

Triennial Review of Pensions Bodies: the NAPF's response

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Executive Summary

The Pensions Bodies that fall under the remit of this review perform critical functions, which help safeguard members' pensions rights. Largely these are functions that need to be carried out by experts and free of any political interference. However the pensions landscape has changed considerably since these organisations were first set up and it is right to review whether these functions are performed effectively and in the most efficient way. The NAPF's response to this review includes a series of constructive proposals as to how these bodies could be made to work better and truly reflect the pensions landscape in which they now operate.

The NAPF's key area of concern is the regulation of defined contribution (DC) workplace pensions. The regulation is currently split between the Pensions Regulator (TPR) and the Financial Conduct Authority (FCA). These two bodies have very different approaches to regulating pension schemes, which could expose members in similar DC schemes to the risk of being treated differently. Therefore the NAPF would like **a single regulator to be created for workplace pensions, with TPR taking on responsibility for workplace contract-based schemes to ensure consistent regulatory oversight of the workplace pensions system.**

Another area of concern is TPR's regulatory approach, which suffers from a lack of real engagement with pensions schemes and appears to prioritise the protection of the Pension Protection Fund (PPF) above its other objectives. There has been encouraging early signs of a change in this behaviour recently as a result of the new objective, currently being legislated for in the Pensions Bill 2013. However pensions schemes need to see consistent evidence. **TPR should set out clear criteria for how it plans to demonstrate it is delivering against its new objective and undertake regular assessment against those success criteria to ensure that the objective is leading to a tangible shift in behaviour.**

The NAPF supports the work of the Pensions Advisory Service (TPAS). However there is a concern that parts of TPAS's role overlaps with those of other bodies and there is little evidence to support the case that TPAS should be run as an NDPB. Therefore we recommend that **the Government actively consider whether TPAS's functions could be better delivered by an external, not-for-profit organisation.**

Like TPR, it is critical that The Pensions Ombudsman and the Pension Protection Fund Ombudsman can act independently and impartially and therefore their constitution, as Tribunal NDPBs, seems most appropriate. The Public Bodies Act 2011 gave Ministers the power to merge the two organisations but we believe **there is no substantive case for merging the Ombudsmen at this stage.**

Finally, one organisation excluded from the review is the PPF. Whilst the PPF is an essential part of the pensions landscape, it is important that there is sufficient accountability and scrutiny of the way it goes about performing its functions. **The NAPF would like to see the PPF included in future reviews.**

About the NAPF

The National Association of Pension Funds is the leading voice of workplace pension provision in the UK. We represent 1,300 pension schemes from all parts of the economy and 400 businesses providing essential services to the pensions industry. We represent both public and private sector schemes, including over 70% of the local authority pension funds. Our members provide pensions for 16m people and collectively hold assets of around £900bn, making them major institutional investors. Our main objective is to ensure there is a secure and sustainable pensions system in the UK.

Introduction

1. The regulation of UK pension funds has been undertaken by the same Pensions Bodies now for nearly a decade. Both the Pensions Regulator (TPR) and the Pension Protection Fund (PPF) were set up under the Pensions Act 2004 to deliver more pro-active, risk-based regulation of occupational pension schemes and provide greater security for members' pension rights through a scheme specific funding regime.
2. With 8.2m people saving in occupational pensions schemes, and an additional 5-8m coming into pensions saving through automatic enrolment, it is important that members' benefits are properly protected.
3. There are 2.2m active members in private sector defined benefit (DB) schemes. The scheme specific funding regime needs to ensure that these schemes deliver on the promises already made to their members. At the same time the system should give schemes sufficient flexibility to do so whilst also maintaining the long-term viability of the sponsoring employer(s). This is especially important during periods when external forces place undue pressure on scheme liabilities.
4. However, the vast majority of people being automatically enrolled over the next 5 years and beyond will be going into defined contribution (DC) pension schemes. Not only do these schemes place the burden of risk largely on the member, but at present the standards that these schemes are required to meet for automatic enrolment are minimal. There is little protecting the member from schemes with higher charges, poor investment strategies and little or no help with key decisions at retirement.
5. This lack of protection is exacerbated by that fact that there are currently very low barriers to entry for occupational pension schemes. At the same time, the NAPF is concerned that contract-based provision is not regulated in a way that truly protects the automatically enrolled pension member.
6. This is why the NAPF has been working to drive up quality in DC provision through the Pensions Quality Mark. We also welcome the recent Department for Work and Pensions (DWP) call for evidence on minimum quality standards¹ which focuses on the minimum standards that schemes should reach in order to enter the marketplace. There needs to be a joined up approach across DWP, HM Treasury (HMT) and the various regulators to ensure a consistent legislative and regulatory framework for the minimum standards required in DC as well as setting out what a good quality DC pensions scheme should look like.
7. But it is not just about ensuring scheme quality, it is also important that members know where to go when they require further information about their private pensions. There should be proper channels to pursue concerns about the way members' schemes have been run or their money managed.

