

## **Morris Review: Response by the Pensions Ombudsman to the June 2004 Consultation Document**

### ***Introduction***

1. I am the Pensions Ombudsman and have held that role since September 2001. Prior to that I have had no contact with actuaries but in responding to the Consultation Paper I have drawn on the collective experience of the Ombudsman's office
2. Although the position is not entirely free from doubt, actuaries have not usually been regarded as coming within the jurisdiction of the Pensions Ombudsman; at least in so far as they are undertaking the role of the Scheme Actuary. Actuaries who are employed by those who provide managerial or administrative services for Occupational Pension Schemes or Personal Pensions providers will usually lie within my jurisdiction.
3. I have limited my response to those matters where my thoughts can be said to be based on practical experience,

### ***The scope of the actuarial role***

4. From my viewpoint, the main value provided by actuaries is their assessment of the funding position of defined benefit occupational pension schemes, offering advice on the actuarial effect of the early payment of pensions from such schemes and on the effect of transfers into such schemes.
5. Actuaries seem to me to be well equipped for those roles. They engender a high degree of confidence from the Trustees of Pension Schemes and indeed from my office. The Pensions Ombudsman, almost by definition, only reviews matters, which allegedly have gone wrong, and thus there are times when failings are identified on the part of individual Scheme Actuaries.
6. There are those who would suggest that Actuaries have a wider and more general responsibility for the fact that some members of pension schemes find themselves approaching retirement without as great a pension as they have been promised, i.e. that because the underlying assumptions on which actuaries have generally been working their Pension Fund has been structured in a way which means that insufficient moneys are available to meet the liabilities.
7. By their training and experience actuaries seem to me to be well able to advise on the design and choice of pension schemes even though such advice might go beyond their strict professional role.
8. I would be in favour of retaining the role of Scheme Actuary. In my view there is a need for someone independent of the Employer funding the Occupational Pension Scheme, to assess and certify the funding status of the scheme and to provide independent advice to Trustees.
9. I have reservations about the pension provider (i.e. the Insurer standing behind the pension scheme) also providing actuarial services to the scheme.

### **Accountability of actuaries**

10. Accountability operates on different planes. Clearly there is an accountability to the particular client. When acting in a reserved role there is also a responsibility to all members of the scheme and to the funding employer. There may also be accountability to the Pensions Regulator. As a member of a profession there will also be an accountability to uphold professional standards. For an employed actuary there will also be accountability to his employer.
11. Some of those relationships involve a less than equal balance of power which may explain why some issues were not brought earlier to light. Some clients and the public generally do not themselves have sufficient expertise to call Actuaries to account. This highlights the need for the sound professional standards and an enforcing mechanism to ensure compliance with those standards. .
12. If individual actuaries advising schemes, have played a part in designing financial services products that have turned out not to be “fit for purpose” then I find it difficult to see why there should not be some mechanism for having the Actuary account to the client in the sense of being liable, in appropriate circumstances for the payment of compensation. The test as to whether there has been negligence or maladministration needs to be one undertaken without benefit of hindsight, i.e. it should be whether the Actuary was acting in accordance with the accepted standards of the profession at the time of his actions.
13. The current Pensions Bill will give increased responsibility to scheme trustees who may be expected to gain more confidence in questioning the advice from professionals. This should also result in actuaries being examined more carefully and as a result contributing to improving confidence in the profession.

### **The regulatory role of the Profession**

14. The objective of the regulatory framework for the actuarial profession should be to ensure that actuary’s practice in accordance with the minimum standards set out in their professional code of conduct.
15. The profession itself will have additional aims, one of which will no doubt be to strive to improve standards of performance above that minimum level. There is a need to ensure that the standards adopted by the profession are acceptable to the public at large and to key players such as the Government.
16. The profession no doubt also has an aim of maintaining and improving the status of the profession in the eyes of the public generally and key players such as the Government. To that end the Regulatory role should be transparent and should involve a significant lay element. Professional Self Regulation should not in fact mean a Regulatory process administered exclusively by fellow professionals. The Regulatory process needs to recognise that the wider public also has an interest in the maintenance of professional standards.

