

**REVIEW OF DISCLOSURE OF INFORMATION REQUIREMENTS APPLYING TO  
OCCUPATIONAL, PERSONAL AND STAKEHOLDER PENSION SCHEMES  
RESPONSE TO CONSULTATION**

The comments set out below are the formal response (“Response”) of Sacker & Partners LLP (“Sackers”) to the consultation by the Department for Work and Pensions (DWP) on the “Review of Disclosure of Information Requirements applying to Occupational, Personal and Stakeholder Pension Schemes” which was published on 12 March 2009 (“the Consultation”).

Sackers is a firm of solicitors specialising in pensions law. The views expressed in this Response have been collated following discussions with a sub-group of the firm’s solicitors.

**Background**

1. We note that the DWP is seeking views on its review of the disclosure requirements which apply to occupational and personal pension schemes and its proposals for reform of those requirements.
2. The Consultation, which seeks to balance the need to help schemes by reducing administrative burdens, whilst ensuring that members receive appropriate information, proposes (as recommended by the Deregulatory Review<sup>1</sup>) the adoption of a “principles based” approach to disclosure regulation with a single overarching principle for disclosure applying to the detailed regulations.

**General comment**

3. As noted in both the Deregulatory Review and the Consultation, “Disclosure requirements applicable to communications with the membership of occupational schemes currently reside primarily in the Occupational Pension Schemes (Disclosure of Information) Regulations 1996, but are also scattered among at least a dozen other regulations and codes of practice.”<sup>2</sup> This can create difficulties for trustees and employers who need to keep abreast of the disclosure requirements for each different element of pension scheme governance, and we therefore agree with the

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<sup>1</sup> Chris Lewin and Ed Sweeney (July 2007): Deregulatory Review of Private Pensions: An independent report to the DWP

(<http://www.dwp.gov.uk/pensionsreform/pdfs/ReviewPaperJuly2007.pdf>)

<sup>2</sup> Deregulatory Review at paragraph 117

DWP's statement that "there is scope for regulations to be significantly restructured and simplified".<sup>3</sup> However, we have a number of comments on the approach proposed in the Consultation which we set out below.

### **Consultation Question 1: Use of a key overarching disclosure principle**

4. It is proposed that new disclosure regulations, which will apply to occupational, personal and stakeholder pension schemes, will "incorporate a high level, overarching principle to which schemes must have regard in determining their disclosure requirements and in interpreting the regulations themselves".<sup>4</sup> It is also proposed that the regulations would additionally incorporate detailed disclosure requirements based on existing requirements in the Disclosure Regulations<sup>5</sup> and other regulations which currently contain disclosure obligations for pension schemes, as outlined in Annex C of the Consultation.
5. Whilst we support the simplification of pensions legislation generally, the introduction of an overarching principle in addition to numerous specific requirements potentially adds to the disclosure burden as opposed to alleviating it and complicates matters for those required to "have regard to" the new principle as well as the specific requirements. On this basis, therefore, we consider that either (a) a general principle or (b) prescriptive requirements could be used. But to run both alongside each other is unlikely to result in simplification of the disclosure burdens faced by trustees and employers. In the light of:
  - the IORP Directive, Article 11.4 (members to receive, on request, "detailed and substantial information" in several areas);
  - the widespread desire to "grandfather" existing disclosure arrangements where compliant with current law – particularly as barely any new defined benefit schemes are being (or expected to be) established;

we support (b) above rather than (a).

In case that view is not accepted, we comment in 6 below on the draft principle.

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<sup>3</sup> Consultation at paragraph 32

<sup>4</sup> Consultation at Annex C, paragraph 1

<sup>5</sup> The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655)

### **Wording of draft principle**

6. The draft principle itself is expressed broadly and consequently could impose an unfair burden on trustees. For example, in seeking to meet the requirement to provide “any other relevant information that will enable each member to make decisions in his or her own best interests”, (a) the reference to “each member” implies the need to cover individual circumstances (an obligation we would not support) (b) trustees might be tempted to provide significant quantities of information to ensure that the duty is met, but in the process inadvertently overload members with information.

