Pensions – consultation on draft scheme Order and Rules

A response by

The National Association of Pension Funds

20 July 2009

Introduction

1. The National Association of Pension Funds (NAPF) is the leading voice of workplace pensions in the UK. We speak for 1,200 pension schemes with around 15 million members and assets of £800 billion. The NAPF's membership also includes 400 businesses that provide essential services to the pensions sector.

2. The NAPF welcomes the opportunity to respond to this consultation exercise. In assembling this response we have drawn on the views of members of the NAPF's Retirement Policy Council, together with input from a wide range of other NAPF members.

The NAPF's approach to Personal Accounts

3. The NAPF wants to see the 2012 reforms succeed without undermining existing provision. We acknowledge that, if delivered successfully, Personal Accounts have the potential to extend pensions saving to a wide range of people who are currently unable to save through a workplace pension.

4. We also recognise that such a major scheme will have a bearing on the pensions landscape as a whole. It is possible, for example, that other schemes may in time adopt features of Personal Accounts. Equally, if Personal Accounts were allowed to enjoy a significantly different regulatory regime, it could put existing schemes at an unfair disadvantage. Easements available to Personal Accounts should also be made available to other occupational pensions. Best practice from the world of existing provision should also be applied to Personal Accounts.

Executive summary

5. Before responding to the specific questions in the consultation paper, the NAPF has a number of comments to make on the overall contents and structure of the draft Order and Rules.

- **Make full use of the Trustees' obligation to operate in members' interests.** Personal Accounts should mirror as closely as possible the structure and approach of other large multi-employer pension schemes. This means that, wherever possible, it should be left to the trustees to decide how the scheme will be run. Therefore, the Order should be drawn as narrowly as possible. Adjusting the balance between the Order and Rules would give the trustees more discretion to decide how to run the scheme and ensure it meets member needs. The potential for political involvement should be minimised.

- **Too much reliance on an "E-business" approach.** The emphasis on making the scheme electronic-only is misplaced. Some potential savers will not have online access; others may simply be more comfortable with the traditional hard copy approach where personal finances are concerned. There may also be some employers who lack the facilities for easy electronic processing of Personal Accounts information. There is no requirement for an annual statement or for a regular forecast of benefits. Without this, and without any other hard-copy communications, there is a risk that members will become disengaged.

- **Simplicity and transparency must be a priority.** Personal Accounts will need to be simple and transparent if they are to meet the needs of people in low and middle-income brackets. Yet the Government is loading them with extra complexity, eg, on data sharing obligations.

- **Awareness-raising should be a job for the Government, not the Trustee.** There are two separate communications tasks to be undertaken: first, the job of educating employers about their auto-enrolment obligations under the 2012 reforms; and second, the job of raising awareness of the reforms. We believe that communication with both groups should more properly be a job for the Government, not the Trustee. Including it in the remit of Personal Accounts will add further costs and could result in a switch away from existing higher value DB or DC schemes.

- **Differences in the regulatory regime should be minimised.** A number of the proposals risk creating an uneven playing field between Personal Accounts and existing occupational pension schemes. Where easements have been introduced for Personal Accounts, in many cases it would make sense to apply them to existing provision.

- **The role of the Employer Panel should be enhanced.** The Members' Panel will have a role in the selection of members of the Trustee Corporation, but there is no such role proposed for the Employers' Panel; careful consideration should be given to whether this leaves the governance structure unbalanced. If so, proposals should be brought forward to give the Employers' Panel greater input into this process.

Differences between Personal Accounts and other trust-based schemes

6. The NAPF's clear view is that any difference between Personal Accounts and other trust-based schemes warrants very careful scrutiny. We would urge DWP and PADA to consider applying the same regime where merited.

