PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION

BETTER WORKPLACE PENSIONS: REDUCING REGULATORY BURDENS, MINOR REGULATION CHANGES, AND RESPONSE TO CONSULTATION ON THE INVESTMENT REGULATIONS CONSULTATION

"SIGNIFICANT GAINS COULD BE ACHIEVED BY REFORMING REGULATION WHICH WOULD ALLOW TRUSTEES TO FOCUS ON THEIR PRIMARY PURPOSE: ENSURING MEMBERS GET THE BEST POSSIBLE RETIREMENT OUTCOMES"

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INTRODUCTION

We're the Pensions and Lifetime Savings Association; the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels.

Our purpose is simple: to help everyone to achieve a better income in retirement. We work to get more money into retirement savings, to get more value out of those savings and to build the confidence and understanding of savers.

The Pensions and Lifetime Savings Association (the Association) is pleased the government is turning its mind to the regulatory burdens facing pension schemes and to addressing some of the 'snagging' issues outstanding from the implementation of Better Workplace Pensions.

There is a very real need for smarter, more effective regulation which reflects the evolving pension landscape, protects members and does not place a disproportionate burden on schemes. In the section immediately following this we reflect on a number of changes that would reduce the cost burden for schemes.

The Association believes that significant gains could be achieved by reforming regulation which would allow trustees to focus on their primary purpose: ensuring members get the best possible retirement outcomes. While some of the issues outlined below demand overarching change, many require small, often technical, changes which would ultimately benefit savers by reducing cost burdens and freeing up trustees to focus on member outcomes. In particular we would like to highlight the following issues as pertinent to this debate:

- GMP reconciliation
- Pension scheme indexation
- Maintaining contributions
- Section 75 debt
- Pensions liberation

By addressing these barriers government will ensure that the regulatory regime remains fit for purpose and suitable for a modern pension savings market.
With regard to the other changes proposed in the consultation:

- The Association welcomes the government's proposed changes to the definition of multi-employer schemes. The modified definition is both sufficiently clear and sufficiently broad to serve the purpose intended and "promotion" is the most useful term to use in this context.
- The Association has long argued that the requirement for an auditor to provide a statement on contributions places a disproportionate burden on schemes without

offering any discernable benefit. We are pleased that the government has recognised this and proposed its removal for large multi-employer schemes. However, we would like government to go further and exempt all master trusts from the requirement to provide an auditor's statement on contributions.

- The Association agrees that the AA regulations need updating to reflect modern accounting standards and to reduce superfluous administrative burdens on schemes. Detailed investment disclosures that are not consistent with current recommended practice under UK GAAP and the corresponding pensions SORP ought to be removed as recommended.

The response below has been structured around the questions posed in the consultation.

REDUCING REGULATORY BURDENS

Question 1: Do you have any views on ways that regulatory burdens on occupational pension schemes (including managers and trustees) can be reduced without compromising member protection?

There are a number of ways that we believe regulatory burdens on schemes could be reduced without compromising member protection. We list some of the ways that we think would be most helpful below:

- The current legislation governing conversion of GMPs to scheme benefits is not fit for purpose. Sections 24A – 24H Pension Schemes Act 1993 must be amended in order for conversion to be appealing or useful. The industry group brought together by DWP to address issues with the conversion procedure as outlined in the legislation has made a number of detailed suggestions regarding how the legislation could be amended so that it can be used as intended. It is time for something to be done.
- A different way of dealing with employer cessation events in non-associated multi-employer schemes is required. A consultation on the way that employer cessation events are handled in non-associated multi-employer schemes was held in March 2015 and closed in May. It is clear that the current system is not fit for purpose. The debt assessed when an employer stops active accruals in such a scheme does not correspond to the actual cost of providing benefit to its members and results in a situation in which the employer can afford neither to stay nor to leave. Attempted collection of an outsized debt from employers in this situation does not even serve the interests of most schemes. A different way of dealing with these cessation events is required. DWP has a responsibility to land upon a more sensible alternative to the present state of affairs, even if that solution is not agreed by all of those affected.
- Scheme responsibilities in relation to maintaining contributions need to be addressed. Under TPR's 2013 Code on reporting late payment of contributions to occupational pension schemes trustees have a duty to check that the contributions are paid in accordance with the schedule. They also have a duty to seek to recover any outstanding payments and debts to the scheme. The Association remains concerned that the legal obligations of employers and regulators are being passed to schemes who now have to effectively 'police' automatic enrolment. These requirements are particularly onerous for multi-employer schemes, which may have hundreds or thousands of participating employers. The Association would like the Regulator to take a more flexible approach concerning the monitoring of payments across the scheme and communications with members. Like the auditor's statement on contributions, it does not strike us as correct in principle, or workable in practice, that schemes are faced with these extra responsibilities.