¹ [Quality standards in workplace defined contribution pension schemes, DWP, 4 July 2013.](#)

8. The NAPF welcomes the opportunity to input into this review. It is important that such a review is undertaken properly, particularly in light of the Public Administration Committee's (PAC) critical report on the Government's review of public bodies in 2010². The PAC criticised the review for being poorly managed and lacking in clear goals.
9. This triennial review focuses on (a) whether each organisation still has a role to play and (b) is it functioning efficiently/are there overlaps with other bodies. Sir Philip Hampton's 2005 review, 'Reducing administrative burdens: effective inspection and enforcement'³ considered how to reduce unnecessary administration for businesses, without compromising the UK's regulatory regime. The Hampton Review set out some key principles (see annex a) that should be consistently applied throughout the regulatory system. We believe that the most relevant Hampton principles for this review are the following:
 - Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
 - Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
 - Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.
10. In formulating the response to this Triennial Review of Pensions Bodies the NAPF has considered these principles as well as the Cabinet Office Checklist of Delivery Options and the Three Tests for whether a body should have Non-Departmental Public Body (NDPB) status identified in the call for evidence.
11. We have also provided answers to the specific questions laid out in the call for evidence, these can be found at annex b.

² [Smaller Government: Shrinking the Quango State, Public Administration Committee, December 2010.](#)

³ [Reducing administrative burdens: effective inspection and enforcement, HM Treasury, March 2005.](#)

The Pensions Regulator

12. TPR's primary function is the regulation of trust-based workplace pensions. Principally to ensure that members' benefits are protected, that schemes are well run and the compensation regime is used appropriately and not exploited. In addition this remit has been expanded to include employer compliance with duties to provide workplace pensions for the vast majority of employees.
13. These are important functions involving the oversight of complex savings and investment vehicles. There is a wealth of literature about why regulators of financial services should be independent, in particular the historical evidence that shows that political meddling has consistently caused or worsened financial instability⁴. Workplace pensions in the UK have around £1trillion of assets under management making them major institutional investors. Like other financial structures pensions are complex and their regulation requires expertise.
14. In addition an independent body should be able to act more nimbly than central government in terms of engaging and responding to employers and schemes. It should also provide stability throughout political and economic cycles. Therefore we believe that the Regulator, like other financial regulators, should maintain its independence from Government and an Executive NDPB is the most appropriate form this independence should take at the present time.
15. In line with the Hampton Principles, the Regulator delivers against its strategic objectives using a risk-based approach. This involves identifying key issues, setting priorities and executing specific regulatory activities based on its assessment of the risks in meeting its statutory objectives. TPR does this by educating, enabling and enforcing. Making those responsible for providing access to and managing workplace pensions fulfil their obligations by:
 - making them aware of what is expected of them,
 - enabling them to meet high standards; and
 - using their enforcement powers where appropriate against those that do not fulfil their obligations.
16. Like other financial regulators TPR is paid for by a levy on eligible occupational and personal pension schemes and therefore is accountable for its regulatory action, not just to Government, but also to the schemes that fund its activities.
17. The NAPF believes that, in theory, TPR's regulatory approach is the right one; it ensures a proportionate regime for those who comply with the regulations and often go above and beyond to demonstrate the very best practice when it comes to running workplace pension schemes. At

