



Warnford Court, 29 Throgmorton Street, London EC2N 2AT
Tel: +44 (0)20 7382 4594 Fax: +44 (0)20 7374 6220 EMail: acahelp@aca.org.uk
Web: www.aca.org.uk

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Secretariat to the Review of Pensions Institutions
The Adelphi
Level 3
1-11 John Adam Street
London
WC2N 6HT

Dear Sir

REVIEW OF PENSIONS INSTITUTIONS RESPONSE TO CONSULTATION

Thank you for giving the Association of Consulting Actuaries (ACA) the opportunity to set out our comments on the above.

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and are subject to the code of professional conduct of the Faculty and the Institute of Actuaries. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of defined benefit pension schemes.

The ACA is the representative body for consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies.

Overview

We agree with the broad principles underlying the Review of Pensions Institutions. Pensions are a heavily regulated sector of the financial services industry and effective and regular monitoring of the bodies responsible is essential. We would therefore hope that this is only the first in a series of regular reviews designed to ensure that the regulatory and other institutions continue to operate effectively and efficiently.

Whilst, however, we agree with the need for a review of pensions institutions in general terms, we are not convinced by the arguments for major structural changes proposed in the consultation document. Detailed reasons are given below. Instead, we would advocate closer and earlier communication between pensions institutions and a clearer understanding of their respective responsibilities. Whilst, however, the arguments for change are not convincing at present, continuing monitoring is needed to ensure that the rationale for a multiplicity of bodies responsible for the regulation and protection of pension schemes remains compelling.

We would also like to recommend that the scope of the review of pensions institutions should be extended (in future reviews, if not for the one currently being consulted on) to cover the effectiveness of Government departments with responsibilities for pensions. Failure on the part of Government departments to communicate effectively with one another has had a considerable negative effect on the introduction of new legislation (for example, the involvement of both the DTI and the DWP in the recent age discrimination legislation, or the failure of HM Revenue and Customs to address fully the implications of the new pensions tax regime for DWP contracting out legislation).

The Pensions Regulator and the Pension Protection Fund

As a basic principle, we believe that it is too soon after the introduction of these bodies to make a major structural change. The two bodies are still finding their feet in certain areas – the PPF is still collecting the first year of risk-based levy from some schemes and has only in the last few months started to make payments direct to members, whilst the Pensions Regulator has not yet been called upon to intervene in a scheme funding decision after the 15 month deadline has expired without agreement. Until these organisations have been through the full cycle of the responsibilities for which they were set up, it is impossible to say how effective they are at fulfilling those responsibilities.

Leaving this basic point aside, there are further arguments for maintaining the status quo. It has been noted that the Pensions Regulator's objectives contain a tension between protecting the interests of members and protecting the PPF. In some cases, this could constitute a direct conflict – for example, an employer offering members an incentive to transfer out of a poorly funded scheme could reduce the potential liability being transferred to the PPF but may not be in the best interests of members. Combining the regulatory and protection functions into a single body would exacerbate this potential conflict since every decision would have to take account of both functions.

The consultation paper notes that there are similarities between the functions of the Pensions Regulator and the PPF, particularly in the area of risk. We believe that the similarities here may be overstated. The PPF's risk assessment is concerned with coming up with a method of risk assessment for all schemes, and the data for this purpose has to be very precisely specified and easy to calculate. The Pensions Regulator can focus its attention much more on schemes which are nearly or could become insolvent. They can use high level measures to narrow down the schemes that interest them, and then obtain more specific information about those that may be at risk.

Similarly, there is a justification for the Pensions Regulator and the PPF having different attitudes to risk reduction measures (other than contributions). The PPF will only take into account a limited standard range of contingent assets, with tight requirements which essentially mean that, once in place, a contingent asset cannot be removed while there is a "shortfall". The Pensions Regulator is willing to accept a wider range of arrangements, provided that it is clear that these will do something to enhance scheme security.