- Pension scheme indexation needs to be modernised. RPI has been shown to be based on an inferior methodology to CPI and we agree with an approach that would abandon the measure. However, such a move must come with a commitment to modernise both the legislation governing pension scheme indexation and government debt issuance in a managed fashion. If RPI is abolished as a measure, DWP would need to legislate for a statutory override that enables trustees of defined benefit pension schemes to transition benefit indexation where their rules would not otherwise allow them to do so.
- More clarity and support is needed for schemes undertaking GMP reconciliation. The reconciliation of GMPs is proving to be an expensive and time-consuming process. More resource needs to be devoted to the process on the HMRC side. In addition, easements to the tax laws should be put in place to allow for easier adjustment of under and over payments. If reconciliation does not proceed at a more rapid pace, we risk the prospect of tens of thousands of members receiving incorrect information concerning their GMPs when they receive their state pension statements starting in 2018.
- HMRC should be taking a more active role in policing pension liberation by investigating questionable registered pension schemes. If HMRC does not have the resources to do this, individual pension schemes have still less. The current practice of requiring scheme trustees to conduct individual investigations of suspicious schemes even while under an obligation to transfer within certain deadlines puts trustees between a rock and a hard place. A revised HMRC registration process is required to provide trustees with the confidence that schemes are both legal and legitimate pension schemes and thereby to reduce the cost and pace of transfers.
- Many defined benefit schemes have faced or are facing a situation in which faulty record keeping in the past (usually well before passage of Pensions Act 1995) has led to an ambiguity as to whether certain amendments to scheme rules were properly made and in force. The process of establishing certainty through court proceedings is costly, risky and in many cases simply not possible. In 2013, the Association put forward a suggestion that scheme trustees be allowed to manage these situations by verifying through resolution the scheme rules as they were presented to members at the time they earned the benefits, provided that certain safeguards are met. We called this the “Imperfect Amendments Procedure” and we would be happy to provide further detail again if there is interest.

CHANGES TO THE REGULATIONS

Question 2: Other than the specific consultation questions, do you have any views on these regulations as a whole?

Nothing more has come to our attention.

Question 3: Do you agree that the right population of multi-employer schemes (commercial master trusts and industry-wide schemes) are now within the scope of the additional governance requirements? In particular we would welcome your views on:

- **Whether the single condition of past and present 'promotion' is sufficiently clear (without further definition) and is the right word to use in this context;**
- **Whether we have included all the necessary corporate scenarios within the definition of 'connected' employers, and they have been adequately described;**
- **Whether the definition of 'participating employer' works for the purposes of this policy.**

We believe that the current definition works well. We believe that "promotion" is the most useful term to use in this context, encompassing both schemes that have been established to serve a particular industry and those which are open to the public at large. The definition of "connected" similarly is both sufficiently clear and sufficiently broad to serve the purpose intended.

Question 4: Do we need to make further provision to protect members in schemes where there are no participating employers?

This question appears to be a little unclear. Is the concern that schemes that are closed to accrual but which have been promoted as multi-employer schemes when they were open to accrual would no longer be subject to the governance provisions meant for master trusts? We do not read the definition this way. We believe that the definition as written is very clear that a scheme that "*is or has been* promoted to employers as a scheme where participating employers need not be connected" (emphasis supplied) would keep a scheme that has been promoted as a non-associated multi-employer scheme within the definition even if there are no longer any participating employers.

Question 5: Would the definition as a whole allow multi-employer schemes which should be within scope to avoid the additional governance requirements? If so, please explain how.

