

Response to the *Hampton Implementation Review* of the Pensions Regulator

The *Hampton Implementation Review* programme

The recommendations of the *Hampton Report* of March 2005 and the *Macrory Report* of 2006 together form the foundations of the Government's vision for a risk-based approach to regulatory inspection and enforcement, as part of its wider *Better Regulation* agenda.

Since 2007, the *Better Regulation Executive* and the *National Audit Office* have been engaged in a programme of independent reviews of all national regulators. The purpose of the *HIR* programme is to provide a structured check of regulators' performance against the *Hampton principles* and *Macrory principles* and characteristics, to highlight areas for development, identify and share good practice in the regulatory community and – where regulators are performing well – to help improve stakeholders' perception of regulation.

The Pensions Regulator underwent its *Hampton Implementation Review* between 29 June and 3 July 2009.

Executive summary

We welcome the positive report of the *Hampton Implementation Review*. We are very pleased that the review team concluded that we have successfully embedded the *Hampton principles* in our work at both operational and strategic levels, identifying examples of good practice across the range of areas covered by the review.

We also particularly welcome the report's view that our approach to enforcement is effective and proportionate. We respond to the report's findings in this area in detail below, and take the opportunity to explain our use of enforcement powers when this is necessary, and their deterrent effect, in the context of our wider efforts to educate, enable, and promote good practice in pensions provision.

Overall we found the review to be a useful exercise, providing a welcome opportunity to understand the merits of our regulatory approach against a generic benchmark, and to identify areas where we need to continue to focus our efforts to deliver *Better Regulation*.

We very much welcome the report's identification of specific strengths in a number of areas, including:

- our pragmatic approach and responsiveness to changing economic circumstances;
- the extent to which a risk-based approach is integrated in the culture of the organisation;
- the strength of our stakeholder relations and the view from our stakeholders that we are a transparent organisation which listens and consults meaningfully with its regulated community;
- our effective systems for identifying and addressing risks to pension schemes proportionately – allocating resources to the most serious issues on the basis of an assessment of these risks;
- our focus on continuous improvement based on a learning culture within the organisation, stakeholder feedback and outcome-focused performance measurement;
- our use of a clear and developing evidence base as the foundation for regulation; and
- our innovative approaches to reducing the burden of information reporting obligations.

The report highlights three key issues on which it suggests the regulator should focus in order to meet the *Hampton* criteria more fully. As the report helpfully acknowledges, we are already focusing on these issues, in the broader context of responding to the challenges of the shifting pensions landscape and our new responsibilities under the Pensions Act 2008. The report also recommends two other specific actions not directly related to these highlighted issues.

We have summarised our response to each of these issues and recommended actions in turn below.

Response to the findings on the regulator's enforcement approach

Key findings:

- The Pensions Regulator has a significant and effective range of sanctions and enforcement tools at its disposal, which it applies in a proportionate way.
- The Pensions Regulator has made relatively little use of formal enforcement action, but stakeholders feel that alternative measures taken by the Pensions Regulator can have an equivalent effect in practice.
- The Pensions Regulator is regulating in a complex environment where a single high-level enforcement policy may not be appropriate; a published policy is much more likely to be necessary in clarifying its approach to its *Employer Compliance Regime* responsibilities.

Response:

We welcome the report's view, developed on the basis of discussions with a wide range of our stakeholders, that we have an appropriate range of powers and that we use them proportionately and effectively.

Enforcement is an important part of our regulatory toolkit, but it should only be used when necessary, complementing our 'educate and enable' approach. As the report helpfully sets out, we have a wide range of powers we can use to gather information, rectify issues with schemes or tackle avoidance of pension liabilities. It is also important to note that we work closely with the Department for Work and Pensions (DWP) to ensure that the legislative framework for the regulator remains fit for purpose and to identify emerging risks that might require the regulator to be given new powers. For example the Pensions Act 2008 granted us new powers to address new risks to members' benefits and to the Pension Protection Fund (PPF), in light of market innovations in dealing with pension scheme risk.

A number of our powers may only be exercised with the approval of the regulator's Determinations Panel. This panel, though a committee of the regulator, is separate from the regulator, in that it has a separately appointed membership and legal support. The fact that the panel is not involved in investigating cases, ensures that our decisions to exercise our powers are evidence-based, fair and impartial. The panel also acts as a useful check that action is consistent with the principles of good regulation. Where enforcement powers may be exercised by staff at the regulator without approval by the Determinations Panel, these are referred to as 'delegated powers'.

