

# Current Pensions Issues

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## Trivial Commutation = Incentive Exercise?

Towards the end of 2014, the Incentive Exercise Monitoring Board Technical Group issued [a statement](#) suggesting that their Code of Practice on Incentive Exercises applies to one-off trivial commutation and small-pot lump sum exercises.

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The Code of Practice (see [News on... Current Pensions Issues: Summer 2012](#)) is a voluntary code, produced by the pensions industry. Trustees and employers are not legally obliged to comply, although not doing so could leave them open to criticism by members or The Pensions Regulator (TPR). The original objective of the Code of Practice was to ensure that all incentive exercises (which include 'pension increase exchanges' and 'enhanced transfer value' offerings) are carried out fairly and transparently and that communications are balanced and easily understood. Furthermore, in certain circumstances, appropriate independent financial advice should be paid for by the employer as part of the exercise.

Following an increase in the limits defining 'triviality' (see [News on... Current Pensions Issues: Spring 2014](#)), a number of schemes and employers have been considering running exercises offering trivial commutation to newly-eligible members. Where an individual's overall pension benefits are valued at less than £30,000 (previously £18,000) any or all of these can be 'trivially commuted' for a lump sum payment. Where a member's benefit in any one single arrangement is valued at less than £10,000 (previously £2,000), this can be taken as a 'small-pot lump sum'.

The Technical Group's statement suggests that the Code applies to one-off trivial commutation and small pot lump sum exercises. However, it does not apply to 'business as usual' activity - for example where trivial commutation is offered as an option on an individual basis at retirement; or where members are not being given a choice. A major review of the Code is planned later in 2015. Trustees and employers who have already begun a trivial commutation exercise should seek further advice on the implications of continuing. Our briefing note, '[Budget Flexibilities and Incentive Exercises](#)' considers this further and summarises the key issues for trustees to consider in relation to other incentive exercises and the flexibilities introduced in the 2014 Budget.

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## HMRC: VAT on pension schemes costs

HM Revenue and Customs (HMRC) has recently issued two briefing notes in relation to reclaiming VAT on invoices for services to pension schemes. Although there are still areas that require further clarification from HMRC, it is becoming clear that trust-based defined benefit (DB) and defined contribution (DC) schemes will be affected by a change in HMRC's stance.

### DB schemes

The [first brief](#) sets out HMRC's revised stance on the recovery of VAT on pension fund costs by sponsoring employers. HMRC's new position reflects the decision in the July 2013 European Court of Justice case involving Dutch company PPG Holdings. It will be primarily relevant for DB schemes.

Historically HMRC has treated different services received by occupational schemes in different ways for the purposes of reclaiming VAT. VAT on 'administration services' (such as actuarial and administration fees) was recoverable by the sponsoring employer, whereas VAT on 'investment management services' was generally not recoverable. Where invoices could not be split between services, a 30/70 split could be assumed (with VAT recoverable on the 30% of the invoice assumed to relate to administration services).



Although HMRC now says that there are no grounds to differentiate between administration and investment services, recovering VAT against invoices for either is likely to prove tougher. In order to reclaim VAT, HMRC will require that the sponsoring employer is a party to the contract and pays for the services provided without re-charging them to the pension scheme trustees.

This will be problematic for most UK pension schemes where it is the trustees that engage suppliers, not the employer. In particular, services provided in respect of certain statutory appointments (for example Scheme Auditor or Scheme Actuary work) can only be provided to scheme trustees. It is also not clear at this stage whether the employer will be able to off-set invoices against any ongoing contributions.

It is hoped that HMRC will provide some further guidance. In the meantime, sponsoring employers of DB schemes should seek specialist tax and legal advice. Certain transitional arrangements are expected to apply until 31 December 2015.

## DC schemes

The European Court of Justice, in the case of ATP PensionService, has ruled that DC pension schemes are classed as 'special investment funds' (SIFs) for VAT purposes. Management services (including investment, administration and marketing) for SIFs should therefore be exempt from VAT.



Following this ruling, HMRC's [second brief](#) says that, specifically, the management of pension funds are exempt from VAT where they are 'solely funded, directly or indirectly, by individual members who bear investment risk spread over a range of securities'. The fund must also contain the pooled contributions of several pension customers.