⁴ Key literature includes:

[Should Financial Sector Regulators be Independent? Marc Quinton and Michael W. Taylor, IMF, March 2004.](#)

[Tools for Regulatory Quality and Financial Sector Regulation: A Cross-Country Perspective J. Black and S. Jacobzone, OECD Working Papers on Public Governance, 2009.](#)

the same time it, in theory, identifies areas of bad practice or types of scheme that present the greatest risk and enables TPR to focus its resource on those areas.

DB regulation

18. However, in practice there has been an imbalance in the way the Regulator reflects its objectives in its risk-based regulation. In particular there has been a concern that the Regulator sees its objective to protect member benefits as primarily applying to current rather than future benefits. TPR has been seen to focus more on short-term funding issues rather than maintaining the long-term viability of the scheme and the sponsoring employer. As a result TPR has appeared reluctant to let schemes use the full flexibility of the funding regime. This is especially important during periods when external forces place undue pressure on scheme liabilities.

19. The downward pressure on gilt yields following the Bank of England's asset purchase programme has increased the deficits of DB schemes that had been increasingly valuing their liabilities using a 'gilts plus' approach to discount rates. In 2011 NAPF members started to express concern that TPR was not allowing schemes to use the full flexibility in the legislative framework for their valuations, including the choice of discount rates for their technical provisions.

"A more flexible approach needs to be considered in the current economic climate when valuing scheme liabilities" **Trustee**

20. In addition there was inconsistency in the way that schemes were treated depending on which case worker they were dealing with. There was also an impression that the larger schemes were more able to 'take the Regulator on' and make the case for choosing a different discount rate, something that has left smaller schemes at a disadvantage. Whilst some of this is inevitable in a scheme specific regime there was a significant level of inconsistency of treatment. This led to pressure on the Government and the Regulator to explore 'smoothing' of discount rates and for the Regulator to be given a new statutory objective to rebalance its behaviour away from an overly prudent approach.

21. Following the Chancellor's Autumn Statement in December 2012 and a DWP Call for Evidence, in the 2013 Budget the Chancellor announced that the Regulator would be given an additional statutory objective. The final wording of this new objective, which has been included in the Pensions Bill, is for the Regulator to 'minimise any adverse impact on the sustainable growth of the employer'.

22. The NAPF welcomes this new objective as we hope that it will enable the Regulator to strike the right balance between protecting savers' interests, helping good defined benefit pensions remain open, and ensuring pension regulation does not hinder investment and growth. However, it will only prove effective if it leads to a demonstrable change in the Regulator's behaviour.

23. There have been some early encouraging signs. In particular the recent annual funding statement was a significant improvement on the annual funding statement published in April 2012, with TPR

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making it explicit that trustees, employers and their advisers should be making use of the full flexibility in the existing funding regime. This will be particularly important for those schemes with valuation dates this year, who faced much more favourable economic conditions in 2010, and who are therefore likely to see significant increases in scheme deficits and recovery contributions without the flexibilities. In particular, the statement made clear that 'trustees may need to make greater use of the flexibilities available than needed for their preceding valuations' and that 'trustees can use the flexibility available in setting the discount rates.... The assumptions made for relative returns of different asset classes may rise or fall from preceding valuations.'⁵

24. However there needs to be continued and consistent evidence from the Regulator that it is delivering against this new statutory objective and that changes in behaviour have resulted from this purposeful rebalancing of the legislation. As mentioned above the Regulator is financed by pensions schemes and is accountable to them, as well as the Government, for its activity. Therefore we believe that **TPR should set out clear criteria for adhering to its new objective and undertake regular assessment of how it is delivering against those criteria.** One area that we would especially like to be brought out in any assessment is how TPR is ensuring that schemes are dealt with fairly and that TPR's caseworkers are delivering consistent responses to similar cases.