We also note that the PPF states that it is 'strongly opposed' to the idea of a merger. The Pensions Regulator in its submission to the review recommends 'a merger of the functions of TPR and the PPF', although recent press reports suggest it is now less keen on the idea. This difference of opinion may well arise from the fact that the PPF has potentially a good deal more to lose from a merger than the Pensions Regulator. Over the last two years, the PPF has attempted (with some success) to promote itself as a fair, transparent and independent institution with a very particular remit – to raise levies in order to provide compensation to members of affected schemes. This reputation for independence would be jeopardised if it were to be combined with a body which has active powers to intervene in the running of pension schemes.

In general, our impression is that the PPF and the Pensions Regulator have worked together productively without the need for a merger. In particular, we would cite the publication of *The Purple Book* which has shown that the two bodies are able to share information effectively.

There are however some areas where we believe the operation of the two bodies could be more transparent. In particular, there have been a few cases where the Pensions Regulator and the PPF have both been involved in clearance applications which have resulted in the scheme entering an assessment period (although it should be noted that PPF involvement in clearance is the exception rather than the rule). At present, few details about these transactions have been made public, and only those actually party to the transaction have known exactly what the roles of the two bodies have been. This confusion has not been helped by press reports which have sometimes credited the PPF with clearing a transaction rather than the Pensions Regulator. There is therefore a need for the Pensions Regulator and the PPF to publish a protocol that explains the roles, responsibilities and objectives of the two institutions in clearance applications that potentially involve the PPF.

The Financial Services Authority and the Pensions Regulator

On the face of it, the arguments for a merger of the FSA and the Pensions Regulator would appear to be stronger than those for a merger between the Pensions Regulator and the PPF. The two organisations both have regulatory functions and there is some overlap in their responsibilities towards defined contribution schemes. However, we have considerable reservations as to whether this would be the right course.

As noted, the Pensions Regulator is still a very recent institution and has not yet exercised the full range of the powers granted to it by the Pensions Act 2004. It therefore seems inappropriate to start altering those powers before they have yet been tested in practice. The FSA on the other hand has been around for rather longer and already has entrenched procedures for dealing with regulatory issues. The Pensions Regulator was established as a risk-based regulator and so far has made considerable efforts to focus on risks rather than processes. It is less clear that the FSA is risk-focused and so a merger could lead to a dilution of the combined body's ability to deal with the particular risks presented by pension schemes.

Another argument against a merger is the fact that pensions is one of the most technically demanding areas of the financial services industry as witnessed by the complexity of its legislation and the range of unique powers granted to the Pensions Regulator. The Pensions Regulator has only just started the process of building up the expertise it needs to act as a risk-focused rather than box-ticking regulator (through secondments from industry in particular). It is important that this developing expertise is not lost or diluted by a merger with a much larger regulatory body.

We agree with the point made in the consultation paper that merging the two regulatory regimes would potentially muddy the clear message that the UK would like to make in Europe that pension schemes backed by sponsoring employers and insurance products are two very different things that should not be subject to the same solvency requirements.

Whilst we do not believe that a merger between the two bodies is appropriate, we wonder whether there is an argument for redrawing the boundary between the two organisations. At present, the Pensions Regulator is responsible for all work-based schemes, which includes responsibility for group personal pensions and employer-sponsored stakeholder schemes. There is certainly a case to be made for moving regulatory responsibility for all personal pensions to the FSA.

A more radical suggestion would be for the FSA to take responsibility for all defined contribution schemes, both trust and contract-based. As things stand, we doubt whether the FSA would have the expertise to deal with the regulatory regime that currently operates in trust-based schemes (for example, member-nominated trustees, whistle-blowing etc). Some considerable levelling of the playing field between trust-based and contract-based schemes would probably be needed before regulatory control could be combined. If such changes were to be contemplated, now would be the appropriate time as the advent of personal accounts in 2012 will significantly change the landscape of defined contribution provision in any case.