It would appear that this is good news to sponsors and trustees of DC schemes, although the final position is not yet entirely clear. HMRC has said that "only fund management and administration services that are integral (i.e. specific and essential) to the operation of a pension fund will qualify for exemption". HMRC has not, however, specified which services would be deemed 'integral' and therefore there is still some doubt over which fees charged will not be subject to VAT.

Nevertheless, sponsoring employers of DC schemes should seek specialist tax and legal advice and consider asking managers and administrators to reclaim historic VAT overpayments.

## PPF News

### Pension Protection Levy: 2015/16

Following an earlier consultation (see our [autumn 2014 newsletter](#), and our [recent blog post](#)), the Pension Protection Fund (PPF) has confirmed its final rules for the 2015/16 levy. The PPF estimates that it will collect levies totalling £635 million in 2015/16, a 9% reduction from last year, and expects the overall levy collection to decrease in each of the next two years.



### PPF Admin Levy: 2015/16

The Department for Work and Pensions (DWP) has been consulting on [changes to the PPF administration levy](#). Under the proposals, the administration levy rates would increase by 15% for each of the three years beginning with 2015/16. The consultation closed on 9 January 2015.

### 2014 Purple Book

TPR and the PPF have jointly published the [2014 Purple Book](#). The Purple Book gives detailed analysis of the risks faced by PPF eligible schemes. Some of the main findings include a fall in the estimated aggregate 'Section 179' deficit of PPF-eligible schemes from £210.8 billion at 31 March 2013 to £39.3 billion at 31 March 2014.

The Purple Book also showed a fall in the number of 'Type A' contingent assets (company guarantees) being put in place in 2014/15, possibly reflecting the PPF's increased requirements for validation.

## Auto-enrolment update

The DWP [is consulting](#) on an alternative quality requirement for DB pension schemes, to qualify as auto-enrolment vehicles based on the cost of pensions accruing. The DWP has said that it does not intend to prescribe the methods and assumptions for testing DB schemes, and will not require actuarial certification.

Meanwhile, the DWP [has confirmed](#) that the automatic enrolment earnings trigger will be set at £10,000 for 2015/16 (i.e. unchanged from 2014/15) and earnings between £5,824 and £42,385 will be 'qualifying earnings' for auto-enrolment purposes. The DWP has also issued [draft regulations](#) removing the £4,600 contribution limit and restrictions on transfers out which currently apply to the National Employment Savings Trust (NEST).

Finally, the DWP has also published a new [information page](#) on auto-enrolment for workers.

## DC governance and charging

The DWP has published a command paper '[Better workplace pensions: putting savers' interests first](#)' in response to an earlier consultation (see [our spring 2014 newsletter](#)) on minimum governance standards in workplace DC schemes:

- Governance requirements, excluding the charge cap, will apply to all workplace money purchase schemes and the DC part of hybrid schemes, but not defined benefit schemes with DC Additional Voluntary Contributions (AVCs).
- Within three months of the new regulations coming into effect (April 2015), a Chair of Trustees will have to be selected. She or he will have to be identified to TPR on the next annual Scheme Return. The only additional regulatory responsibility of the Chair will be in signing off an annual statement on governance standards in the Trustees' report and accounts.
- The 0.75% charge cap will apply from April 2015 to default arrangements where a scheme is used as a qualifying scheme for auto-enrolment. Default arrangements include those to which 80% of members are contributing, regardless of whether this is indeed the default option for those members.

DB Schemes with AVC arrangements will be covered by the charge cap.

## Spotlight on: Executive Pensions

### DC Pensions – 2014 Budget: tax considerations

As part of the Chancellor's shake-up of DC pensions in March's Budget (see [Current Pensions Issues – Spring 2014](#)), from 6 April 2015 individuals will have greater freedom and choice in accessing their DC pension savings.

The new flexibility means people over age 55 can choose how they access their pension savings; for example they could take them all as a lump sum, draw them down over time or buy an annuity.

Our [recent blog post](#) discusses how the new flexibilities could offer welcome opportunities for well-informed individuals to manage their taxation affairs as well as their income needs. However, individuals should consider their overall tax position before making any decisions and should therefore seek professional advice before acting.