DC regulation

25. Arguably much of the Regulator's focus over the last decade has been on ensuring that DB schemes were properly funded which is understandable given the economic backdrop. However, the number of DB schemes has declined over the last decade; the proportion of employees with DB occupational pensions is now 28%, compared with 46% in 1997⁶, largely as a result of DB scheme closures. This function remains important as there are still 2.2m active members in private sector DB schemes and greater numbers of deferred or pensioner members. DB schemes in the UK hold around £1trillion assets under management. It is critical that these assets are managed correctly and those members benefits are protected now and in the future.
26. At the same time the pensions landscape has been changing and there has been a seismic shift away from DB schemes to DC schemes. This trend looks set to continue with the implementation of automatic enrolment which will bring an addition 5-8m people into workplace pensions, the majority of which will be saving in DC. Around 39,000 of these DC schemes are trust-based and therefore are regulated by TPR. With increasing numbers of people entering this form of provision it is right that TPR ensures that these schemes are well run and provide value for money for members.
27. In January 2013, TPR consulted on its draft Code of Practice for trust-based DC schemes. The NAPF had some serious concerns about the Code. Perhaps because of its history of regulating complex DB schemes TPR seems to have a tendency to be highly prescriptive and legalistic and

⁵ [Defined Benefit Annual Funding Statement 2013, The Pensions Regulator, May 2013.](#)

⁶ [Annual Survey of Hours and Earnings, ONS, 2012.](#)

this was reflected in the draft DC Code. The Code also appeared to conflate trustees' legal obligations with recommendations for good practice. The revised Code, however, which was published in July 2013, was a substantial improvement. The NAPF is now working constructively with TPR on implementing the Code. This includes work on how the NAPF's Pension Quality Mark can help pension schemes to demonstrate compliance with the Code.

28. However, it is unfortunate that this work is being delivered when automatic enrolment is already underway; the new DC Code is not due to come into operation until this autumn. There is also a concern that the proposed 'comply or explain' regime runs the risk of good DC schemes doing the work to ensure they comply whilst the riskier schemes ignore the initiative entirely.
29. The debate around TPR's DC Code highlighted the uneven regulatory landscape in DC workplace pensions, with regulatory oversight split between TPR and the Financial Conduct Authority (FCA). The NAPF is very concerned that given TPR's competencies it is only able to apply the Code to trust-based schemes. There are 3 million savers in contract-based schemes who are ignored by this Code. TPR's work to map its own regulations against those of the FCA, which regulates contract-based schemes, is welcome but demonstrates the very different approaches taken by the two regulators.
30. The FCA regulates financial services products around the point of sale based on the principle of an engaged consumer who is able to vote with their feet if they feel the product is not fit for purpose. By contrast, TPR regulates occupational trust-based schemes where there is a clear duty on the trustees to act in members best interests but there are lower barriers to entry. Arguably we need a system for the regulation of workplace pensions that includes the best features of both of these regulatory regimes. As present we risk people in similar schemes between treated differently.
31. This inconsistency of regulatory approach was highlighted by the National Audit Office (NAO) in its recent assessment of the Government interventions to support retirement incomes. The NAO expressed concern that "three regulators have oversight of pension providers but they have no common framework for assessing risk and measuring performance."⁷
32. The main reason this regulatory inconsistency causes problems is that workplace pensions do not operate in the same way as financial products. Schemes are set up by the employer, and members are then automatically enrolled into schemes by their employer. The employer makes the key decisions around scheme set up, choice of provider, design, communications strategy and even investment strategies. It is a market designed to take account of low levels of engagement and inertia. But even an engaged scheme member cannot easily change provider, as doing so will probably mean losing their employer's contributions. The member, therefore, typically plays a passive role.
33. Contract-based schemes, which are technically a series of similar contractual arrangements between individual members and the provider, are regulated by the FCA. There is no requirement for these schemes to have governance in place although guidance does exist and there is some

⁷ [Government interventions to support retirement outcomes, NAO, July 2013.](#)

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pressure to provide governance. However where there is governance in place it can often be difficult for a governing body to secure good outcomes for members without their consent, which is rarely forthcoming. This is because the contract-based nature of the product makes changes very difficult, even when they are designed to be in the member's best interest.

