

# THE HUNDRED GROUP

*Cumbria  
School Lane  
Seer Green  
Beaconsfield  
Bucks HP9 2QJ  
01494 673479*

[adelphi.deregulatoryreview@dwp.gsi.gov.uk](mailto:adelphi.deregulatoryreview@dwp.gsi.gov.uk)

Ruth Saunders  
Deregulatory Review  
Department for Work and Pensions  
3<sup>rd</sup> Floor, Adelphi  
1-11 John Adam Street  
London WC2N 6HT

15 November 2007

*Dear Ms Saunders*

## **Deregulatory Review of Private Pensions - Government Response**

I am writing on behalf of the Hundred Group of Finance Directors in response to the consultation contained in the government response to Chris Lewin and Ed Sweeney's report on the Deregulatory Review of Private Pensions. The Hundred Group represents the Finance Directors of the UK's largest companies. I also refer you to my letter of 18 September 2007 addressed to John Kyriacou, in response to his request for further submissions following the publication of the report.

We agreed with many of the recommendations made by the external reviewers and are disappointed that the government has not felt able to accept a number of them. However, our response does not deal with all the issues raised by the external reviewers, but confines itself to the question of returns of surplus and to the issues raised for consultation in your response.

### Return of Surplus

We urge the government to reconsider its decision on allowing the possibility of a return of surplus above the scheme funding level.

The new scheme funding legislation requires schemes to target technical provisions calculated on a prudent basis. Once a scheme is fully funded on such a basis, it is unnecessary to require the scheme to hold additional assets which may be better employed in developing the employer's business (and hence may indirectly strengthen the employer's covenant to the pension scheme).

We accept that any refund of surplus above the scheme funding level should only take place as part of an agreement with the trustees. Requiring trustee agreement would ensure that member protection was given proper consideration when the agreement to allow a refund of surplus in specified circumstances was made.

Many employers would be willing to make higher contributions in the short term if they knew that they could recoup any surplus funds that may arise. Whilst it is possible to set up an escrow account to avoid the possibility of surplus arising, such contingent assets are tax-inefficient in comparison with making contributions directly into the scheme. The other main alternative to a refund of surplus is to take a contribution holiday when a scheme has reached full funding – however, as an increasing number of schemes close to future accrual, this will cease to be an option for many schemes. Neither of these courses are therefore attractive alternatives to allowing the possibility of a refund of surplus.

We would also request that the government give further consideration to the idea that employers should have an automatic right to a refund of surplus once a scheme is fully funded on a buy-out basis, irrespective of the surplus rule in the Trust Deed and Rules and without requiring the agreement of the trustees. This would put an ultimate cap on the level of excess assets the scheme could hold without the employer having the option of reclaiming them.

We welcome the government's indication that they intend to work with employers and other stakeholders to explore the scope for addressing concerns about surplus. This is an issue of particular significance for the Hundred Group, as surplus is already a reality for a number of our member companies. We would therefore be very keen to participate in any dialogue on this topic.

On the specific areas raised by the consultation itself, we would like to make the following points:

#### Revaluation in deferment

In principle, we are in favour of measures that increase flexibility for employers providing defined benefit pensions to their employees. However, we note that reducing the cap on revaluation could create complexity. Assuming that the change only applies in respect of accrual relating to future service, it would require the deferred pension to be split into two elements for the purposes of revaluation.

We wonder however whether you might give further consideration to making this change in respect of all service for those active members who will leave the scheme in future. Whilst the response indicates the government's view that no changes should be made to past service rights, it could be argued that, where a member has not yet left employment, any revaluation only applies in respect of the future and is contingent on the member leaving the scheme. Reducing the rate of revaluation on the member's entire pension is not therefore a retrospective change.

#### Statutory override

We are in favour of the application of a statutory override. Without it, the reduction to the level of revaluation in deferment (as with that to mandatory indexation in April 2005) would not be available to a number of schemes.

We believe that the override should be available to employers without trustee consent. It is the employer that has had to bear the increased burden placed on it by legislation, and it is therefore appropriate that it should be for the employer to take advantage of any change that may redress the position to some extent. Requiring the trustees to agree to the reduction could put them in a difficult position, as it is hard

to see the circumstances in which they could agree to a change that has the effect of reducing members' benefits.

### Risk-sharing

We agree with proposals to encourage methods of risk-sharing between employers and members. In particular, we are in favour of allowing flexibility in applying indexation to pensions in payment where pension schemes are underfunded (and would therefore encourage the government to reconsider its decision to retain mandatory indexation).

We do not however believe that there is a need for a third legislative regime for risk-sharing pension schemes. To the extent that existing legislation restricts effective risk-sharing, those barriers should be removed.

Please contact me if you would like any further information on any of the matters discussed in this letter, or in our original submission to the Deregulatory Review. As noted above, we hope to hear from you further in regard to your ongoing dialogue with employers and stakeholders on the topic of surplus.

Yours sincerely

*Eddie Weiss*

Edward Weiss  
Chairman  
Hundred Group Pensions Working Party