## News in Brief

### Inflation: Johnson report

A report by Paul Johnson, Director of the Institute of Fiscal Studies, suggests there is a strong case for abandoning the Consumer Prices Index (CPI) as the Government's main measure of inflation. Mr Johnson was commissioned to review published inflationary measures by the UK Statistics Authority (UKSA).

Mr Johnson suggests the government should "work towards ending the use of RPI as soon as practicable". He also suggests replacing the CPI with CPIH, a measure of inflation that also includes owner occupiers' housing costs.

Whilst the recommendations in the report are not binding, the UKSA is expected to issue a consultation on the report later this year. Our [blog post](#) looks at the issues raised in the report in more detail and considers the possible implications for pension schemes.

### Pensions Ombudsman: Tax advice

The Deputy Pensions Ombudsman [has clarified](#) that trustees do not have a duty to advise members on tax issues. A scheme member had complained that he should have been told of the tax implications of a top-up pension arrangement.

### Contracting-out: Countdown

HMRC has published its latest [Countdown Bulletin](#) in relation to the end of contracting-out in 2016. The bulletin includes information on the Scheme Reconciliation Service and urges administrators to submit any queries as soon as possible. Our [briefing note](#) includes further information on this matter.

### Defining 'Money Purchase'

The DWP has published guidance for trustees on changes to the definition of [money purchase benefits in occupational pension schemes](#) (see our [summer newsletter](#)). The DWP intends this to be a practical guide to the legislation, focusing on where the treatment of benefits has changed.

### Assigning pension scheme debts

The High Court has ruled that a trustee is legally able to sell an outstanding [section 75 debt](#) owed to the pension scheme by a former employer, allowing them to complete wind-up of a scheme without having to wait for the company administration to be concluded.

In the case of *Singer & Friedlander v Corbett*, the sponsoring company had entered administration in 2008, but the administration was not yet complete. The trustee of the scheme had served a section 75 debt on the company of around £74 million and had received some dividends as part of this administration. However, further dividends are still possible and the trustee could not therefore complete wind up of the pension scheme whilst this possibility remained.

Trustees who are considering assigning section 75 debts should ensure that they are acting in their members' best interests and that they have taken legal advice.

### Video Blog: Technology for pensions

Our latest video blog highlights how we use technology for the benefit of our clients: [Technology for pensions](#), including an overview of [illuminate](#), pension scheme funding tool for trustees and employers; and our range of tools to help with [governance of DC Schemes](#).



## Forthcoming events

### Trustee Training

All pension scheme trustees are legally required to have a minimum standard of knowledge and understanding. With the pensions world constantly changing, regular training is essential. Our one-day Trustee Training courses are aimed at both new trustees and those seeking a reminder of the basics of trusteeship.

We have four Trustee Training days confirmed for 2015:

- **London** – Thursday, 4 June 2015
- **Bromsgrove** – Wednesday, 10 June 2015
- **Leeds** – Thursday, 10 September 2015
- **Bromsgrove** – Wednesday, 11 November 2015

For further information on the course please visit our [website](#).



## About Barnett Waddingham - our services

Barnett Waddingham provides professional services spanning pensions, life and general insurance.

Our services include:

- Scheme Actuary and associated services to the trustees and employers associated with defined benefit pension schemes.
- Advice in relation to defined contribution schemes.
- Pension accounting for UK and international companies.
- Administration and management services including pensioner payroll, preparation of annual accounts and secretarial services.
- Investment strategy reviews and advice on scheme evolution strategy.
- Management of closed schemes, wind-ups and reconstructions and schemes in PPF assessment.
- Guidance to senior staff on the impact of pensions taxation applicable to their own circumstances.
- Advice to individuals and employers on pension provision for executives, including pre-hire, while accruing benefits, early termination and at retirement.
- Employer risk management through buy out options, transfer exercises and PPF levy management.
- Advice on group personal pensions, stakeholder schemes and personal accounts.
- Group risk advice including group life assurance, private medical benefits and income protection benefits.
- Analysis and modelling of mortality and longevity risk for insurance companies, reinsurance companies, investment banks and pension schemes.

Barnett Waddingham is also a leader in the provision of self-invested personal pensions (SIPPs), small self-administered pension schemes (SSASs) and other retirement arrangements.



Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail.

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