The regulator's ability to take enforcement action acts as an effective deterrent, often creating sufficient incentive to enable us to secure good regulatory outcomes without recourse to enforcement action itself. In other cases, initial steps towards enforcement proceedings have been enough to bring about a compromise.

Where we are actively engaging with schemes and employers to address risks, our aim is to prevent these risks from crystallising into problems and to enable solutions to be found. Nonetheless we will follow through with enforcement action where we believe this is necessary to achieve our statutory objectives. As the report suggests, this is very much in line with our risk-based approach.

The most recent data on the regulator's powers bears out these findings. Of the 4,747 cases and enquiries active in the period 1 April 2008 to 31 March 2009 we formally exercised our powers in 787 instances. In the following six month period 1 April 2009 to 30 September 2009 there were 3,272 active cases and enquiries, and we formally exercised our powers in 798 instances. The powers used in these cases were wide ranging in both their application and extent. In terms of our information gathering powers we have required information from schemes, employers and their advisers as well as inspecting premises and retaining documents.

In the context of our avoidance powers we have issued clearance statements providing assurance in the context of a specific corporate transaction that we will not use anti-avoidance powers. We have also issued two Financial Support Directions – requiring support for a final salary pension scheme from a party associated with the scheme's sponsoring employer¹. In addition, we have appointed trustees (in some cases with exclusive powers) and exercised our powers to suspend and prohibit trustees. We present more detailed figures on the frequency with which we formally exercise our powers for the period 1 April 2008 – 31 March 2009, and for the period 1 April 2009 – 30 September 2009 at Annex A.

We note the report's view that a single high-level enforcement policy may not be appropriate in the context of our current regulatory responsibilities and in particular that such a policy statement could present risks to the scheme specific nature of our defined benefit funding regime. In accordance with this view, we have no intention to publish a single enforcement policy at this time, although we will continue to review the materials we do publish on our website providing focused guidance for the regulated community on our approach to our regulatory responsibilities.

¹ Issued by the Determinations Panel in 2007-08.

We agree that it will be necessary to publish an enforcement strategy setting out our approach to regulating compliance with the new employer duties. We will consult with interested stakeholders and publish this strategy in 2010.

Response to key highlighted issues

Issue:

Developing effective guidance channels for reaching smaller pension schemes and employers.

- The Pensions Regulator will need to further increase the penetration of its advice and guidance to reach trustees of smaller pension schemes.
- The Pensions Regulator will need to explore means of reaching smaller schemes and employers.

Response:

In keeping with our risk-based approach to regulation there is a clear requirement to give appropriate attention to the small number of very large schemes which have some 85% of scheme members.

Nonetheless, we recognise that reaching out to smaller schemes is important and that there are often greater challenges in communicating effectively with smaller schemes and employers than with larger ones. As the report acknowledges, we fully accept that meeting these challenges is increasingly important in light of our new responsibilities to regulate employers' compliance with their duties under the Pensions Act 2008 from 2012, and the impact that these reforms are likely to have on the pensions market, set against the background of an existing trend towards defined contribution (DC) pension scheme provision.

We welcome the fact the report has found much to praise in our 'innovative and effective' approach to educating and enabling the pensions community and in the quality of the guidance material we have supplied to trustees and more widely. We believe we have indeed made significant progress in our efforts to educate, support and influence the regulated community – including small schemes and employers.

Good examples of this include the *Trustee toolkit* - our free online training tool to help trustees and others with an interest attain the knowledge and understanding required of trustees by law; and *Pensionwise* – our website which provides clear, accessible information of relevance to employers operating small schemes and their trustees. More generally we have adopted a campaigns-based approach, targeting particular audiences through a variety of different channels to communicate our key messages in a sustained and consistent way.

We consider it important that smaller schemes maintain the same standards of governance and administration as larger schemes but acknowledge the need to tailor our approach to such schemes to educate and enable them to do so.

In November 2009 we embarked on a campaign focused on improving standards of scheme governance and administration, and have been focusing on providing education and guidance to small schemes in particular in this context. For example, we have recently published a revised code and scope guidance for trustee knowledge and understanding – to include a specific section aimed at small schemes. We have updated our *Trustee toolkit* accordingly and have also updated our guidance for schemes on the internal controls they should have in place, focusing in particular on small and medium schemes to ensure they have practical tools for risk management. Alongside this we have launched a *bite-sized e-learning module* to enable the key messages on scheme governance to be absorbed quickly and conveniently.

