
Independent Pensions Research Group

Northern Pensions Resource Group

5 Goldspink Lane
Newcastle upon Tyne
NE2 1NQ

Web: www.prg.org.uk
email: secretary.PRG@btinternet.com

Tel: 0191 232 2968
Fax: 0191 222 1559

9 September, 2004

The Independent Pensions Research Group, and the Northern Pensions Resource Group, are networks of member-trustees and others interested in all aspects of State and occupational pensions. The groups are based respectively in London and Newcastle. We welcome the opportunity to provide comments to the Morris Review.

Our comments are in most part limited to the pensions area and in particular the experience our members have of services provided by scheme actuaries. We have not commented in areas where our members' experiences are not relevant and have not therefore responded to all the questions raised by the consultation document.

Question 1.1

We do not see number crunching as the main function of actuaries. Rather we value an ability to interpret numbers for trustees and explain the consequences of different potential decisions the trustees may make. It is only with a full understanding of the issues that trustees can properly exercise the onerous responsibilities they are given.

Unfortunately our experience is that some actuaries concentrate only on the production of figures. Trustees are often presented with "the answer" without any prior or post discussion of the issues. As an example, many of our member nominated trustees find that their input to actuarial valuations is invited at best only when the valuation report has been produced.

We find that some actuaries are not well equipped to advise trustees – this is a point we will return to in our comments on the training of actuaries.

Question 1.3

We welcomed the introduction in the Pensions Act 1995, of the role of the scheme actuary and the primacy given to the actuary's duty to the trustees in situations of conflict. Before this legislative change, many actuaries viewed their appointment by the employer as being the most important. We are particularly concerned that recent guidance on conflicts issued by the Institute of Actuaries suggested there are occasions in which the scheme actuary should resign in that post and retain the position advising the employer. This threatens the primacy of the role advising the trustees.

We believe that the importance of the role as scheme actuary should continue to be recognised in Statute. The interpretation of figures and giving advice to the trustees is a role which we believe should be reserved for actuaries. The mechanical number crunching need not be done by actuaries, and in reality, is often not – being undertaken instead by technicians and trainee actuaries.

It is difficult to see how duties such as reporting to OPRA could be required or policed if the law did not define the scheme actuary role.

Question 1.5

Whilst we support the concept of peer review, we do see significant problems with it in perpetuating the dominance of the large consultancies. We do not consider that peer review will solve some of the problems it aims to tackle. We return to this issue later.

Question 1.7

Actuaries should shoulder a significant amount of blame for the misselling of personal pensions and endowment mortgages. However, we do not believe they are solely to blame. For example with personal pensions, part of the responsibility rests with (but has not been accepted by) the then government. There are also significant failures in systems for providing financial advice to individuals. We consider reasons for the failure of actuaries to bring these issues to the public attention later in this submission.

Question 1.8

We feel that the primary duty of the actuary should be to his or her client. However in the past, actuaries have often been vague in clarifying who their client is and in recognising conflicts of interest. We remain open to accepting the claim from the Institute of Actuaries that their members have and exercise a wider public interest duty but have the following reservations:

- a) in an increasingly litigious society, actuaries and the actuarial profession are likely to rely on legal advice to limit their potential liabilities in this area. This could restrict the ability of actuaries to give practical advice and their cautionary advice may not be in the client's interest.
- b) At the other end of the spectrum, the wider public interest could be interpreted very widely. Out bluntly, anything is allowed as long as it does not have catastrophic consequences for society as a whole. If actuaries proclaim a wider public interest duty but fail to apply it consistently, this can be misleading to anyone using the advice
- c) The wider public interest is a subjective concept which can be interpreted in diametrically opposite ways by two individuals.

We feel these issues are better dealt with by actuaries being clear about who their client is and their responsibilities to that client and making these clear in any advice given. For example, a scheme actuary standing firmly behind their responsibilities to a pension scheme's trustees is more likely to be acting in the public interest than one attempting to juggle their duties to the scheme employer, their own employer and the wider public interest.

Question 1.9

As stated earlier, we would prefer to see actuaries more open to debate and discussion rather than presenting their client with "the answer". In the area of pensions, it is very definitely the trustees rather than the actuary who are accountable to members, regulators and the employer. Some trustees have shied away from such responsibility and so been keen to accept the actuary's answer. However others have been let down by actuaries who have failed to properly explain the issues to them. For the actuary, usurping the decision making power of trustees by simply presenting "the answer" is easier than spending time explaining things to trustees so they are able to make effective decision. Since trustees always carry the final responsibility, there is little risk to the actuary in following this course of action.

Question 1.10

We understand that there have only been a small number of occasions where successful action has been taken against an actuary giving poor advice. We do not however feel that large increases in such legal actions would be productive. A significant amount of the fees charged by actuarial firms are already used to provide professional indemnity insurance and action which increases these costs are likely to make the final costs for clients higher and to further reduce the competition in the market. We believe clients have a role to play in demanding a better service from actuaries and believe that NPRG/IPRG have played a role in educating member trustees to make such demands.