17. I doubt whether it is part of the role of the Professional's Self Regulatory process to deal with claims for compensation from clients or others to whom an Actuary may owe a duty of care. If assessment and the provision of compensation is (in my view rightly) not part of that Regulatory process then the fact that the Profession had a mechanism for enforcing professional standards should not be seen as a reason from excluding Actuaries from the oversight of bodies such as the Ombudsman.
18. A comparison can be made with doctors who are subject to professional regulation by the GMC, with its disciplinary processes but are also subject to the jurisdiction of the Health Services Ombudsman.
19. A criticism, which has in the past been made of the GMC, is that it is essentially reactive and does not itself do enough to police its profession to ensure compliance with professional standards. The Actuarial Profession should ensure that its regulatory processes include a policing element as well as an appropriate adjudication element.

### **The role of the Scheme Actuary**

20. Currently scheme actuaries have necessary skills and expertise to be able to perform this role. I see little benefit in establishing some other Regulatory body to can be assesses whether other Professionals are in possession of equivalent relevant knowledge so as to be able to fulfil similar duties. My starting position is that if a non-Actuary wishes to be a Scheme Actuary then they should be expected to take the necessary steps to achieve the current professional qualification.
21. There may, however, be an argument (although I myself have no reason to espouse it) that the role of Scheme Actuary requires only part of the skill-set involved in being an Actuary. If that is so then in order to be a Scheme Actuary all that should be required is demonstration of a satisfactory standard of that skill-set. The existing professional body could be expected to certify the necessary professional competency.
22. It seems to me to be self-evident that those who seek professional advice or to have someone undertake professional duties are not themselves likely to have the same professional expertise. This is true over wide areas of life: I have to rely on the skill of a mechanic when my car malfunctions and I lack sufficient expertise to be able to challenge his assessment of what my car needs. Scheme trustees will similarly lack skills and expertise in order to challenge scheme actuary's decisions. If, however I albeit from an unskilled base doubt the advice of my garage I am free to obtain another view and this is an option which is not so easily open to the Pension Scheme Trustee who as a lay person nevertheless has doubts about the Actuary's advice.
23. There is currently no obligatory requirement for schemes to review the scheme actuary's advice. The larger pension schemes may from time to time engage in such practices but sufficient audit or peer review of actuarial advice is not currently being undertaken universally in the industry.

24. Scheme actuaries should be accountable both to the scheme trustees and scheme members. It could be said that scheme trustees are acting on behalf of the members and hence no further accountability is required beyond that due to the trustees. However in my view individual scheme members should have the right to complain about negligence on the part of the scheme actuaries.
25. My impression is that actuarial advice has played a key role in the way occupational schemes have been funded in the UK. Even when the Government or Parliament has intervened to impose funding requirements on scheme the actuarial profession has been influential in defining the necessary standard and in determining how measurement against that standard is to take place. That is not to say that the actuarial profession should thereby be charged with responsibility for the failure of the MFR regime always to ensure that schemes are satisfactorily funded.

### **Monitoring Complaints and Disciplinary systems**

26. I see no harm in the Review considering whether a fully independent disciplinary process is needed. There are likely to be several factors behind the low number of disciplinary hearings there have been. I would not seek to make any conclusion as to whether that indicates a successful profession an ineffectiveness of monitoring and disciplinary processes although such evidence as is available to my office might be more suggestive of the former rather than the latter conclusion.
27. I see advantage in moving away from reactive complaint-driven disciplinary procedures to a more proactive regime of monitoring of compliance with professional actuarial standards. The sooner issues are tackled the more the public interest would be served. Any findings should be made available to the public via the actuarial website.

### **Government Actuary's Department**

28. I am in a sense a client of the Government Actuary's Department whom I use a source of specialized advice should that be needed in connection with my investigations. I have not put that arrangement out to competitive tender. The attraction of using GAD is that it is not likely to have had any direct involvement in the particular matters that I have been investigation. Obviously I would need to involve another firm if I was faced with investigating a complaint where GAD had been involved.

29. I am satisfied with the service I receive from GAD.

30. I can see some substance in all of the reasons advanced in paragraph 3.20.

**David Laverick**

**Pensions Ombudsman**

**10 September 2004**