We continue to assess the effectiveness of different channels of communication with those we regulate, using a variety of metrics, to ensure that the cost of this activity is justified by the regulatory outcomes we can achieve in terms of real changes in behaviour in the pensions community. The key performance indicators we use to assess progress on scheme governance and administration include separate measurement of responses to our annual governance survey from small schemes about their internal controls; focusing on areas such as risk management, management of conflicts of interest and investment strategy.

Finally, we are now very much focused on the challenge of delivering a regulatory regime to maximise compliance with the new pensions duties which fall on all employers from 2012. Effective communications with employers and other stakeholders is vital to this objective. We are committed to an effective dialogue with employers as we design this system to make it as easy as possible for them to comply. A targeted series of communications campaigns will then be rolled out from 2010, directed initially at intermediaries from 2010, and then at employers from 2011. We will be providing information and guidance to enable employers to meet their obligations, and to ensure that intermediaries are able in turn to provide clear accurate information to employers.

Issue:

Communicating the Pensions Regulator's approach to the regulation of trust-based DC schemes.

- The systems and structures for managing risks to DC pensions do not at present inspire the same levels of confidence and assurance amongst some stakeholders.
- Given the long-term trend for employers to move away from DB provision and towards hybrid or DC provision, this is likely to become a more significant issue in the coming years.
- The changing balance of the Pensions Regulator's work may mean that more conventional inspection methods could be needed in future.
- More could be done (by the Pensions Regulator and its major delivery partners and partner regulators) to present 'joined up' information for the general public, who may not be aware of the specific responsibilities of the Pensions Regulator.

Response:

We believe that DC provision will increase, both as employers move away from DB to DC and as many others start to think about providing pensions for the first time, in response to the 2012 reforms. We therefore accept that the report's focus on regulation of DC schemes as a strategic priority for the regulator is reasonable.

We would however stress that the regulator has been focused on risks to DC schemes for some time. In 2006 we consulted with industry to develop an understanding of the risks prevalent in DC schemes. In 2007 we published our DC risk framework and in 2008 we embarked on a major programme of deliverables to provide help and assistance to trustees and employers in understanding and mitigating these risks.

Most recently we launched a campaign in July 2009 aimed on improving standards of practice in the management of DC schemes. The campaign has built on our existing guidance to trustees, employers and their advisors, to focus on ensuring that scheme members are able to make informed choices at retirement, and encouraging employers to become more engaged and aware of their responsibilities in providing pension schemes.

We have made clear in this context that we are willing to take enforcement action to address continued poor practice if this proves necessary. However we would stress that the work we have done to date to identify DC risks and monitor the impact of our guidance and education work has been a necessary foundation to ensure an evidence-based approach going forward that is both proportionate and targeted at addressing risk.

We have now begun a comprehensive review of the DC risk framework and the tools we use to regulate DC provision, to ensure that our understanding and response to DC risks remains fit for purpose in light of the trend towards DC pension provision and the impact of 2012 on the DC market. It is too soon to comment on the likely outcomes of this review or on whether, as the report suggests, more conventional methods of inspection may be necessary. However we believe this work will provide the framework needed to address the review's recommendations in this area.

We are pleased that the report highlights the regulator's effective joint working with its regulatory partners, and in particular our good working relationship with the Financial Services Authority (FSA). We acknowledge the importance of a continued focus on providing information to joint stakeholders in a co-ordinated way. We believe we have made good progress in this area, for example, we published in 2007 a clear public statement setting out how the FSA and Pensions Regulator regimes overlap in respect of workplace contract-based pension schemes and how we work together to ensure joined up and effective regulation of this area of the market. Furthermore we have worked closely with the FSA to develop information for pension scheme members. We believe that presenting a single point of information and contact for scheme members, whether in jointly published leaflets or via the FSA's *MoneyMadeClear* website, is often the right way to ensure members have access to the information they need.

Looking forward we also acknowledge the need to work effectively alongside the DWP and the Personal Accounts Delivery Authority (PADA) as we seek to raise awareness among employers and others of the new pension duties falling to employers from 2012.

Issue:

Clarity on the Pensions Regulator's approach to its new responsibilities for regulating employer compliance under the Pensions Act 2008.

- A published enforcement policy is likely to be necessary in clarifying its approach to its Employer Compliance Regime responsibilities.
- The Pensions Regulator needs to deal with unintended consequences that may follow from its new objective under the Pensions Act 2008.