34. Pensions are a long-term savings vehicle and therefore need to evolve as the market changes. The suitability of contract-based arrangements as workplace pensions depends largely on the employer. Where there is an active and engaged employer, contract-based schemes can be highly suitable for automatic enrolment. But where there is not an active employer, inertia reigns and members' savings can be left in inappropriate arrangements.
35. The FCA's regulatory approach may be well suited to financial products where the customer is an active consumer, but it is not well suited to pensions. The FCA's Treating Customers Fairly regime has a focus on disclosure to ensure that consumers are well informed but, as pointed out earlier, under automatic enrolment 'the consumer' is the employer as they pick the pension for their employees. If the employee is unhappy with the pension the only option they have is to opt out losing their employer contribution in the process. The FCA does however have an effective approach to prudential regulation, which is increasingly relevant to the DC market with the development of commercial master trusts.
36. By contrast, TPR focuses on good scheme governance and the ability of trustees to oversee the scheme and make decisions about its structure in order to drive better member outcomes. The NAPF recognises, however, that the DC market is increasingly competitive. New master trusts, multi-employer trust-based schemes, have emerged over the last few years to serve employers for automatic enrolment. Many of these are excellent pension schemes, which have strong governance well aligned with members' interests and the potential for economies of scale. But low barriers to market entry mean that there may be master trusts ill equipped to cope with the demands of the market. It will be important that only schemes that have "durable" business plans and high quality standards should succeed in entering the market.
37. To resolve these tensions and inconsistencies the NAPF has long been calling for workplace pensions to be regulated by a single pensions regulator, a call backed by the recent Work and Pensions Select Committee report into Good Workplace Pensions⁸. We do not believe that the FCA's consumer-centric approach is appropriate for workplace pensions although we recognise that unlike TPR it does have effective prudential regulation powers. TPR is well placed to promote high quality schemes across the different forms of pensions provision given its existing duty to police the automatic enrolment compliance regime (which is aimed at employers) and because it already has some level of responsibility for the regulation of contract-based schemes with regard to stakeholder schemes and maintaining contributions.
38. Therefore we recommend that **a single regulator is created for workplace pensions, with TPR taking on responsibility for workplace contract-based schemes to ensure consistent regulatory oversight of the workplace pensions system.** The FCA would retain regulatory oversight for personal pensions. We believe a single workplace pension regulator would help develop a

⁸ [Improving governance and best practice in workplace pensions, Work and Pensions Committee, April 2013.](#)

consistent regulatory approach, which would be easier for employers to understand and would avoid the current risk of regulatory arbitrage.

39. The exact constitution of a single workplace regulator would require further consideration. As mentioned above there is already a concern that TPR does not have sufficient powers to enforce the existing regulations. In addition TPR presently has very few prudential regulatory powers, which make it difficult to ensure that master-trust providers have strong business cases and the appropriate capital to underpin their pensions business. Therefore it would be appropriate to review the powers and constitution of any single regulator of workplace pensions.

Regulatory consistency

40. It is not just about ensuring the Regulator has sufficient coverage. It also needs to ensure that it delivers its objectives efficiently and effectively so that it can demonstrate value for money to the levy payer. We have already discussed its proportionate, risk-based approach to its regulatory oversight, which we believe is appropriate. But there is a wider concern about the inconsistent and sometimes unhelpful behaviour of the Regulator, in particular its caseworker team. It appears that the response schemes receive when contacting the Regulator still very much depend on which caseworker they are dealing with.

“We run two DB schemes in almost identical positions: on one the Regulator was happy with our recovery plan, on the other we were sent back to the drawing board.” **Employer**

41. The NAPF has heard from members of experiences that appear to demonstrate a lack of engagement and customer service. For example communications with the Regulator are often unacknowledged and subsequently ignored for long periods, and in one particular case a scheme was told to appear at TPR’s offices in Brighton where it was interrogated by 6 case workers about its valuation process. In particular, our members find it incredibly frustrating that they are not allowed a direct telephone number for the caseworker who has been assigned to their scheme. This lack of real engagement with schemes does not help to build constructive working relationships between a regulator and schemes that often share the same goal, to provide good workplace pension schemes for members.

