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Dear Chris

ACA: Response to consultation on 2010/11 pension protection levy
Levy estimate

I am writing on behalf of the Association of Consulting Actuaries, in response to the above consultation.

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 effectively the 'trade association' for consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies.

Given current economic conditions, schemes and sponsors will welcome the decision to restrict the increase in the overall levy to £20m. Nevertheless, they will be concerned by the knowledge that the PPF clearly believes that a higher levy is really needed and therefore that significant increases are merely being deferred. In these circumstances, we consider that the PPF should be providing much more information about the likely future path of 'contributions' (analogous to the kind of detail that has to be provided for most pension schemes).

Levy cap

The proposal to reduce the cap is not as insignificant as many people might have inferred from paragraph 2.4.5 – based on the stated impact on the scaling factor, it appears that uncapped schemes' levies will on average increase by 5% or more, with the figure being even higher if we compare 0.5% with the 2009/10 cap of 1.0% (rather than with the 0.8% which would retain the cap for 5% of schemes). The proposal would seem to operate contrary to the normal PPF principle that 'fairness' requires that each scheme pays an amount appropriately reflecting its risk, so we hope that this aspect of the draft determination at least is still genuinely open for consultation and that the various arguments 'for' and 'against' the change can be put by respondents and given appropriate consideration.

Scaling factor

We infer from the reconciliation in Table B3 that the assumptions made about D&B score appeals and new contingent assets or deficit reduction contributions have added 0.47 to the factor, making the risk-based part of the levy 40% higher than it would have been without this adjustment. This seems to us to be pretty high, as does the assumption that 400 schemes (i.e. more than 5%) will benefit from a successful failure score appeal. We would also have appreciated a split of the 0.47 addition between the three different items mentioned.

Insolvency risk

We are not qualified to opine on whether or not the new proposals for assessing insolvency probabilities for overseas companies provide a better assessment of the risk. However, they do appear to be easier to understand and use than the current approach.

We consider that it is important to perceptions of fairness that the basis on which insolvency probabilities for overseas companies is determined should be known in advance of the cut-off date for taking action to improve the solvency rating. Because the basis for determining probabilities at 31 March 2009 was unknown until now, this has not happened for the 2010/11 levy year. However, looking to the future we would ask that the conversion table for the 31 March 2010 failure score (for the 2011/12 levy) should be made available well before 31 March 2010.

Block transfers

Paragraph 2.3.18 of the 'Conclusions on the 2009/10 levy consultation' document set out a "confirmed policy" for dealing with transfers in the 2010/11 levy. In addition, paragraph 4.4 of the 'Guidance for calculating and certifying block transfers' (issued December 2008) states the Board's intention, in cases where an 'expected' partial transfer notification was not given, to calculate the 2010/11 levy in "a similar fashion to unreported whole-of-scheme transfers for 2009/10" and goes on to say that "similarly, unreported whole-of-scheme transfers will be treated in the same manner for 2010/11 as for 2009/10".

We are therefore strongly opposed to the proposals in the latest consultation document, which we cannot see could reasonably be considered to be consistent with these statements, particularly in relation to whole-of-scheme transfers where it is clear that the new 'penalties' for non-submission would be significantly harsher than those previously indicated. This is extremely unfair to those schemes which made reasoned, pragmatic decisions earlier this year, based on the information provided by the PPF at that time, that the potentially substantial additional cost of undertaking fresh valuations was not justifiable in relation to the levy adjustment that would otherwise apply. This was not a matter of schemes wilfully trying to select against the PPF, but of sensible practical expedience.

We would not expect that a large number of schemes will be directly affected by these proposals. However, many more schemes (and their advisers) will be very concerned by the PPF's apparent willingness to rewrite rules affecting the levy in a manner that has a retroactive effect. We would therefore as a minimum ask that for whole-of-scheme transfers made before 1 April 2009 the PPF retains the same basis as used for the 2009/10 levy, and that the PPF reconsiders its proposals for material partial transfers completed prior to 1 April 2008 (if not changing the penalty for these, at least allowing submission of a block transfer certificate up to a year later than would normally have been the case).

Aside from the 'retrospection' issues above, the detail of the new proposed method for adjusting for these block transfers reveals the perverse feature that the 'penalties' are based only on the assets being transferred and not on the liabilities, and so are generally greater for well-funded schemes than for poorly-funded schemes (contrary to the actual risks presented to the PPF). In an extreme case, where a scheme with almost no assets gets merged into another scheme, the levy previously payable by the transferring scheme would be 'lost' and not picked up by the receiving scheme, which is presumably the very effect that this provision is seeking to avoid.

The draft Determination

We agree that the proposed new layout of the determination is an improvement, although we would like to request that this type of presentational change is made as infrequently as possible.

The main reason why re-presentations can be a problem is that subtle changes can be difficult to spot. For example, in the current draft determination (even though B2 covers data corrections) we cannot see any provision regarding the circumstances in which a levy that has already been calculated and invoiced can be recalculated and re-invoiced by the PPF, whereas in the 2009/10 determination we interpret paragraph 6 as indicating the circumstances in which this can be done (and, by implication, those in which it should not).

We note that the definition of 'Full transfer' (F1.2(1)) has been amended from that for 2009/10, but we still think it contains potential gaps. For example, if the scheme has had one or more single-member transfers it would seem that the reduction to fewer than two members is not solely "because it has transferred (in groups of two or more Members) all of its other Members to one or more other Schemes".

Levy practice guide

We welcome the proposal to publish a document that provides guidance as to how the PPF might anticipate using those discretions that it retains under the determination.

In particular, we welcome the idea of 'case studies' concerning the circumstances in which the PPF might or might not allow corrections or updates to data. The first two examples seem to be extreme/obvious cases, but the third is of much more practical use, confirming that there can be circumstances in which the PPF would accept that wrongly-entered data may be corrected. The contrast between examples 4 and 5 is also potentially useful, albeit that it would be more so if the ‘middle ground’ between the two examples were explored further – for example, would the outcome of example 4 have been different if the transfer had taken place before the PPF announced its policy in this area and there had therefore been no indemnity from GHI to RST covering this aspect, or if Ayesha had provided a fuller explanation as to why the transfer was not properly notified?

The PPF’s practice as indicated in the section on data errors, that in general adjustments will not be allowed to data where the submission of incorrect data results in a scheme paying a much higher levy than it should have done, appears excessively harsh. Even in well-run schemes, there may from time to time be expected to be mistakes in data input and some of these could have a massive impact on the levy despite being no more than a single-digit typing error. We can understand the PPF’s reluctance from a practical point of view to get involved in a lot of debate about which corrections should be permitted, but we consider that the balance on this has not at present been appropriately struck and it therefore fails two of the PPF’s key criteria – fairness and proportionality.

Yours sincerely

Charles Young
Chairman
ACA Pension Schemes Committee