However we would not argue that actuaries are always at fault. We are aware that clients themselves put pressure on actuaries to produce acceptable answers. We are also aware of clients shopping for acceptable advice.

Question 1.14

The members of the Institute's decision making bodies are made up from working actuaries who need to take time off from their normal duties. As covering for such staff requires a company with a certain critical mass, these members are drawn largely from the large consultancies and insurers. The block vote from the staff of such organisations means their people almost always fill the positions of real influence. Small and local consultancies are under represented within the decision making bodies. This means that some of the decisions made are informed entirely from the viewpoint of big businesses with little thought given to the impact on smaller organisations. For example, a system designed to work for a 10bn pension scheme with a pensions manager, department and a large trustee body including well trained trustees is unlikely to work for a £400,000 scheme run by a small local company whose owners are the scheme's trustees.

It is difficult to see how this could be addressed unless members of the decision making bodies were paid for their work. We do not think that the introduction of lay members would improve the governance of the Institute. However, the Institute could make itself more approachable to members of the public by offering services such as a helpline.

Questions 1.15 to 1.21

We consider that the way in which actuaries are trained is a major obstacle to openness, innovation and standards in the profession. Only a small element of an actuary's training is conducted in the public arena. The remainder is done within the consultancies and insurance companies themselves. This means that trainees simply learn, and tend to accept, the way things are approached within their employer's firm. The isolated nature of the training means it is difficult for trainees to challenge any particular aspects of a firm's approach. On qualification, actuaries are required to attend a professionalism course which considers issues such as conflicts of interest. These are held at the Institute and include delegates from different organisations. But this is the first opportunity actuaries may have to debate difficult issues. This is far too late in an actuary's career coming at a time when habits are already set. We would prefer to see such courses as a requirement at a much earlier stage.

Trainees should be able to raise any issues they do have with the Senior Actuary in their organisation. The Institute's Professional Conduct Standards require all firms to nominate a Senior Actuary responsible for professional issues. But the role of the Senior Actuary is inadequately defined. We suspect that many organisations have a Senior Actuary but devote little resources to ensuring they play a proactive role in the organisation. Most trainees would be unaware of this source of guidance – or too overawed to seek it. The Senior Actuary should play a much more active role in the lives of new recruits. We return to the role of the Senior Actuary later in our submission.

Question 1.22

Within the pensions arena, demand for actuarial services has largely been driven by new legislation. However, other factors have been the increasing financial significance of the pension scheme in company finances and deficit positions.

Question 1.23

Whilst we feel the situation is improving, there has been a concentration of actuarial services for pension schemes within a small number of large consultancies. Whilst this may not be a problem for the largest schemes, many smaller schemes have struggled to find advisers who

will give their schemes suitable attention. The limited market has meant fees are higher than most trustees would like to pay.

Question 1.24

Whilst there are some barriers to switching between actuarial service providers, we do not feel these are insurmountable. Trustees are more frustrated by the discovery that having switched providers for a better service, they find similar inadequacies in new advisers.

We are unconvinced that there is any significant merit in switching for its own sake. Pensions are long term vehicles and repeated switching of advisers tends to mean that historical details of the scheme are lost. These “details” are important in establishing member benefits.

Question 1.25

Pension trustees are frequently left with a gap in their understanding of the position. This is not because pensions are too difficult for lay people to understand. It is frequently because both actuaries and trustees tend to underestimate the time taken to explain the position. It is also in part because actuaries tend to concentrate too firmly on numbers rather than explaining the underlying issues and effects.

There are some possible solutions to this. For example, we have found that it is helpful for the actuary to spend a day training trustees on actuarial valuations generally, before the formal valuation results are presented. It can however be difficult for trustees to persuade employers that this is a suitable use of the trustees’ time.

As we have commented earlier, we also feel there is a tendency for actuaries to simply present “the answer” rather than explaining different scenarios thoroughly.

We feel there are two main principles which should be followed to improve understanding:

- undertaking training in the principles well before an answer is presented is vital. Trying to have the same discussions when specific “answers” are available is much more difficult
- both actuaries and their clients need to demand more of each other. Clients need to demand that actuaries explain in full and actuaries need to ensure clients see the bigger picture rather than focussing on a comfortable answer.

Question 1.26

Factors mitigating against an increase in the supply of actuarial services to trustees have included the lack of availability of professional indemnity insurance and the increasing complexity of legislation which makes small practices less possible.

Question 2.1

The aim of regulation should be to ensure that all actuaries meet the correct standards in technical knowledge and professional issues.

Question 2.2

The current framework seems to work well for gross violations. However, there are inadequate processes for consumers to raise concerns.

Question 2.9

We are not aware of other professions clamouring to be recognised to undertake the role currently filled by the scheme actuary. We are unable to identify other professions who would be able to undertake the role.