42. Some of this inconsistency comes from a miss-match between messages from the senior executive and the day-to-day interaction with the Regulator, one example of this is in the messages around pensions liberation fraud:

“the [senior] management have given the impression [to the industry] that TPR is there to help, but when administrators go to TPR for help / guidance on what to do in a particular case, they get told "sorry we can't help you".” **Scheme**

43. At the same time TPR produces vast swathes of paper and website material. Whilst more guidance is, in theory, useful, pension schemes struggle to keep up with it all. In addition it is not organised in a way that makes it easy to find the relevant piece of guidance. The Regulator

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appears to produce a new document on something almost every week, which only adds to this confusion. Our members would like to see a minimum number of clear, simple documents with no overlap.

44. We know that TPR has a large number of projects to deliver, not least the roll out of the compliance regime for automatic enrolment. The Regulator will go from regulating around 46,000 DB and DC pension schemes to overseeing the compliance of 1.2m employers with the new automatic enrolment duties. Given this additional pressure on TPR's delivery we have welcomed the Government's specific funding of the Employer Compliance Regime (ECR). This recognises the additional role TPR is taking on, a role which should not be funded by the general levy on schemes. However, we remain concerned about TPR's overall ability to deliver against its expanding remit whilst ensuring that it continues to deliver its primary function, the protection and promotion of good quality workplace pensions. In particular consideration needs to be given to whether TPR is the most appropriate body to deliver the compliance regime for automatic transfers of small pension pots. With the roll out of real time information we believe there is a case for oversight of such a complex system to sit with HMRC. We also believe that the Government should consider moving the compliance regime for automatic enrolment to HMRC once it has reached steady state.
45. The pensions landscape does not stand still and we need to ensure that any regulator of workplace pensions is able to respond to these changes and ensure that the occupational pensions people are saving into are fit for purpose, offering value for money and good member outcomes. The NAPF's members would like to see a culture change in the way the Regulator engages with pension schemes. The service that schemes receive should not depend solely on either the size of the scheme involved, nor the caseworker the scheme is dealing with. We would like to see a more open Regulator, more willing to engage in real dialogue with schemes about the challenges they face and the way they can navigate through them to meet everyone's overall objective, the long-term sustainability of good workplace pensions.

The Pensions Advisory Service

46. The NAPF supports the work of the Pensions Advisory Service (TPAS). This organisation provides valuable information and guidance to pension scheme members and is a valuable dispute resolution service. Its army of volunteers provide millions of pounds of pro bono work each year as well as helping to manage the workload of the Pensions Ombudsman. In particular members often think they have cause for complaint when what they really require is an explanation. In providing impartial explanations, TPAS turns potential complainants into satisfied customers and acts as a valuable filter for both the Ombudsman and the Pensions Regulator.
47. However concerns have occasionally been expressed by some NAPF members about whether TPAS always delivers its service fairly and impartially. In particular whether advisors have occasionally pushed members to seek compensation where it was not warranted. We do not

believe this activity is wide spread but it is important that TPAS maintains an objective advisory role and resists the urge to develop into an advocacy service for pension scheme members.