- *Death in service benefits.* In other occupational schemes, trustees generally have discretion to decide who should receive death-in-service benefits – either the member's nominated death beneficiary / spouse / dependant or another recipient. Yet in the case of Personal Accounts, trustees will simply be under an obligation to pay accrued rights to the nominated beneficiary. We fully accept and acknowledge PADA's view that case-by-case decision-making would be impossible in the case of Personal Accounts, since it could potentially involve tens of thousands of such decisions per year – an impossible task. However, many large schemes are facing similar difficulties and could usefully benefit from this easement.

- *Trustees' objectives.* At present the Trustees' objectives are spread across a number of different source documents. The Order should include a single clear statement of the trustees' objectives – as would commonly be found in the deeds of other trust-based schemes.

- *Forecasts.* Other pension schemes are obliged to issue an annual statement and a forecast of likely benefits. There is no such requirement on Personal Accounts.

Questions in the consultation paper

7. The NAPF's responses to the specific questions in the consultation paper are set out below.

Q.1 Are the following aspects of the members' panel the right model for ensuring that members' interests and perspectives influence the day-to-day running of the scheme?

- **The role of the members' panel;**
- **The members' panel involvement in the recruitment and selection process for all members of the trustee corporation;**
- **The members' panel remit to produce a report on whether the trustee considers members' interests in its decision-making process.**

8. We endorse the overall concept of the Members' Panel (and also of an Employers' Panel).

9. The Panels' remits must be made clear in terms of reference agreed by the Panel and the Trustee, so that each body knows their respective roles and powers.

Q.2 Are there ways in which the panel can be constituted or its functions defined that would maximise its effectiveness?

10. The Members' Panel will have a role in the selection of members of the Trustee Corporation, but there is no such role proposed for the Employers' Panel;

careful consideration should be given to whether this leaves the governance structure unbalanced. If so, proposals should be brought forward to give the Employers' Panel greater input into this process.

11. Article 8b suggests that the Panels must be in place within a year of the scheme starting up. The NAPF's clear view is that they should be in place from the start.

Q.3 Is it appropriate to allow representative bodies on the members' and employers' panels?

12. Yes. We agree that it is right to source panel members from as wide an area as possible, including representative bodies.

Q.4 Are the provisions in the scheme Order providing indemnity and insurance appropriate to this scheme?

13. Adequate exoneration and indemnity arrangements are essential for potential members of the Trustee Corporation.

14. Insurance is a good idea in principle, although we know from experience of the cost of insuring very large schemes that it is expensive and is likely to be prohibitively so in the case of Personal Accounts. This will need to be taken into consideration.

Q.5 Does the wording of Article 15 [on information and awareness-raising] adequately cover the activity that the trustee will need to undertake to raise awareness of the scheme to employers and prospective members?

15. The NAPF has serious concerns about the proposals on awareness-raising. We fear that they could result in Personal Accounts replacing high-value existing pension schemes.

16. In the NAPF's view, the task of promoting the new employer duty should more properly be a job for the Government, not the Trustee, and we strongly recommend that this responsibility should rest with DWP.

17. In fact there are two separate communications tasks to be undertaken:

- first, the job of educating employers about their auto-enrolment obligations under the 2012 reforms and the fact that they can register early for Personal Accounts; and

- second, the job of raising public awareness of the reforms – a task similar to the communications campaigns that successfully underpinned the National Minimum Wage and the Working Family Tax Credit.

18. Including awareness-raising in the remit of Personal Accounts will add further costs, which (as the consultation paper acknowledges) will be passed on to members. If Personal Accounts were to end up being used by a large group of employers who currently offer higher value DB or DC schemes, then this would result in some employees getting lower pensions than is currently the case.

19. Furthermore, we are concerned that a vigorous promotion campaign will shift the focus of Personal Accounts away from their original target – low-income groups that currently do not save for pensions, turning them into a provider of pensions for the population as a whole.

20. There is a further concern that the task of awareness-raising and promotion will add further costs, which (as the consultation paper acknowledges) will be passed on to members. This will make it even more difficult for Personal Accounts to generate the low-cost, low-charge pension provision that was intended.

