on top of the existing complex tiers of levy.

For several reasons of principle and practice, we disagree with setting an additional fee of anywhere near the proposed amount.

- *The projected revenue is excessive in terms of levy funding*

The reason we question the projected revenue is because TPR's data indicates that, of the 32,145 schemes, 31,804 have fewer than 10,000 members. At £10,000, the resultant revenue (assuming that the number of such schemes halves by 2026-27) would give rise to an additional 'levy' of nearly £160m. Given the stated projected deficit, absent any change, of £200m by 2030-31, this would seem likely to give rise (instead) to a massive surplus by 2030-31; unless, of course, the intention is that the additional fee would apply only for a year or two.

As also discussed in our response to question 5, the language used in the consultation around the concept of "small schemes", defining them as those "with memberships under 10,000" (see page 11 of the consultation document) is not consistent with industry's understanding of what a small scheme is (certainly way below 10,000 members), and even with regulators' views. For instance, a TPR [report](#) from June 2023 on DC trust-based pension schemes considers a methodology that differentiates between micro schemes (fewer than 12 members), *small* schemes (12-99 members), medium schemes (100-999), and large schemes (more than 1,000 members) and master trusts. "Small" may actually have a different meaning for DB and DC schemes.

- *The projected levy is excessively penal to very small schemes that need not wind up and any schemes that would take a while to do so.*

The proposal is particularly egregious in relation to DC schemes with fewer than 12 members. Many of these schemes will qualify for a lighter regulatory footprint in that they qualify for exemptions from the Chair's Statements, charges legislation, value for members assessments and other governance requirements because they are 'relevant small schemes' (including small self-administered schemes (SSAS) with memberships limited up to 11 members) or executive pension plans (EPPs) for current and former directors. Nevertheless, they would be liable to pay a penal additional fee of £10,000 each year. If there is no remaining employer with an obligation to contribute, then this funding must come out of members' pension savings, which is unjustifiably destructive to their savings.

Candidly, if these small schemes should be consolidated, then it makes no sense for them not to

already be subject to the usual governance regime. Alternatively, if the current exemptions are correct, then they should not be subject to the usual governance regime, and there is no pressing need for them to be forced to wind up and consolidate.

This is also unfair to those schemes who are simply unable to wind up. These include those DB schemes whose funding situation does not permit an earlier winding up (and who would more usefully use the levy money to improve their funding situation). It also includes many DC schemes where there are members who currently benefit from guaranteed annuity rates or investment returns that would make premature consolidation contrary to trustees' fiduciary duties to the membership and to the detriment of these members' retirement outcomes.

We also know that the winding-up process may take more than two years in complicated cases (e.g., complications on GMP equalisation, illiquid investments -which are particularly prevalent in SSAS-, existing assets with irreplaceable guarantees etc.), so an additional fee as part of the levy payable in 2026/27 may simply be too early for schemes that would need more time to consolidate. We also note that the vast majority of DB schemes have fewer than 10,000 members, and we do not believe that all of these schemes are poorly run. In fact, there are many well-run schemes with fewer than 10,000 members, and we do not believe that it is in the members' interest for these schemes to seek consolidation prematurely.

There are also other methods of consolidation whereby schemes are run collectively through a range of models, although each scheme is still legally separate. This proposal does not recognise the improved governance from these models.

- *TPR is cited as being a risk-based supervisor*

It seems incongruous that those 'small' schemes that are well governed and currently comply with their legislative obligations and TPR's expectations, should be 'punished' just for being small.

- *The pensions market is consolidating already, but this is only selectively modelled*

It is not clear from the consultation document what modelling the Government has undertaken in relation to the resource requirements in each of the three entities supported by the General Levy (TPR, TPO and MaPS). In recent years, staff numbers at each entity have increased. However, in a scenario where consolidation is expected to accelerate, such that – by the Government's own assertions – there is likely to be a halving of the number of small schemes by 2026-27, it is not clear that the staff resourcing numbers would necessitate such a high overall levy. We accept that membership numbers are unlikely to fall massively (as in many cases, their number will just be spread across fewer, larger schemes), so there is a case to be made for the resource numbers for TPO and MaPS to increase. However, the modelling on consolidation should apply to Options 1 and 2 as well.

- *The proposal shows a lack of faith in existing more appropriate measures to ensure consolidation where that is the right solution*

Proposing to demand a £10,000 per year additional fee from small schemes (many of which relate to small businesses) implies that existing reasonable measures to achieve consolidation (such as the trustees' obligation to perform a value-for-members assessment against at least three comparison schemes with over £100m in assets) are not working. When, in fact, these measures have not been in force for a sufficient period of time to assess whether they have been successful in increasing consolidation. Worse, they load those assessments in a negative way (so as to tip the balance) and create the scenario that those schemes that represent value for members should

have at least some of that value taken away or that value for schemes' members should be wound up to meet a consolidation objective. The proposed premium rate could actually delay or prevent consolidation for some small pension schemes, as the extra levy may equate to, and therefore take away, a substantial portion of the funds needed for this process.

