

The Department for Work and Pensions discussion paper on "Payments to the employer (the "surplus" rules)"

A response by

The National Association of Pension Funds

October 2008

Introduction

1. The NAPF is the leading voice of workplace pensions in the UK, with over 1300 members, between them providing pensions to over 10 million working people. NAPF Member schemes hold assets of some £800bn.
2. The NAPF welcomes the opportunity to respond to the discussion paper. As the document is described as an options paper designed to inform DWP's further work in the area of legislation governing surplus, we have restricted our response to a brief comment on each of the options.

Options

3. **1 – Clarification of the members' interest requirement**

We agree that guidance to clarify the extent of the "members' interest" requirement in section 37 of the Pensions Act 1995 would be helpful. We would stress that any such guidance should acknowledge that the interests of pensioner members are not necessarily identical to those of current employee members.

4. **2 – Sharing payments between employers and scheme members**

We believe that this option is illogical in a scheme where employees pay contributions at a fixed rate and employers meet the balance of cost.

5. **3 – Lowering the full buy-out threshold**

This is the option favoured by NAPF although it is a difficult area where the strength of the employer and the level of PPF compensation potentially come into play. We believe that the threshold should be lowered but we understand that funding levels need to be kept sufficiently high to keep a scheme out of the PPF in the event of employer insolvency. We suggest that a funding level appropriate to a 'closed fund' (using Statutory Scheme Funding or section 179 assumptions) could be one for consideration. Alternatively, an intermediate point between this and full buyout level might be preferred.

6. **4 – Lower threshold for open schemes only**

Whilst this proposal might be helpful in some circumstances, it fails to recognise that many employers have more than one scheme – and might like to use any stranded surplus in a closed scheme to support the funding of an open one.

7. **5 – Encouraging trustees and employers to agree in advance**

Trustees and employers are already encouraged by the Pensions Regulator to discuss and agree plans in advance for post-valuation action. The NAPF believes that there would be benefit in making greater use of this existing framework. However, we also think that the flexibility to be able to deal with a surplus in the light of all current conditions would be very important.

8. **6 – Schemes which do not provide for payments to the employer**

We believe that payments should be made possible for these schemes by the introduction of overriding legislation.

9. **7 – Market solutions**

The use of contingent assets and escrow accounts can be difficult and expensive to negotiate. To some extent they have been used to work around the issues and are not necessarily the preferred options for employers. We do not feel they should be held up as a satisfactory solution to the current concerns.