Q.6 What remedies would it be useful for the Trustee Corporation to have available in order to deal with employers who persistently fail to meet the agreed terms and conditions of the scheme?

21. The NAPF has a number of concerns about the approach to sanctions on employers outlined in paragraph 27 of the consultation paper.

22. These proposals seem heavy-handed and send a negative message to employers, some of whom will draw the conclusion that Personal Accounts are all about compliance and potential punishment.

Q.7 Are there any issues arising out of the proposal to operate one membership category and not to differentiate between 'active' and 'deferred' members?

23. The NAPF does not see any need to differentiate between active and deferred members, as the contribution that each employer has made should be clear from the annual statement. It is important that employers are named, as some individuals will have had more than one employer in a single year.

Q.8 In order to avoid disproportionate administrative costs, should the scheme set a minimum level of contributions in relation to workers without qualifying earnings?

24. Too much detail on the permitted types and levels of contributions is set out in the Order. This section of the Order (Article 19) should more appropriately be included in the Rules, and should be a matter for the Trustee Corporation to decide upon in the light of experience.

25. There is, of course, a risk of incurring significant extra costs in determining whether membership is appropriate for some individuals – particularly those who might find that means-tested welfare provision renders their pension investments somewhat less than worthwhile.

Q.9 Should there be a specific provision to require the Trustee Corporation to make the method and level of deductions transparent, and, if so, how can this be achieved?

26. It is important that charges are visible and any increases are communicated regularly. Some form of annual statement for members would be helpful.

Furthermore, information on charges must be readily available on the scheme's website and in the literature.

27. The basis on which charges are disclosed should be the same as is used for other pension products.

Q.10 Should the Trustee have the power to change the scheme rules without the agreement of the Secretary of State? If not, what are the circumstances where you feel the trustee should not be able to make changes?

28. As the NAPF has argued throughout this submission, Personal Accounts should, wherever possible, mirror accepted practice for other occupational schemes. This means that the Trustee Corporation should be obliged to consult with the Secretary of State on issues on which other Trustees are required to consult with sponsoring employers.

29. It should be made clear, however, that the Trustee has as much scope as possible to amend the Rules where they judge necessary. The Secretary of State should only become involved in the most exceptional cases. Without this, there is a risk that the Scheme will become too rigid and unable to move swiftly in line with best practice and market conditions.

<u>Further issues</u>

30. The NAPF would offer the following comments on issues not covered by specific questions:

- The Framework Document setting out the relationship between the Government and the Trustee Corporation should be published. This would help to strengthen public understanding of the role and obligations of the parties involved in the delivery and governance of Personal Accounts.

- Article 4 allows the Secretary of State to dismiss trustees. The NAPF would suggest that the Order should do more to ensure that this power may only be exercised in an objective manner. For example, it might be triggered where the trustee is in breach of certain specified standards or has a conflict of interest that makes it impossible for them to safeguard the interests of the members.

- Although there are no specific questions on the data sharing provisions, the NAPF has very serious concerns that the requirement for the Trustee Corporation to share an extensive range of information with the Government could generate an excessive burden of administration and cost. This must not be allowed to set a precedent that might be extended to other schemes at some point in the future.

- Article 25 indicates that the charging levels will be open-ended. This seems inappropriate. Much tighter wording is required, making it clear that charges must be 'reasonable'. The same applies to the choice of funds in Rule 15.3.

Conclusion

31. The NAPF remains supportive of Personal Accounts. It is important, however, that they remain true to their original purpose of providing low-cost pensions saving for people on low incomes. Well-meaning attempts to add extra features will risk increasing costs and undermining the appeal of the new system.

32. It is equally important that the Order and Rules mirror as closely as possible the systems that govern other large multi-employer pension schemes, with the trustees given as much freedom as possible to determine how best to go about their task of safeguarding the members' interests.

33. For further information, please contact me on james.walsh@napf.co.uk.

Yours sincerely,

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