



ASSOCIATION OF PENSION LAWYERS

Paul Thornton
c/o Secretariat to the Review of Pensions
Institutions
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DATE 4 April 2007

OUR REF KB/2070957

YOUR REF

Dear Mr Thornton

REVIEW OF PENSIONS INSTITUTIONS

I am writing on behalf of the Association of Pension Lawyers, Legislative & Parliamentary Sub-Committee. Your consultation paper was discussed by the sub-committee at its meeting on 3 April 2007, however, the sub-committee have not had an opportunity to read or approve this letter.

I understand that an extension has been granted by you for our comments to be submitted by 4 April 2007.

In the consultation paper, you asked various questions:

1. Is there a good case for bringing the PPF and TPR closer together?

The sub-committee were against this proposal for the following reasons:

- (a) The PPF is an administrator and provider of pensions and not a regulator.
- (b) If the PPF and TPR are brought closer together, this may give rise to more regulation of pension schemes (contrary to the spirit of the Government's current deregulatory review).
- (c) The PPF may be influenced in exercising its functions by the objectives of the Regulator. It may result in both organisations losing focus. Currently the separation between the organisations means that they focus on issues important to those bodies. A good example of this is the recent information issued by both bodies on contingent assets. Because the PPF and TPR organisations were not unduly influenced by each other, they were able to give helpful guidance on what they required from contingent assets. If they were brought together, there is a



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risk that they would have unified their approached and required contingent assets to satisfy both of their requirements in order to be acceptable. This would have made the processes more cumbersome for employers.

- (d) We recollect that when TPR was set up, consideration was given to including the PPF under the same structure, but this option was dismissed.
- (e) We agree with your point that the PPF's approach to risk assessment could be compromised by being part of a combined organisation.
- (f) We also agree that the two bodies have successfully worked together since they were established and it seems unnecessary and unhelpful to meddle with this.

2. Is there a good case for bringing FSA and TPR closer together?

The sub-committee felt the following points were important:

- (a) There are currently two compliance regimes in relation to pensions. For so long as it is considered appropriate to maintain different regimes we believe it is appropriate to have separate Regulators. The important issue is therefore where the line should be drawn between the two Regulators rather than whether they should be brought together.
- (b) The FSA is concerned with the regulation of providers who wish to market and sell their products. This is a very different environment from occupational pension schemes which are not sold and which are administered by trustees who include member-nominated trustees.
- (c) We recognise that the introduction of personal accounts will introduce a different type of arrangement into the pension arena and this vehicle will not fit naturally into either regime. If personal accounts are administered by a statutory body, it may be that regulation by either body is unnecessary provided there is sufficient scope for decisions to be reviewed.

3. Is there a good case for bringing the Pensions Ombudsman and the FOS closer together?

The sub-committee's view was that it would be very difficult to align these two bodies. Currently the Pensions Ombudsman has the power to make the same orders as a court while decisions of FOS are not binding.

If the Pensions Ombudsman and FOS are brought under the same organisation, it is likely would dwarf the Pensions Ombudsman. This could create problems with resourcing since the larger organisation would be able to offer better career prospects and development of talent.



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There is a risk that if the organisations were brought together neither organisation will continue to be as focused as it is at present on the issues facing those under their jurisdiction.

The sub-committee agrees that the differences in the organisations reflect the distinctive nature of pensions work. For this reason we see harmonisation of these organisations as almost impossible to achieve.

The sub-committee felt that the appropriate forum for complaints and issues in relation to personal accounts should be considered once the detail for those arrangements have been finalised.

4. Are any changes to PPF Ombudsman functions or boundaries needed?

The sub-committee feels unable to comment on this question since there has been no experience of the PPF Ombudsman.

5. Are any changes to TPAS functions or boundaries needed?

The sub-committee felt that combining TPAS with the Pensions Regulator would be very unhelpful and counter-productive. TPAS is staffed by volunteers and we believe there would be less goodwill if that organisation were part of the Regulator.

TPAS acts as a mediator and in order to do this needs to collect information from the trustees, administrators and employers concerned with a complaint or dispute. Organisations may be much less willing to work with TPAS if it is part of the Regulator.

Its role as a mediator means it would also not be a natural fit with either of the Pensions Ombudsman or FOS.

6. Are any changes to FSCS functions or boundaries needed?

We do not feel that we have any relevant experience to comment here.

7. Are any changes to the Pensions Regulator Tribunal functions or boundaries needed?

The sub-committee has no experience of the Pensions Regulator Tribunal and so does not feel able to comment on this.

8. Impact of pension reforms.

The sub-committee feels it would be unhelpful to comment at this stage on whether TPR should be involved with personal accounts while the details of the structure of this new pension vehicle are unknown. However, we would comment that if personal accounts are to be set up as a statutory body, a regulator for personal accounts may be



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unnecessary so long as there is an adequate review process for decisions made by that body.

If you need any further information, please feel free to contact me.

Yours sincerely

Katherine Banks