

## Pensions - July 2012

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#### LATEST NEWS FROM THE COURTS

## Incentive Exercises – Code of Practice

Prompted by the Pensions Minister's concerns about poor practices being adopted when undertaking pension Incentive Exercises (for example enhanced transfer values (ETVs) and pension increase exchanges (PIEs)), an Industry Working Group has issued a voluntary **Code of Practice** for employers, trustees and consultants.

The Code is intended to improve the standard of Incentive Exercises whilst acknowledging that they remain a legitimate tool for sponsors looking to manage defined benefit scheme liabilities.

The Code, which is supported by the Department for Work and Pensions (DWP), the Pensions Regulator (TPR) and the Institute and Faculty of Actuaries, introduces seven principles for incentive exercise programmes:

- Cash incentives that are contingent on the member accepting an offer are not viewed as appropriate.
- Employers should pay for members being offered ETVs to get professional advice. For modification exercises (eg where benefits are being changed but remain in the scheme, such as PIEs) employers should offer financial advice to members if the terms are less than cost-neutral.
- Communications with members about any offers should be fair, clear, unbiased and straightforward.
- Records should be retained, and "insistent customers" (ie those who accept the deal despite receiving advice not to) should be reported to the parties involved.
- Sufficient time should be given to make a decision, and no undue pressure should be put on members to accept an offer.
- Greater protection should be given to vulnerable members - in particular members over age 80 should only be included on an "opt-in" basis.
- All parties involved should ensure that they are aware of their roles and responsibilities, and act in good faith.

The Code of Practice does not apply to member options offered in the normal course of running an occupational pension scheme, such as individual transfer values, early retirement and options to exchange pension for a cash sum on retirement. It also does not apply to more common scheme restructurings such as bulk transfers, changes to future accrual or buy-outs. However the Code does encourage the application of some or all of the principles where this might be appropriate.

A monitoring body has been set up to review the Code and its application. Ultimately this may lead to legislative changes being made.

For further information on the Code of Practice, see our [information sheet](#).

## RPI/CPI Update

The Consumer Prices Advisory Committee, which advises the UK Statistics Authority, has recommended a change in the collection of data for the Retail Prices Index (RPI) to remove "unjustified causes" in the difference between different price index measures.

The change could lead to a reduction in the long-term rate of inflation measured by the RPI, reducing pension scheme liabilities but potentially penalising schemes who hold significant quantities of index-linked gilts as part of their investment strategy.

However, the work is at an early stage and any methodological changes to the RPI require the approval of the Statistics Authority before being referred to the Bank of England. Our recent [information sheet](#) on this subject includes further detail on the proposals and their impact on pension schemes.

## EIOPA consultation on QIS

The European Insurance and Occupational Pensions Authority (EIOPA) has launched a **public consultation** on the technical specifications for the quantitative impact study (QIS) of its final advice to the European Commission on the IORP (Institutions for Occupational Retirement Provision) Directive review (see **Pensions News – March 2012**).

It is intended that the QIS will only cover the numerical calculations relating to the “holistic balance sheet” proposal rather than the wider implications relating to funding obligations, governance or disclosure. The technical specifications are aimed at providing guidance for the institutions participating in the QIS to value the holistic balance sheet and calculate the solvency capital requirement.

TPR has confirmed that it will be carrying out the QIS for occupational pension schemes in the UK using its existing data, although larger schemes may consider participating voluntarily and can feed back their results to TPR.

Meanwhile, European Commissioner Michel Barnier has announced that revisions to the IORP Directive, originally expected by the end of 2012, will not now be tabled until summer 2013 to allow time for thorough consideration of the QIS.

## Pensions Minister: “No compromise” on Solvency II

Pensions Minister Steve Webb has said the Government remains resolute it will **fight EU plans** to apply Solvency II funding rules to pensions.

The Minister said that it was “unbelievable the Commission is pressing ahead with these pointless proposals which would cost UK employers with final salary schemes hundreds of billions of pounds and lead to DB [Defined Benefit] scheme closures”. He also encouraged employers to take part in the consultation on technical specifications.

## Updated Recovery Plan Analysis

TPR has published an update to its **annual report** on the funding of UK defined benefit (DB) and hybrid schemes which are in funding deficit. The update is based on “Tranche 5” scheme valuations (ie those with valuation dates between September 2009 and September 2010). Initial findings include:

- 5 in 6 of Tranche 5 schemes are closed to new entrants.
- 21% of Tranche 5 schemes used some form of contingent security (the majority of whom had a parent/group company guarantee in place)
- Tranche 5 schemes were, on average, 78.8% funded on an ongoing basis.
- The average (unweighted) length of Tranche 5 recovery plans was 8.1 years, compared to 9.5 years for Tranche 4.

## Workplace Defined Contribution (DC) Pensions

TPR has updated its statement on “**enabling a good member outcome in DC pensions**”, having previously published (see **Pensions News – January 2012**) the following six principles for good design and governance of workplace DC schemes:

1. Schemes should be designed to be durable, fair and deliver good outcomes for members.
2. A comprehensive scheme governance framework should be established at set-up.
3. Schemes’ decision-makers should understand their duties and be fit and proper to carry them out.
4. Schemes benefit from effective governance and monitoring through their full lifecycle.
5. Schemes should be well administered with timely, accurate and comprehensive processes and records.
6. Communication to members should be designed and delivered to ensure members are able to make informed decisions about their retirement savings.

Since then TPR has been liaising with trustees, fund managers, administrators and other parties with the intention of identifying key features which, if present in a DC arrangement, are more likely to result in a good outcome for members. A **draft list** setting out how these features tie up with the original six principles is now available on TPR’s website.