We do not believe so, assuming that the only schemes that should be within scope are those in which unrelated employers participate, and that multi-employer schemes that have been established for a group of employers who are inter-related in corporate or partnership structure should be outside the definition.

Question 6: Do you agree or disagree that the AA regulations need amending? If you disagree please say why. If you agree, are you content with the proposed approach as set out in Option 3, or would you prefer an alternative approach?

The Occupational Pension Schemes (Requirement to obtain audited accounts and a statement from the auditor Regulations 1996) regulations (the AA regulations) are in need of updating for the reasons identified in the consultation - to reflect modern accounting standards and to reduce superfluous administrative burdens on schemes. Detailed investment disclosures that are not consistent with current recommended practice under UK GAAP and the corresponding pensions SORP ought to be removed as recommended.

The Association recommends that the regulations could go one step further than pointing to FRS 102 as a replacement to the current investment reporting requirements specified in regulation. Instead it should delegate the reporting standards to the relevant administering authority – in this instance the Financial Reporting Council (FRC) and the UK GAAP that they set. This means that when UK GAAP evolves in response to international evolution of standards, the regulation will also evolve, and will keep up with best practice by default. For example International Accounting standards are currently under review, and FRS 102 is scheduled to have a review in 2018. Significant changes to the international standard may provoke further change in UK standards, possibly resulting in further changes to the name of the standard. This would therefore avoid the need for any future artificial regulatory revisions.

The wording of such regulation ought to capture carefully the powers given to the FRC and recognised SORP setting bodies. This will ensure that the powers delegated are not inadvertently diluted. Their powers vary and in many instances the SORP setting bodies only have the power to recommend that the accounting standards be implemented in ways relevant to the kind of financial reporting body they represent. For instance PRAG could only recommend and not mandate that pension schemes disclose on transaction costs in the latest pensions SORP.

DWP should take active approach to engaging with the development of the UK GAAP so that the relevant disclosure framework for pension schemes now, and into the future, is fit for purpose. This statement informs our response to question 7.

Question 7: Do you agree or disagree with the investment information that would be prescribed under Option 3?

If you think additional information should be prescribed, could you please say what this information is, why it should be prescribed and what the impact that prescribing this information would have on scheme costs.

We agree that option 1, doing nothing, is not a desirable solution.

In the long term, we do not believe that option 3 would produce the desired policy outcomes of reducing superfluous administrative burden to schemes and ensuring that the accounting requirements prescribed by occupational pension scheme regulation is consistent with and not a duplication of modern standards of best practice. We think that option 2 would produce these outcomes.

Option 3 is a halfway house between devolving the setting of standards for reporting purposes to the UK GAAP and corresponding pensions SORP and maintaining the status quo. We recognise that the Department does not want to dilute the quality of investment reporting. However, if DWP believe there are important items lacking in the pensions SORP, such as on ‘the concentration of risk’, then they should work closely with the SORP setting bodies to ensure they are reflected there.

Since the current Pensions SORP does not include these items an interim solution is necessary - the Regulation could retain the reference to the investment disclosures that go beyond the scope of the pensions SORP, for a scheduled time period only while they work to ensure that the pensions SORP includes all relevant quality standards in the future.

The Department should also consider whether there are other regulatory mechanisms ensure that the important investment disclosures identified are reported on in some form and therefore whether they need to be covered by the AA regulations. For example, reporting in relation to ‘the concentration of risk’ and ‘employer related investment’ might be better managed exclusively by the pension Regulator’s expectation that schemes take an ‘integrated approach to risk management’.

Question 8: Do you have any comments on these estimated savings? If you think the cost savings would be higher or lower could you please provide your estimate of the impact that the proposed changes would have.

N/A

Question 9: Do you agree that large multi-employer schemes should be exempt from the requirement for an auditor's statement?

Yes. The Association has long argued that the requirement for an auditor to provide a statement on contributions places a disproportionate burden on multi-employer schemes without offering any discernible benefit. However, we would like to see the government go further and exempt all multi-employer schemes, not just large ones, from the requirement to produce a statement.