Response:

We accept the recommendation of the report that the regulator should provide clarity on its proposed approach to regulating employer compliance with the new pensions duties. As the report recognises, we are fully aware of the significant challenge presented by our new responsibilities in this area.

As noted above we believe effective communications with employers, intermediaries, and other stakeholders are vital to our meeting this challenge. It is important that we get the timing of our communications activity right. We are already beginning to set out our broad approach to this regime. However, as the report recognises, we will need to wait until the completion of the legislative process next year before setting out our intended approach in more detail.

Our research to date suggests that the timing and format of communications activity needs to be informed by a sophisticated understanding of the way businesses will respond, with the aim of ensuring that businesses receive information in a timeframe and format that will enable them to act, and indeed motivate them to comply.

As noted above, we agree that it will be necessary to publish an enforcement strategy setting out our approach to regulating compliance with the new employer duties. We will consult with interested stakeholders and publish this strategy during 2010.

Alongside the development of the Employer Compliance Regime itself we are working to identify and address regulatory risks which may emerge from our taking on this new responsibility and from the 2012 reforms more widely. This work is focusing on the implications of the reforms for the pensions market, as well as aligning the new regime with our existing regulatory approach.

Response to other recommended actions**Recommended action:**

The Pensions Regulator's website is well structured, but needs more signposting. We would encourage the Pensions Regulator to explore how information could be more clearly indexed with these users in mind.

Response:

The Pensions Regulator website is a vital part of our interface with our regulated community, and we are committed to ensuring it is user-friendly and informative. We welcome the positive comments made in the report about the broad structure of our website, and the accessibility of our guidance material. We find the comments about improving the signposting and indexing of information on the website to be reasonable. We are currently redesigning the website, in part to ensure that the information provided online is easier to find and use. This redesign process is user-centred, with customers involved throughout to help inform and test the structure of the new website. We will therefore consider how best to address this recommendation as part of this work.

Recommended action:

There are overlaps between the data required by the Pensions Regulator and some of its partners which the Pensions Regulator should explore with a view to reducing costs. We would encourage the Pensions Regulator to build upon its achievements to date with regard to its own data in seeking to secure a more co-ordinated approach amongst the bodies concerned.

Response:

We welcome the positive findings in the report on our efforts to reduce the burden of data reporting. This programme of work is ongoing, and we therefore accept the report's finding that it merits our continued focus.

As the report acknowledges, we have already used data sharing arrangements as one of a number of means to reduce the volume of data we collect through the scheme return. We are now working with a number of partner organisations to identify further opportunities to share data where appropriate and permitted under the restricted information/data protection regimes. Moreover, as noted in the report, we are working alongside HM Revenue and Customs to assess the feasibility of better integrating our registration processes, with a view to reducing burdens for pension schemes.

We would also note that the regulator's 'data panel' provides a robust process – identified as good practice in the report – for ensuring that the addition of any new requests for data to the scheme return is justified by cost benefit analysis and specifically that the requested data cannot be practicably collected from other sources.

Annex A

Instances in which the regulator has formally exercised its powers

Frequency of formal exercise of powers in cases	1 April 2008 – 31 March 2009	1 April 2009 – 30 September 2009
Total number of cases and enquiries active in the period	4,747	3,272
Cases and enquiries where no powers were exercised	3,953	2,468
Cases and enquiries where delegated powers were exercised	787	798
Cases and enquiries where powers were exercised by the Determinations Panel	7	6

*NB There is an overlap in active cases and enquiries between the two periods above. Some of the cases active in the 1 April 2008 - 31 March 2009 period were also active during 1 April 2009 - 30 September 2009. In certain active cases, powers were exercised during both periods.

The Pensions Regulator has to use a range of powers not quantified in this annex to carry out its daily work. The regulator takes an 'educate and enable' approach, and its ability to take enforcement action acts as an effective deterrent. In most cases, dialogue with pension trustees, the sponsoring employer and their advisers results in matters being resolved satisfactorily.

The total number of active cases and enquiries reflects cases brought to the regulator's attention through information schemes are required by statute to provide, as well as information provided voluntarily and via the regulator's own proactive enquiries.

