

Financial Services and Markets Act: two year review

Royal London's response to the consultation

Scottish Life, which has been part of the Royal London Group since July 2001, specialises in working with employers and their advisers to provide occupational pension schemes.

The current financial promotions regime creates problems for employers who feel constrained from recommending an employee sponsored scheme (specifically Group Personal Pension or Group Stakeholder) to their employees. Rather than risk inadvertently contravening the Financial Services and Markets Act some employers, particularly within the small and medium sized enterprise (SME) sector have elected to do very little to promote group pension arrangements. This is an example of regulation acting against the best interests of individuals, many of whom should be joining their employer sponsored scheme.

The proposals in Chapter 4 therefore go to the very heart of our business and we are very keen to see a practical outcome. The comments in this response are therefore confined to the proposals in Chapter 4 of the consultation.

Q10 Do you agree that there should be an exemption for both real time and non-real time promotions made by employers?

Yes. Any other exemption would be impractical to impose and difficult to monitor.

Employees require information about their pension options in a variety of formats. Whilst many employees will respond to a presentation or other "real time" promotion, most will also require written information (or "non-real time" promotions) before taking action. To allow face-to-face promotion but prohibit the distribution of literature seems perverse and contrary to most individuals' decision-making preferences. The same could be said for a regime which permitted the distribution of written material but prohibited spoken communication.

An exemption would put Group Personal Pension and Group Stakeholder on an equal footing with other forms of occupational pension where the employer is not bound by the Financial Promotions Order).

Furthermore, paragraph 4.27 makes it clear that employers are bound by the law under which it is an offence to mislead employees, so we cannot see any major obstacle to employers offering information in a number of convenient formats.

Q11: Do you agree that any exemption should be subject to conditions and not be unrestricted?

It seems reasonable, and desirable, to permit employers to promote other products in addition to pensions in the workplace. Healthcare and protection benefits would most obviously fall into this category and we would urge that they are subject to the same exemption.

We are not, however, arguing for financial promotion by employers without restriction. There is a clear risk that a minority of unscrupulous employers would seek to exploit their workforce with sales of inappropriate or expensive financial products.

However we see a clear benefit in employers encouraging employees to take individual financial advice and taking advantage of the limited tax-exempt status of this perk (announced in the recent Budget Statement). Indeed the promotion of the benefits of financial advice to employees should be subject to the exemption.

Q12: Do you agree with the conditions outlined above?

We think it should be mandatory for employers to point to the availability of *independent* financial advice to their workforce when making a financial promotion. Employees should also be made aware of any tax breaks that are in existence for employees seeking financial advice.

We can see a case for removing from regulation only those schemes in which the employer has no direct commercial benefit. Such a measure would greatly reduce the risk of employers seeking to exploit employees (see answer to Q11 above). However there have been instance in other jurisdictions (notably in the US with 401k plans) where aligning the interests of the employees and employers has proved beneficial to both parties. We would not seek to impose conditions on employers which would eliminate creative incentives for the promotion of schemes. This condition should no, therefore be imposed on employers.

We would not seek to impose any other conditions on the exemption of employers from the FPO.

Q.14 Do you think the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employers?

We would strongly recommend that employers should not be permitted to provide their employees with advice in relation to their individual circumstances. The provision of individual pension advice is an activity that few employers would

have the experience, or time, to undertake. There is a clear risk, that employers are very well aware of, that advice will not take account of an individual's circumstances adequately. This may result in significant financial disadvantage for the employee. Furthermore some employees will feel resistant to sharing all the details about future intentions (a return to education or a period out of the workplace to raise a family, for example). This will result in inappropriate advice being provided by the employer.

A far better solution to the issue of individual advice is for the employer to direct employees to a source of independent advice where an individual's previous pattern of pension provision, and future aspirations, can be considered impartially.