Additionally, from an administration perspective, the assumed trend for consolidation could be especially challenging for administration teams, considering the accelerated pace and short timeframe modelled for Option 3.

- *Requiring schemes (alone) to meet (all) the costs of the three entities is not justified*

When the General Levy was introduced in the 1990s, it was – not unreasonably – argued that the cost of regulating pension schemes should be met by those same schemes because it was a voluntary arrangement that employers entered into. The question was asked: ‘Why should all taxpayers meet the cost of regulating the pension schemes that only a proportion of the working population were fortunate enough to be members of?’

An analogous – but contrary – argument was made in relation to the cost of ensuring employer compliance with automatic enrolment obligations. As this is not a voluntary regime, it was and continues to be a function that is met by taxpayers generally – in contradiction to recommendation 14 of the Mary Starks [review](#). She recognised in paragraph 209 of her September 2023 report ‘Independent Review of The Pensions Regulator’ that reform of the current arrangement for funding AE compliance was not essential or urgent and that *“any move to bring AE into levy funding would raise questions about the appropriate distribution of costs across the industry (DB vs DC, size of schemes, etc.)”*. On the issue of funding for AE compliance, please also see our comments on question 1.

Finally, as we said in our [response](#) to the same consultation in 2020, schemes are funding the bodies underpinned by the General Levy, but there is no clear mechanism for those providing the resources (schemes) to scrutinise the value for money of their contributions. As the costs to be met from the levy continue to rise, we think that the need for representative oversight of spending, and accountability to levy payers, becomes increasingly important. An example of where accountability to levy payers is visibly better recognised is the Solicitors Regulatory Authority (compare for example the stance taken on the Pensions Regulator’s [“What we do and who we are”](#) webpage with that taken on the SRA’s [Accountability statement](#) webpage). Recognition of the interests of funding stakeholders could incentivise more efficient use of resources and improve public oversight.

The activities of MaPS and TPO provide benefits to society as a whole. There is an argument that at least some of the funding for these organisations should continue to come from public funds rather than solely from the pensions industry.

3. What is the impact on your scheme/business of raising the levy under Option 2?

Due to the wide range of constituents of the SPP, we are not well-placed to comment.

4. What is the impact on your scheme/business of raising the levy under Option 3?

Due to the wide range of constituents of the SPP, we are not well-placed to comment.

5. How will your scheme respond to a levy increase and/or premium? (For example: would it be absorbed by the scheme, passed on to members, or employers?)

Whilst we cannot second guess how each scheme will respond, it is almost certainly the case that some schemes will pass on the cost via member account charges. All costs are ultimately met by the membership, so it is ordinary savers who will bear the impact of – in particular – the additional fee. We note that a £10,000 fee on a scheme with assets of less than £1.3m equates to an annual charge at least equivalent to the 0.75% charge cap.

This would make it extremely challenging for smaller schemes to demonstrate that they are providing value for money, and it is not – in our view – appropriate to compel schemes that are otherwise providing value for members to meet this universal and punitive cost.

Whether the cost is met initially by members, employers or providers, it is inevitable that the additional levy will divert resources that could have been invested in improving communications, increasing contributions, or other purposes directly benefiting members.

The position in DB schemes is similar but may differ depending on how costs are apportioned between members and scheme sponsors. This will be scheme-specific. However, it is certainly not the case that the fee will not adversely affect DB scheme members – even in cases where the employer ultimately bears the costs. The £10,000 fee will be monies that are then not available to improve governance and member communication material or, indeed, enhance the security of member benefits.

Our view is that Option 3 would have a disproportionate impact on DB, particularly considering that the additional levy is more difficult to avoid through consolidation as this process is significantly more complex and expensive in the DB environment and may not be in the members' best interests.

Moreover, on DB consolidation, it is important to note that there are several reasons why the rationale for consolidation differs from DC:

- (i) Well-run but small DB schemes may not have the same drivers to consolidate as a DC scheme (where costs to members can be reduced through consolidation for DC schemes).
- (ii) The 10,000 members threshold is not a good or logical cut-off for DB – at the industry level, small schemes are those with 100 members. Moreover, leaving aside local authorities and public sector schemes, there are probably fewer than 300 DB schemes with more than 10,000 members. In other words, the additional levy will impact 90-95% of schemes, increasing the costs by £10,000, and reducing the available resources towards, for example, funding deficits so that schemes can consolidate.
- (iii) Related to the above, we are sceptical about the increased costs for the regulator in the DB environment due to the proportion of schemes below 10,000 members; 1-1 supervision is usually focused on larger schemes, so there is no clear justification for the increased cost in supervising schemes.

6. If you were to consider passing on costs to employers to absorb the levy increase, what is the size composition of employers using your scheme? (For example are they mainly small, with less than 50 employees or larger employers?)

As a representative body that has multiple and disparate constituents, we have no typical number or size of employers using our schemes. However, we believe that the idea of passing the cost on to employers, rather than to members, should be considered in more depth and consulted on separately. Any additional resources raised through the levy might be invested in the benefit of members.

Response ends.-

Yours faithfully,

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Chair, Legislation Committee, SPP

Fred Emden
Chief Executive, SPP

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