

Please reply to:

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The Hundred Group
of Finance Directors

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Alistair Elliott
DC, governance and administration
The Pensions Regulator
Napier House
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Brighton
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Dear Mr Elliott,

Regulating work-based defined contribution pension schemes

I am writing on behalf of the Pensions Committee of the Hundred Group of Finance Directors with regard to the above-named consultation.

The Hundred Group represents the views of the finance directors of FTSE 100 and several large UK private companies. Our member companies represent almost 90% of the market capitalisation of the FTSE 100, collectively employing over 7% of the UK workforce and in 2011 paid, or generated, taxes equivalent to 13% of total UK Government receipts. Our overall aim is to promote the competitiveness of the UK for UK businesses, particularly in the areas of tax, reporting, pensions, regulation, capital markets and corporate governance. 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.

In general, we welcome the increasing focus of the Pensions Regulator on defined contribution (DC) schemes. Automatic enrolment will bring many more workers into DC schemes and it is important that those schemes are properly and efficiently managed and regulated. However, it is equally important that regulation in this area should be proportionate and should not exceed the Pensions Regulator's statutory remit.

In particular, we make the following points:

Respecting legislative differences between trust-based and contract-based schemes

UK legislation provides two different regulatory structures under which pension schemes can be established (trust-based and contract-based), presided over by two different regulators. Opinions vary (including within the Hundred Group Pensions Committee) as to the extent to which the difference in regulatory treatment between trust-based and contract-based schemes is desirable and the extent to which this might give rise to regulatory arbitrage.

However, given that different regulatory structures do exist currently in the legislation, it is important that the two regulators respect the division as it stands and do not seek to regulate indirectly where they do not have a statutory role. We therefore have concerns with some of the wording in the consultation which appears to extend the Pensions Regulator's role in the context of contract-based schemes.

Need for proportionate regulation

We agree that the Pensions Regulator has an important role to play in regulating trust-based DC schemes. However, there is a real risk of over-regulation, which could deter employers from providing trust-based schemes. We therefore question the sheer scale of the DC regulatory package. There is already a considerable amount of regulatory and guidance material relating to DC. Adding to the existing mass of guidance would seem to run counter to the Government's objective of reducing regulation on business.

We believe that a shorter, more principles-based approach would be much more effective in achieving the Pensions Regulator's objectives, without deterring employers from providing trust-based schemes. We would urge the Pensions Regulator to focus on promoting and publishing best practice rather than incorporating unnecessary detail into a statutory code.

We cannot accept the Pensions Regulator's view that the DC regulatory package imposes no additional cost burden. Providing a further 125 pages of regulatory material is bound to lead to substantial time costs and advice fees for even the best-run schemes.

Scope of the proposed regulatory package

As well as concerns over the scale of the DC regulatory package, we would also question its scope, which seems to go well beyond the Pensions Regulator's statutory remit, i.e. its objectives to protect the benefits of members and to promote and improve the understanding of good administration in work-based schemes.

For example, the regulatory guidance appears in a number of places to push on to trustees the responsibility for benefit design issues which are, in fact, the responsibility of the sponsoring employer: the trustees have no role in establishing benefit design, nor does the Pensions Regulator have any remit to regulate in this area.

The DC regulatory package also puts a great deal of emphasis on member outcomes, which also do not fall within the Pensions Regulator's statutory objectives. Trustees should not be held responsible if members end up with low DC pensions (because of low contribution rates and/or poor investment returns and/or poor choices at retirement).

Decision to issue a new code of practice

We do not feel that the Pensions Regulator has provided a convincing justification for its decision to issue a new code of practice for trust-based DC schemes rather than best practice guidance. Codes of practice have a particular legal status and therefore a full rationale is needed before a new code can be issued.

The role of the proposed DC code of practice within the regulatory framework also seems confused. The interaction between the DC code and existing codes of practice and regulatory guidance is not always clear. Also, the reasons for putting some material in a code of practice and other material in regulatory guidance are not clearly explained.

I trust that these comments are useful.

Yours sincerely,

Sent by email

Philip Broadley

Chairman

The Hundred Group – Pensions Committee