Meanwhile, in order to assist employers in deciding whether their DC scheme qualifies as an automatic enrolment scheme, TPR has also produced an online **tool**. TPR has also produced guidance on “**selecting a good automatic enrolment scheme**”.

# Auto-enrolment - Compliance

TPR has published its **strategy** for tackling non-compliance with the new auto-enrolment regime, together with an overview for employers.

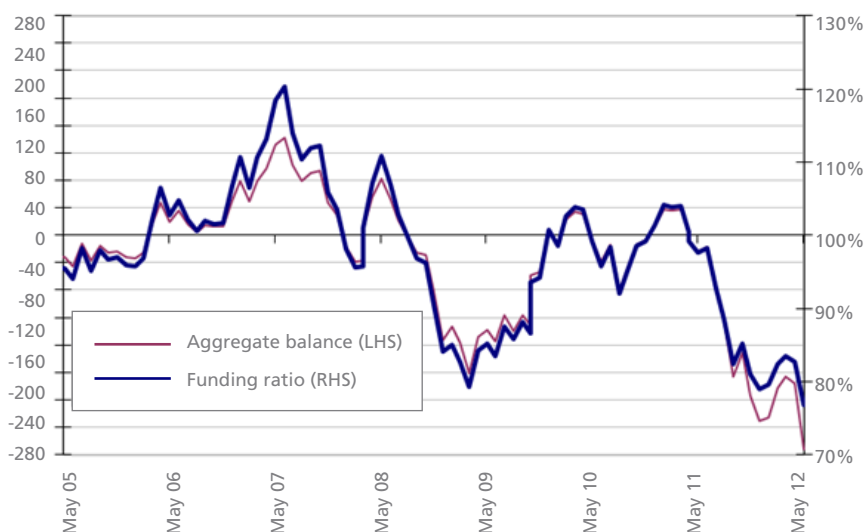
TPR aims to be “firm but fair”, providing information and support so that employers know what they need to do to fulfill their new duties, and working with employers who have not understood their duties or who have been unable to comply. However, employers who ignore their new duties will be subject to TPR’s powers, including statutory notices, fixed or escalating penalties and, ultimately, court action.

## PPF: 7800 Index updated

The **latest update** of the Pension Protection Fund’s (PPF) 7800 Index of schemes’ funding on a s179 basis has been published.

The aggregate deficit of the 6,432 schemes in the index is estimated to have increased over the month to £312.1 billion at the end of May 2012 (there was an aggregate deficit of £216.8 billion at the end of April 2012).

Funding has also worsened over the year (there was an aggregate deficit of £24.5 billion at the end of May 2011).



### OTHER NEWS

## LIBOR

Barclays has been fined £59.5m by the Financial Services Authority (FSA) for misconduct relating to manipulation of the London Interbank Offered Rate (LIBOR) and the Euro Interbank Offered Rate (EURIBOR). The US Department of Justice and the Commodity Futures Trading Commission (CFTC) also imposed fines, forcing Barclays to pay a total of around £290m.

The National Association of Pension Funds (NAPF) is **encouraging** trustees to liaise with fund managers over whether their schemes’ assets have been affected. The issue may directly affect schemes with swap contracts (or other derivatives) with LIBOR obligations.

## HMRC: Salary Sacrifice Guidance

HM Revenue & Customs (HMRC) has updated its **Q&A document on salary sacrifice arrangements** in order to add additional information on workplace pension schemes and auto-enrolment.

There had been some doubt over whether salary sacrifice schemes could meet auto-enrolment requirements because employees are typically only able to vary their choices under salary sacrifice arrangements once a year (whereas auto-enrolment rules require that employees are able to opt out whenever they wish). HMRC has now confirmed that members can opt out of salary sacrifice arrangements for pension contributions at any time, provided any appropriate changes to terms and conditions of employment have been made.

## HMRC: Asset-backed Contributions

Following changes to the tax treatment of asset-backed contribution arrangements originally outlined in the Chancellor’s Autumn 2011 statement (see **Pensions News – January 2012**), HMRC has published **draft guidance for employers**.

The guidance outlines the circumstances in which upfront tax relief can be obtained when setting up asset-backed contribution arrangements for funding pension schemes from 29 November 2011. Further sections will be added to the guidance in due course, covering contributions paid before this date as well as details of transitional provisions.

## Actuarial Profession: Conflicts of interest

A working party of the Institute and Faculty of Actuaries has finalised its package of conflicts of interest material, following consultation in October last year. The package includes guidance for actuaries on managing conflicts of interest, including where advice is provided to both trustees and sponsoring employers.

The package also includes updates to an Actuarial Practice Standard for actuaries providing pensions-related advice, as well as a ***note for pension scheme trustees***. The note for trustees is intended to assist trustee boards in exploring with their actuary the kinds of conflicts of interest which might arise in practice.

You might also find our recent publications on the following topics useful:

- ***Current Pensions Issues – Summer 2012***
- ***Current Issues in Pensions Financial Reporting - 30 June 2012***
- ***The Impact of Final Salary Pension Schemes on Companies' Share Prices***
- ***Auto-enrolment and your Occupational Pension Scheme***
- ***RPI, CPI and the Formula Effect***
- ***Incentive Exercises - Industry Code of Good Practice***

Finally, we have a limited number of spaces remaining for new trustees (or existing trustees who wish for a refresher) who would like to attend one of our basic trustee training days in Leeds (18 September) or Bromsgrove (14 November). Please see ***our website*** for further details.

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For further information on any of the topics in this bulletin, please speak to your usual Barnett Waddingham consultant, or visit our website [www.barnett-waddingham.co.uk](http://www.barnett-waddingham.co.uk)

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