Please reply to:

E L S Weiss
Cumbria
School Lane
Seer Green
Beaconsfield
Bucks
HP9 2QJ

Tel No: 01494 673479
Fax No: 01494 671593
E-mail: eweiss@btopenworld.com

The Hundred Group
of Finance Directors

Chairman
Ashley Almanza

5 February 2009

materialdetrimentcode@thepensionsregulator.gov.uk
Carl Davey
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW

Dear Mr Davey

Consultation on Code of Practice 12: Application of the material detriment test

I am writing on behalf of the Hundred Group of Finance Directors with regard to the Pensions Regulator's consultation on the material detriment code of practice.

Who we are

The Hundred Group represents the views of the finance directors of the UK's largest companies drawn largely, but not entirely, from the constituents of the FTSE100 Index. Our members are the finance directors of companies whose market capitalisation collectively represents over 80% of that of companies listed on the London Stock Exchange. While this letter expresses the views of The Hundred Group of Finance Directors as a whole, they are not necessarily those of our individual members or their respective employers

Our response

The Hundred Group appreciates the time taken by both the Pensions Regulator and the Department for Work and Pensions to allay the concerns raised by their initial proposals to extend the circumstances in which contribution notices may be applied. We believe that the final legislation as set out in the Pensions Act 2008 achieves the goals of the DWP much more proportionately than did the clause initially laid before Parliament.

We are broadly content with the text of the proposed Code of Practice on the material detriment test, although we have some issues with the wording, which we set out below, some of which were pointed out in a recent meeting with two of your colleagues.

We believe that some comment on the status of the code of practice would be helpful (either in the code itself or in the Pensions Regulator's response to the consultation). We understand that, whilst the code of practice lists the circumstances in which the Regulator expects to use its powers, the Regulator is not prevented from using those powers in other (as yet unforeseen) circumstances so long as those fall within the ambit of the legislation.

We note that the wording on page 12 'The circumstances in which the regulator expects to issue contribution notices' is incorrect. These are only the circumstances in which the

Regulator would consider using its powers where the material detriment test is met. We would therefore recommend that the Regulator review the wording of the title and preamble to the list of circumstances.

Our comments on the list of circumstances are as follows:

(i) We note the comment that these circumstances are not to be taken as affecting EU rights and obligations. Presumably however it is transfers outside the EEA that are of most concern to the Regulator. If so, can 'United Kingdom' be replaced by 'EEA' without any real effect on the ambit of this circumstance?

(ii) See comment above under (i). Should this circumstance also cover the case where a UK sponsoring employer is being replaced by a sponsoring employer outside the UK/EEA, or does the Regulator believe that this would be caught under (iii)?

(iii) We have no substantive comments on this circumstance, which seems appropriate. However, we note that 'severing' is not appropriate to describe reduced or nominal employer support and suggest that the wording is tidied up.

(iv) We have some concerns with the wording of this circumstance. We understand that the rationale for an absolute test (rather than a relative test comparing the transferring and receiving schemes) is to avoid a snapshot at a moment in time, but rather to take into account both the actual and potential level of funding and/or support envisaged under the receiving arrangement. We believe that the wording could be tightened up to make this clearer.

It would also be helpful to have some indication as to how the Regulator will interpret 'sufficient'. Our understanding is that this is not intended to be read by reference to any specific funding standard (whether technical provisions, FRS17, self-sufficiency or buy-out) but rather to be interpreted on an individual basis, taking account of both the funding level and the covenant both immediately after the transfer and in the longer term.

We also believe that a definition of 'arrangement' might be helpful.

(v) We note that this circumstance is designed to catch 'new business models' in particular. We find the wording of the circumstance a little awkward and in particular the addition of 'including where risks to members are increased', which does not appear to add anything to the definition. Could the circumstance be shortened to read '… where inadequate account has been taken of increased risks to members'? We also wonder whether the order of this circumstance should be inverted to place more weight on the increase in risks to members (which is the real concern) rather than on the creation of financial benefit to the employer (which is only of concern to the extent that it impacts on members' benefits).

Please contact me if you would like to discuss any of the matters raised in this letter.

Yours sincerely

Eddie Weiss

Edward Weiss
Chairman
The Hundred Group – Pensions Committee