Regarding (b), this could hinder members in their decision making, particularly in the context of defined contribution fund choices.

Consideration also needs to be given to the already fine line between provision of information and the giving of financial advice, which could be further blurred if the overarching principle were introduced as drafted.

7. Unintended consequences may arise from the words “and any other relevant information”. We suggest that the disclosure requirements of Article 9 of the Directive would be better covered by deleting those (and the subsequent) words and substituting “and any options under the scheme that apply to them”.

### **Consultation Question 2: Consolidation of existing disclosure requirements**

8. We agree that the consolidation of the existing disclosure requirements into a single set of regulations would greatly assist those involved in pension provision and administration. However, just as the DWP notes in the Consultation, we also acknowledge that in certain circumstances “there are information requirements embedded in a set of regulations dealing with a specific issue, and taking those requirements out of their existing location would appear to be unhelpful”.<sup>6</sup> The Consultation suggests not incorporating such provisions into the new disclosure regulations.
9. This approach could cause confusion as, if the general consolidating approach is adopted, there will be an expectation that all disclosure requirements are covered in

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<sup>6</sup> Consultation at paragraph 33

the new disclosure regulations. It would therefore be very helpful if the new disclosure regulations could include a cross-reference to the other relevant regulations, thereby sign-posting where the additional disclosure requirements are to be found.

Further, if some provisions of the new regulations are moved from (or are relevant to) other continuing regulations, we suggest that the latter cross-refer to the new regulations – an example being the Preservation Regulations (SI1991No.167) if the move of regulation 27A is effected, as proposed by paragraph 32 of Consultation Appendix C.

### **Consultation Question 3: re Annex C**

10. Paragraphs 13/14 refer to 29 existing requirements and envisage that these be “simplified, focusing on requirements in IORP”. While the IORP requirements must be met, we would be surprised if the DWP proposed to delete the whole of Schedule 1 (the 29 paragraphs). For example, these contain valuable pointers such as the decision taken on discretionary distributions (paragraph 17), and the existence of the Pensions Advisory Service, the Pensions Ombudsman and the Pensions Regulator.

On the other hand, the existing Schedule 2 could be pruned heavily. However, we would recommend retaining the obligation (paragraph 4) for basic data about the member to be included on the leaving statement, so that on subsequent query an adviser would have this without needing to enquire.

### **Consultation Question 4: Applying reasonable periods to disclosure**

11. The use of reasonable periods works well in some areas of pension provision, for example where a scheme specific approach can be more efficient than a general one. Positive examples can be found in trustees’ arrangements for the nomination and selection of member nominated trustees, as well as in the context of internal dispute resolution.
12. Given the number of disclosure obligations (both existing and proposed), having to determine what is reasonable in each circumstance is likely to add considerably to the workload of pension scheme trustees and sponsors, as well as to confusion in terms of member expectation. We therefore consider that for the purposes of

disclosure, members and those involved in pension provision and administration would be better served by the imposition of set deadlines.

### **Consultation Question 6: Electronic Communications**

13. We welcome the recognition of electronic means as essential tools for communicating with pension scheme members. That said, as the DWP recognises, not all pension scheme members will have access to email or to the internet (for the purpose of accessing their scheme's website). Careful thought therefore needs to be given to the concept of 'deemed delivery' in two distinct scenarios:

- (a) email to inform or draw attention;
- (b) website for standing information.

Clearly (a) can only be used where the scheme has been given a member's email address. (b) requires notification (e.g. by post or workplace circular) to the relevant members that website information is available and asking if they have internet access – non replies will entail hard copy information.

The above may change at a future date if current proposals for nationwide broadband are implemented.

14. Regarding deemed delivery, what steps will need to be taken when an email message is rejected (or bounces back)? If information is to be provided via a website, there will need to be provisions to inform members when material changes are made.

15. Where positive action is required from a member (for example to select their preferred fund choices), merely posting information on a website is unlikely to be sufficient to elicit a response from all members. In all cases, appropriate security measures will need to be put in place.

### **Impact on current compliance**

16. We support the position described in paragraph 36 of the Consultation that schemes which comply with the current regulations will not have to alter their procedures.