In the absence of any redrawing of the boundary between the two bodies, we recommend closer liaison between the two bodies in their handling of defined contribution schemes. The Pensions Regulator is currently taking its review of the regulation of defined contribution schemes onto the next stage and there is a risk of them 'reinventing the wheel' to some extent if they do not liaise fully with the FSA.

In particular, the two bodies should publish clear statements of their respective responsibilities in these areas to help both the industry and pension scheme members understand how the regulatory regime operates. We believe that joint guidance in some areas may be appropriate, e.g. the investment options in defined contribution schemes.

Where there are potential gaps in regulatory coverage (the consultation paper notes the example of independent financial advice on employer-led transfers between occupational pension schemes), the two institutions should agree how these gaps should be filled and ask government to pass any necessary enabling legislation.

The Pensions Ombudsman and the Financial Ombudsman Service

We have relatively little experience of the Financial Ombudsman Service. It does not appear however that the arguments for a merger between these bodies are particularly strong. Assuming that the Pensions Regulator and the FSA remain separate bodies, it seems appropriate that the two bodies for member/consumer complaint should also remain separate. It is also appropriate that the range of responsibilities for the two Ombudsmen should directly mirror the range of the respective regulatory bodies. To the extent that this is not already the case, there is an argument for redistributing responsibilities.

We would not be in favour of moving all personal pension complaints to the Pensions Ombudsman as this would leave the Pensions Ombudsman responsible for some cases that fall under the FSA's regulatory jurisdiction rather than the Pensions Regulator's.

The main argument for a merger would be that a combined body would provide a single access point for complaints for members and consumers. At present, however, there seems little evidence that the existence of separate bodies is causing confusion.

The PPF Ombudsman

We do not have any experience as yet as to the effectiveness of the PPF Ombudsman, so it is hard to comment on whether there is an argument for change or not. In principle, it would seem that complaints against the PPF are likely to raise rather different questions than complaints about individual pension schemes. We note that, whilst the PPF Ombudsman and the Pensions Ombudsman are notionally separate bodies, in practice the same man (David Laverick) occupies both offices, and so the distinction may be more notional than real.

The Pensions Advisory Service

We believe that the Pensions Advisory Service plays a unique role in the UK pensions system. All the other bodies under review provide regulation or member protection. TPAS is the only body that actually provides advice directly to members. We agree that TPAS could play a greater role in the mediation of complaints. However, there is an important distinction between TPAS as an independent advisory body with expertise in helping people to settle claims and the Pensions Ombudsman as a body with statutory powers to deal with complaints. We therefore believe TPAS should continue to operate as a separate organisation.

We also note that the introduction of Personal Accounts is likely to lead to an increase in the workload of TPAS as members seek to understand the arguments in favour of not opting out of Personal Accounts.

Financial Services Compensation Scheme

This is not an area where we have particular experience, but we are not aware of any arguments in favour of a change in the FSCS's remit.

Pensions Regulator Tribunal

As with many other of the bodies discussed here, we believe it is too soon to review the role and responsibilities of the Pensions Regulator Tribunal.

Impact of Personal Accounts

In the absence of any redrawing of the boundaries between the FSA and the Pensions Regulator, we agree that the introduction of Personal Accounts is likely to lead to further demands on the Pensions Regulator (and also on the Pensions Advisory Service). It is difficult to quantify exactly how this will work in practice until we see the legislation implementing personal accounts. We would imagine it would necessitate the creation of a specialist department within TPR with particular expertise in the problems raised by Personal Accounts which are likely to be rather different to those experienced in other occupational pension schemes.

There is a danger that it will be very difficult to operate a risk-focused approach in this area (where theoretically all Personal Accounts will be very low risk) and therefore that this part of TPR will revert to a box-ticking regulator. This type of unnecessary bureaucracy should be avoided.

Yours faithfully

Charles Young

Chairman

Pension Schemes Committee of the Association of Consulting Actuaries