Powers exercised by the Determinations Panel

1 April 2008 – 31 March 2009

Statutory reference	Determination requested	No. of times power exercised	Outcome
S7 Pensions Act 1995 (PA95)	Appointment of independent trustee with exclusive powers	5	Appointments made in five cases – three made by way of special procedure. One hearing involved two schemes and independent trustees were appointed to both schemes. One application refused.
S23 PA95	Appointment of independent trustee	1	One appointment carried out at the same time as a vesting order (see below).
S7 PA95	Bulk appointments of independent trustees	2	Eighty appointments made in total at two hearings (both related to the same case), 28 by special procedure.
S4 PA95	Suspension of trustees	1	Five suspension orders (across one case) made re two individual trustees and three firms of trustees by way of special procedure. At same time bulk appointments were made to 28 schemes as noted above.
S11 PA95	Winding up a scheme	3	All granted.
S9 PA95	Vest in, assign and transfer of property	1	Order granted – heard in conjunction with application to appoint an IT by special procedure.
S23 PA95	Removal from the regulator's trustee register	1	Granted.
	Grand total	14	

Powers exercised by the Determinations Panel

1 April 2009 – 30 September 2009

Statutory reference	Determination requested	No. of times power exercised	Outcome
S7 PA95	Appointment of independent trustee	4	Four independent trustees were appointed across four cases, two of which were appointed with exclusive powers. Vesting orders were also granted at two of these hearings. Two of the cases were heard as a result of special procedure.
S7 PA95	Termination of appointment of independent trustee	1	An independent trustee appointment was terminated during one of the above standard procedure hearings.
S9 PA95	Vest in, assign and transfer of property	3	Three vesting orders were heard and granted in total. Two of the three were heard in conjunction with the hearings where independent trustees were appointed.
S3 PA95	Prohibition of trustees	3	The power to prohibit trustees was exercised three times during a single hearing via standard procedure. No other powers were exercised during the hearing.
S4 PA95	Suspension of trustees	3	Three sets of corporate trustees were suspended across 180 schemes all via special procedure.
S99 (Pension Scheme Act 1993)	Extension for Cash Equivalent Transfer Value (CETV)	1	Extension granted for a Cash Equivalent Transfer Value.
	Grand total	15	

Delegated powers exercised by regulatory staff
1 April 2008 – 30 September 2009

Statute reference	Power exercised	Apr 09 - Sep 09	Apr 08 - Mar 09
S42 PA04	The issue of a clearance statement in relation to a s38 Contribution Notice	30	72
S46 PA04	The issue of a clearance statement in relation to a Financial Support Direction	25	67
S72 PA04	Demand information and documents for occupational and personal pension schemes	20	37
S288 PA04	Revocation of the authorisation of an occupational pension scheme to accept contributions from European employers	2	n/a
S289 PA04	Revocation of the approval of an occupational pension scheme to accept contributions from specified European employer	2	n/a
S13 PA04	The issue of an Improvement Notice	1	n/a
Employer Debt Regulations SI 2005/678 as amended in 2008 by SI 2008/731 and SI2008/1068	Reg 7(1)(a) direction - the power to suspend the trustees' power to enforce the s75 debt for a period	3	n/a
Employer Debt Regulations SI 2005/678 as amended in 2008 by SI 2008/731 and SI2008/1068	Reg 7A(1)(c)/7(2) notice - the power to approve a regulated apportionment arrangement	6	n/a
Employer Debt Regulations SI 2005/678 under transitional provisions in reg.2 of SI 2008/731	Reg 7(2)(b) direction - the power to remove the suspension of the trustees' power to enforce the s75 debt, if an approved withdrawal arrangement comes into force	2	n/a

Employer Debt Regulations SI 2005/678 under transitional provisions in reg.2 of SI 2008/731	Schedule 1A Para 2(1) notice - the power to approve a withdrawal arrangement	4	n/a
Employer Debt Regulations SI 2005/678 as amended in 2008 by SI 2008/731 and SI2008/1068	Reg 7(3) notice - the power to approve a withdrawal arrangement	1	n/a
Employer Debt Regulations SI 2005/678 as amended in 2008 by SI 2008/731 and SI2008/1068	Reg 7(1)(c) direction - the power to remove the suspension of the trustees' power to enforce the s75 debt, if an approved withdrawal arrangement comes into force during the period	1	n/a
S7 PA95	Appoint a trustee to schemes: with exclusive powers if required; Order the employer or scheme to pay fees and expenses etc (see s8)	740	641
S23 (while s22 applies to scheme) PA95	Appoint an independent trustee <ul style="list-style-type: none"> • During an assessment period for PPF • When the scheme is authorised to continue as a closed scheme • When sponsoring employer becomes insolvent 	15	25
	Grand total	852	842*

*NB No allowance has been made for powers exercised under the employer debt and cross border regulations within this period.