The pensions market has evolved since the requirement was introduced in 1996 with the increasing use of master trusts designed for diverse and numerous unconnected employers. As we have made clear in previous discussions, the amount and nature of the work required in producing a statement is highly dependent upon how a multi-employer scheme defines pensionable pay and the form of payment schedule produced. It is no longer practical to require master trusts, who can be overseeing hundreds of employers, to comply with a regulation that was clearly designed for traditional single employer schemes.

The Association would therefore support the removal of this measure for all multi-employer schemes, not just those with over 20 employers. We see no reason for smaller multi-employer schemes to have more onerous requirements placed on them than larger ones. The cost of producing a statement for smaller multi-employer schemes would be proportionately the same as that for larger ones and it is not clear to us that the cost benefit trade-off would be any different.

II) Is at least 20 participating employers the right number on which to base this exemption?

The Association understands that this threshold has been proposed in order to capture large multi-employer schemes or master trusts while still requiring smaller multi-employer schemes to produce a statement on contributions. We see no case for mandating multi-employer schemes of any size to provide an auditor's statement on contributions for the reasons set out in our answer to the previous question.

However, evaluating the proposed threshold on its own merits, we are not clear that a threshold of 20 participating employers would achieve the government's suggested objective. A threshold of 20 employers could still be too high for a proper audit to take place and strikes us as an arbitrary figure which could throw up some unintended consequences and create even more discrepancies in an already complex system. For example, a multi-employer scheme with four employers could have a similar membership profile as one with 20, yet only one would be required to monitor and report on the flow of contributions through providing an auditor's statement on contributions. There is also a concern that with a fluctuating numbers of employers sponsoring a scheme, a trust might move in and out of the exemption causing compliance problems.

It remains the Association's view that all multi-employer schemes should be exempted from the requirement to provide an auditor's statement on contributions.

III) Can you provide any information on likely savings from this change?

A large master trust in our membership has told us that for the current financial year the costs of servicing their internal and external audits are approximately £375,000. If their current rate of growth is to be maintained, they would expect the costs of providing these audits to increase very substantially over the coming years as staging continues.

Question 10) Do you have any comments on any aspect of these draft regulations?

None.

DISCLOSURE OF INVESTMENT INFORMATION

Question 11: To what extent do trustees and scheme managers currently make the information on selection, monitoring, retention, stewardship and realisation of investments and selection, appointment and monitoring of investment managers and other agents available to beneficiaries on request?

Our members have told us they already disclose some of this information, in their Statement of Investment Principles for example, or their Chair's Statement.

Our annual stewardship survey[1] recently found that:

- 37 % of respondents publicly disclose their voting record at company AGMs publicly available;
- a further 4% actively disclose this information to members while 22% willingly volunteer it when requested;
- 37% do not disclose their voting record.

We might expect these respondents to apply a similar approach/principle to disclosure of their investment policy and scrutiny of asset managers, and thus the breakdown of disclosure versus non-disclosure to be similar.

Our members also say that requests for this type of information are rare, though it's difficult to know whether this results from indifference or a lack of awareness.

Question 12: What are the challenges trustees and scheme managers might face in accessing this information including how it may be affected by different investment approaches?

Over 80% of respondents to our stewardship survey stated that their investment policy included commitments to engagement, voting and Environmental, Social and Governance (ESG) factors. Similarly, 68% of respondents set out their expectations in terms of stewardship in mandates to asset managers. 77% said they had increased their scrutiny of investment managers through processes such as reviewing reports from managers or questioning their managers face to face. 94% said they had exercised their voting rights that year.

This information, detailing investment policies and oversight procedures, might be easier to access than granular information on – for example – individual investment decisions or engagements with investee companies.

[1] PLSA Survey conducted in Autumn 2015, 60 pension funds responded

It should also be noted that existing information may have been prepared for an internal readership (ie trustee meetings) so could require re-phrasing or re-formatting in order to make accessible to scheme members.

Question 13: Do you have any information on the costs involved in disclosing this information to beneficiaries where such information is requested?

As above, existing investment policies or mandates and review procedures for asset managers could be disclosed for a limited cost. We do not hold data for responsibilities that are outsourced or the costs of new requirements.