48. There is also a concern about whether there is overlap between the information provided by TPAS and other bodies. This is particularly with regard to information provided to the public about pensions rather than that provided to pension scheme members. The NAO report identified “seven public bodies inform the public about pensions and saving for retirement... but there is no overall strategy or mechanism to make sure they work seamlessly together.”⁹
49. The question of whether TPAS should operate separate from political control is less clear than with TPR and the Ombudsmen. Much of the important explanation and dispute resolution role is undertaken by TPAS’s army of advisors and this should continue as without it the Ombudsman’s workload would be unmanageable and people would lose access to a valuable free service.
50. The central body’s primary role however is shifting towards providing information and guidance to members of the public about all aspects of pensions. As mentioned above this role arguably overlaps with other existing bodies including the Department for Work and Pensions whose agencies have a role in providing information to the public about state pensions (The Pensions Service) and lost pensions (The Pensions Tracing Service). It also risks overlapping with the work of the Money Advice Service.
51. This is particularly pertinent as TPAS is funded from a general levy on occupational pension schemes and yet is providing advice and guidance on state pensions, something The Pensions Service is set up, and paid, to do. DWP is also spending a considerable amount of money communicating about the roll out of automatic enrolment to the public so there is the potential for further overlap there. TPAS is supporting this work by providing an additional call service for those members of the public who wish to know more. However this appears to be another example of a function that has been given to TPAS with what could be seen as limited consideration for:
- how the organisation and its work is funded (ie. by levy payers); and
 - whether it is the most appropriate body to be delivering those functions.
52. There is little evidence to support the case that TPAS should operate as a grant-in-aid NDPB. Not least because a more independent body would arguably have greater say over which communication activities it should rightfully be taking on. Therefore the NAPF recommends that the Government carefully consider what would be the most appropriate way to deliver TPAS’s work to avoid duplication with other information services already being provided and to ensure its independence. In particular, in line with the big society agenda, the Government **should actively consider whether TPAS’s functions could be better delivered/overseen by an external, not-for-profit organisation.**

⁹ [Government interventions to support retirement outcomes, NAO, July 2013](#). NAO did not set out who the seven bodies were in the detail of the report, however we have pointed to a few that we believe would be covered.

The Pensions Ombudsman/The Pension Protection Fund Ombudsman

53. The Pensions Ombudsman and the Pension Protection Fund Ombudsman both perform similar functions, investigating and determining complaints concerning pension schemes and the PPF respectively. Like TPR it is critical that they can act independently and impartially and therefore their constitution as Tribunal NDPBs seems most appropriate.
54. The Public Bodies Act 2011 gave Ministers the power to merge the two organisations. However as both the Ombudsmen are the same person and the two offices already run as one the NAPF agree with the assessment in their Corporate and Business Plan¹⁰ that “there will be few direct operational consequences [of any merger]. However, there will be considerable work in making sure the unified legislation is as effectively operable as possible.” Therefore we believe **there is no substantive case for merging the Ombudsmen at this stage.**

The Pension Protection Fund

55. One organisation excluded from the review was the PPF. As a key part of the compensation regime for DB pension schemes, there is little rationale in questioning whether the PPF's function is still necessary. However it is important that the way the PPF goes about performing its functions is subject to the same scrutiny as TPR.
56. The PPF has a good record of engaging with pensions schemes about its activities, in particular the formulation of the levy. It has also demonstrated that it is willing to respond to issues as they arise. The NAPF's members have raised issues in the past with their levy calculation, the D&B credit rating, the PPF appeals process and the interaction with TPR's annual scheme return which is used to calculate the levy. The NAPF has been working with PPF operational staff to resolve some of these issues. For example, the PPF has streamlined its appeals process in response to member feedback. **The NAPF would like to see the PPF included in future reviews.**

¹⁰ [Pensions Ombudsman: Pension Protection Fund Ombudsman: Corporate and Business Plan, April 2012-March 2015, 4 July 2012.](#)

Conclusion

57. In conclusion, these Pensions Bodies perform critical functions and, largely these need to be carried out by experts and free of any political interference. However the pensions landscape has changed considerably since these organisations were first set up and it is right to review whether these functions are performed effectively and in the most efficient way. The NAPF's response to this review has set out a series of constructive proposals as to how these bodies could be made to work better and truly reflect the pensions landscape in which they now operate.

58. In particular:

- A single regulator should be created for workplace pensions, with TPR taking on responsibility for workplace contract-based schemes to ensure consistent regulatory oversight of the workplace pensions system.
- TPR should set out what success will look like when adhering to its new objective and undertake regular assessment of how it is delivering against that success criteria in order to demonstrate a tangible shift in behaviour in response to its new statutory objective;
- The Government should actively consider whether TPAS's functions could be better delivered by an external, not-for-profit organisation; and
- The PPF should be included in any future review of pensions bodies.

