

NAPF RESPONSE TO THE DWP CONSULTATION ON DISCLOSURE REQUIREMENTS

SECTION 1 - INTRODUCTION

1. The National Association of Pension Funds welcomes the opportunity to respond to the DWP's consultation on the 'Review of Disclosure Requirements applying to Occupational, Personal & Stakeholder Pension Schemes', published in March 2009.
2. This submission sets out the NAPF's general views disclosure and scheme communications, as well as the responses to the specific questions posed by the DWP in the consultation document. In writing this submission we have consulted widely with members and the proposals have been discussed at both our Retirement Policy Council and in our 2012 Regulations Working Group. Discussions have included employers operating all types of trust and contract-based workplace pensions.

About The NAPF

3. The NAPF is the leading voice of workplace pensions in the UK. Our 1,200 pension fund members provide pensions on behalf of more than 15 million people and have combined assets of around £800 billion.

SECTION 2 – NAPF GENERAL COMMENTS

4. We welcome the move to a more principles-based approach to regulation, and are pleased the DWP has developed proposals in this area. NAPF members have long had concerns about the overly-prescriptive nature of disclosure regulation, which can lead schemes towards ticking boxes rather than thinking about the best way to communicate with scheme members. However, we also recognise there needs to be a balance between the use of principles and more detailed rules, and agree that it is appropriate to maintain a list of prescribed information, where it is essential to do so.
5. Different schemes have different concerns about disclosure regulations. Many NAPF members are keen to use any new flexibility to improve their communications, and make them more focused on the key issues that matter to scheme members. However, some schemes are more cautious – perhaps because they are smaller and have less access to specialised advice or expertise – and want greater certainty they are meeting requirements. The requirements must cater for both groups, by allowing flexibility for those who want it and certainty for those who don't. This is best achieved by putting as much of the detail as possible into guidance or codes of practice rather than regulation.

6. Whilst we welcome the concept of an over-arching disclosure principle (if accompanied by a reduction in detailed rules), we have great concerns about the wording of the suggested principle. We believe it is currently too broad and could have the effect of greatly increasing the scope of disclosure requirements, with unintended consequences that would disadvantage scheme members. This consultation is supposed to be about deregulation: giving trustees, employers and the industry more flexibility to develop pension communications. It would be a complete reversal of the original purpose of this review if it were to do the opposite and increase the burden of regulation on those who provide workplace pensions. Therefore we have suggested a substantial change to the wording of the principle (see paragraphs 8-11).

SECTION 3 – NAPF COMMENTS TO SPECIFIC QUESTIONS

7. This section provides the NAPF's responses to the specific questions set by the DWP. These should be read in conjunction with our general comments above.

Question 1 – Against the background that a streamlined set of prescriptive provisions would still be required for the purposes of satisfying IORP and in the interests of certainty for schemes, do you support the addition to the legislation of a key, overarching disclosure principle?

8. Yes – we agree with the concept of an overarching principle but (as stated earlier) we have great concerns with the proposed wording. The phrase “relevant information that will enable each member to make decisions in his or her best interests” is extremely broad, and seems to greatly widen the scope of disclosure requirements, which is not the purpose of the review. One example of increased scope would be where a sponsoring employer becomes insolvent; DB scheme members might say that the trustees should have given them information on the strength of the company's covenant.
9. This broadening of the scope of disclosure could have unintended consequences that disadvantage scheme members in a number of ways:
 - Those smaller schemes which have less access to advice and expertise would feel obliged to provide large amounts of extra information to protect themselves against the perceived future risk of a scheme member saying something “relevant” was not disclosed. This would overwhelm the scheme members and make it harder for them to identify the important information. It would also increase costs, which in the end are likely to be passed onto scheme members.
 - Trustees often need access to confidential commercially-sensitive information during negotiations with employers over funding issues. This principle would

put trustees and employers in a very difficult situation when dealing with such information, by increasing the risk that commercially sensitive data could end up in the public domain. In order to protect the scheme and scheme members, Trustees must be able to continue to have confidential discussions with the employer.

10. The final part of the principle on enabling scheme members to make “decisions in his or her best interests” seems to potentially extend disclosure beyond providing information about the scheme and individual entitlements, towards more personalised help, where the employee’s personal circumstances ought to be considered. It would be wrong for the requirements to be extended in this way, as employers, providers or trustees cannot be expected to second guess employees circumstances.
11. Therefore, we do not believe the second half of the principle is appropriate and it should be shortened to: “Members should be given sufficient information that allows them to understand the benefits to which they are entitled”. This will keep the disclosure rules focused on the areas they currently are, without any unwarranted increase in scope. We also believe that there needs to be guidance to help trustees interpret this principle.

Question 2 - Do you support the consolidation of general disclosure provisions into one set of regulations, rather than the existing position where disclosure requirements affecting occupational, personal and stakeholder pension schemes are dealt with separately?

12. Yes – we welcome the consolidation proposed, but we believe that guidance or a code of practice is the best location for much of the provision in the document (see answer below).

Question 3 – Do you consider that the proposed approach outlined in Annex C (of the DWP consultation) is appropriate? Detailed comments on particular requirements would of course be welcome.

13. We have set out our concerns about the wording of the principle in our response to Question 1. With regards to the proposed list of information requirements, this appears to be going in the right direction, with some pruning of the more superfluous requirements. However we have some concerns:
 - Although IORPs is recited, the DWP have not presented definitive analysis of which of the proposed information requirements are mandated by the Directive and which are super-equivalent. This analysis is needed to judge whether all these detailed rules are actually necessary.
 - We believe this list should be provided in a code of conduct, to give schemes some flexibility within the ‘comply or explain’ doctrine.

- To a large extent the devil will be in the detail, and the issue will be with the quantity of information required to be provided under each heading. For instance information on 'scheme benefits' could mean a short 2 page summary of the main benefits, or a 50 page booklet detailing every aspect of how benefits calculation and entitlement, the vast majority of which will not be relevant to most individuals.

Question 4 – Do you support the proposal for regulations to require relevant information to be provided "within a reasonable period" backed with a Code of Practice, replacing the existing approach where timescales are specified in regulations?

14. Yes – this is a welcome reduction in unnecessary prescription. However, we must guard against two risks. Firstly, that time limits in a code of practice simply replicate those in regulation, and in practice the rigidity of the time limits remains. Therefore, we think that guidance might be more appropriate than a code of practice. Secondly, there is risk that some schemes feel there is not enough certainty about what they need to do. This means that guidance should offer quite clear and simple rules of thumb for schemes (particularly smaller ones with less resources) to follow if they do not wish to innovate.

Question 5 – Do you have any views on the disclosure of information by schemes in the context of the automatic enrolment requirement for employers, commencing from 2012? (Paragraph 4 of consultation Annex C proposes a requirement for schemes to provide basic scheme information within 14 days when a new employee commences pensionable service. The draft Pensions (Automatic Enrolment) Regulations 2009 are the subject of a current consultation exercise.)

15. We expect most employers will want to provide this information at the same time and the requirements should be aligned. However, we do not believe it is justifiable or sensible to impose a strict time limit when this is what we are supposed to be moving away from. They should be aligned by setting both as a 'reasonable time period'. We will be setting out that case more fully in response to the Automatic Enrolment Draft Regulations consultation.

Question 6 - Do you have views on the proposal to allow greater use of electronic communications and on how schemes could make significant cost savings from this change?

16. We support this proposal. Communications technology has advanced rapidly over the last decade and we should assume it will continue to do so over the time period of these regulations. We believe that in some workplaces electronic

communications will be the default, but that employees should be able to opt for hard copies if they wish.

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