Further information

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Annex A - Hampton Principles for Regulation

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
- No inspection should take place without a reason.
- Businesses should not have to give unnecessary information, nor give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.
- Regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Annex B - Responses to consultation questions

The call for evidence set out a number of key questions to focus responses, our responses to the specific questions are set out below.

Q1. Do the functions of each of the Pensions Regulator, the Pensions Ombudsman, the Pension Protection Fund Ombudsman and the Pensions Advisory Service remain necessary?

Yes, these bodies perform critical functions which help safeguard members' pension rights, provide members with important information about pensions saving and ensure there are proper channels to pursue should there be any concerns about the way members' schemes have been run and their money managed.

Q2. To the extent that the functions are necessary, are there alternative means of delivering them which would be more efficient and effective?

This depends on the body in question. The NAPF believes that in order to ensure a consistent approach to the regulation of workplace DC pensions that a single workplace pensions regulator should be created, in particular that TPR takes on responsibility for workplace contract-based schemes with the FCA retains regulatory oversight for personal pensions.

There is a question about the best way to deliver TPAS's work and the NAPF recommends that the Government carefully consider the best way to deliver these functions in order to avoid duplication with other information services already being provided. In particular the Government should actively consider whether TPAS's functions could be better delivered by an external, not-for-profit organisation.

The Public Bodies Act 2011 gave Ministers powers to merge the PO and PPFO. However as the Ombudsmen are the same person and the two offices already run as one. Therefore we believe there is no substantive case for merging at this stage.

Q3. Is continuing NDPB status the most appropriate and cost-effective delivery model for each of the organisations? Which one or more of the three tests of the appropriateness of NDPB status does each organisation meet?

Again, this depends on the body in question. TPR's functions meet all three tests. Their work involves oversight of complex financial products. There is a wealth of literature about why regulators of financial services should be independent, in particular the historical evidence that shows that political meddling has consistently caused or worsened financial instability. Like other financial services pensions are complex and their regulation requires expertise. In addition an independent body should be able to regulate more nimbly than central government and provide stability throughout political and economic cycles. Therefore we believe that the Regulator, like other financial regulators, should maintain its independence from Government and an Executive NDPB is the most appropriate form

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this independence should take at the present time. The exact constitution of a single regulator for workplace pensions was need to be considered further.

The question of whether TPAS should operate separate from political control is less clear than with TPR and the Ombudsmen. Much of the advisory role is undertaken by TPAS's army of advisors and the organisation's primary role is shifting towards providing information and guidance to members of the public about all aspects of pensions. As mentioned above this role arguably overlaps with other existing bodies including the DWP and the Money Advise Service (MAS).

The Pensions Ombudsman and the Pension Protection Fund Ombudsman both perform similar functions, investigating and determining complaints concerning pension schemes and the PPF respectively. Like TPR it is critical that they can act independently and impartially and therefore their constitution as Tribunal NDPBs seems most appropriate.

Q4. Is there sufficient clarity about the role of each body in relation to the others? Are there gaps or overlaps in relation to other regulatory, advisory and dispute resolution bodies?

As mentioned above the NAPF believes that in order to ensure a consistent approach to the regulation of workplace DC pensions that a single workplace pensions regulator should be created, in particular that TPR takes on responsibility for workplace contract-based schemes with the FCA retains regulatory oversight for personal pensions.

We have also outlined our concerns about areas where TPAS's role may overlap with those of other bodies, in particular DWP and MAS.

Q5. Are there any other issues or evidence the review team should take into account?

One of the specific questions not addressed in the call for evidence was how effectively the bodies actual perform their functions. This is something we have addressed in the body of our response. One particular area of concern is how effectively and consistently TPR engages with pension schemes.

Finally, one organisation was excluded from the review - the PPF. As a key part of the compensation regime for defined benefit pension schemes, there is little rationale in questioning whether the PPF's function is still necessary. However it is important that the way the PPF goes about performing its functions is subject to the same scrutiny as TPR.