Question 2.10

The expertise of pension scheme trustees is very variable and we are uncomfortable with making sweeping judgements about trustees en masse. As a body consisting largely of member nominated trustees, we are particularly frustrated by the common assumption that MNTs have inadequate training and expertise. Our experience is that the member nominated trustee can often be better informed. Many MNTs have undertaken training before or after their nomination by the members. The same often cannot be said of the Finance or HR director who is simply told they are a trustee.

We feel that there is a duty on both the scheme actuary and the trustees to ensure that they understand the actuary's advice and can act upon it. As we have commented earlier, we feel there are some trustee bodies where the scheme actuary is effectively making decisions with the passive acceptance of trustees. However there are equally trustee bodies where trustees are desperate to understand the issues but are let down by their scheme actuary.

Question 2.11

We do not feel that the influence exerted by the scheme actuary is too strong. Ideally, we feel that the scheme actuary should aim to present the range of possible decisions, which could be made by trustees. If asked, the actuary should then be willing to provide guidance on a preferred course of action. Of course, if a scheme actuary were improperly to give too much weight to the interests of the employer, such strong guidance may not be helpful to trustees. But this problem should be tackled by making sure actuaries deal better with conflicts of interest. A bigger problem for trustees is where actuaries, for fear of litigation, refuse to give trustees any guidance – instead insisting that they require copious amounts of legal advice. If actuaries are the professionals they claim to be, they should be willing to give strong advice where asked and to stand by that advice.

Question 2.12

As commented earlier, we believe the actuary should be clear about who their client is and then be accountable to that client, making this clear in all advice given.

We are attracted in theory to the idea of having separate advisers for the trustees and the employer but feel this could be an additional cost too far for the sponsors of smaller schemes. We would argue that for smaller schemes in particular, one actuary for both the employer and the trustees is acceptable. However, if a conflict does arise, the scheme actuary's primary duty should be to the trustees.

Question 2.13

In our view actuaries have contributed to the current poor state of funding of defined benefit pension schemes. Before the Pensions Act 1995, we routinely saw actuarial valuation reports which recommended short term contribution holidays for employers. Had such surpluses been spread as contribution reductions over longer periods, scheme funding would not now be so precarious. We feel some of the problems were addressed by making scheme actuaries primarily responsible to the trustees. We are concerned that the new legislation makes scheme trustees negotiators in terms of the funding position of the scheme. Since trustees have few powers, they will be negotiating from a very weak position.

The need to draw up a Statement of Funding Principles should in theory mean the actuary has to ensure that the trustees understand the range of strategies they could take and justify their approach in terms accessible to members. However, this was supposed to be the result of the introduction of the Statement of Investment Principles. In that case, we found that the Statements were hijacked by the compliance departments of the consultancies and turned

into turgid, incomprehensible yet fully compliant documents. We would hope that actuaries do not take the same approach in this case.

Question 2.26

Whistle blowing by scheme actuaries in situations covered by the Pensions Act 1995 has seemed to work tolerably well. There has perhaps been an element of over enthusiasm as actuaries have reported in all situations to avoid legal or professional censure.

However, we feel there could be more informal reporting on a no fault basis to tackle problems before they become severe.

There are a number of ways this could work – for example informal discussions with the internal Senior Actuary, or a helpline for consumers run by the Institute.

Question 2.27

In technical terms, the profession's guidance is we feel adequate. However, there is a lack of industry wide discussion of grey areas. These discussions do operate within individual firms but wider debate seems to be hampered by the Institute's unwillingness to operate in these areas and competitive pressures between different consultancies. A grey area would then be covered by internal guidance in each firm but with little or no cross fertilisation of such ideas. Within any one firm the "XYZ way" then becomes accepted practice and the fact that there may be room for debate and trustee decisions is forgotten.

These comments apply both to technical issues and professional issues such as dealing with conflicts of interest.

As we have commented before, we feel there may be a much greater role here for the Senior Actuary. We would like to see the role of the Senior Actuary clarified. Each Senior Actuary should be required to attend cross company seminars held by the Institute from time to time – perhaps specific to their own industry, perhaps general. There is a danger that staff from the large consultancies would dominate such meetings so we would like to see attendance at such meetings made compulsory even for smaller firms. It should be possible for the Institute to raise issues with the Senior Actuary, initially on a no blame basis. Senior Actuary meetings should be able to mandate the Institute to offer guidance or simply set out the ranges of possibilities to all members of the profession.

Question 2.35

We are concerned that peer review is being suggested as a cure all panacea for the actuarial profession. We are aware that most of the larger consultancies already operate a system very close to peer review so are unconvinced it will have a big impact in practice. A major problem with peer review is that the larger firms will operate it entirely internally. As we have commented a few times already, we feel a large part of the current problems are caused by the acceptance of the "way we always do it" approach. These points are unlikely to be picked up by an internal review. We feel more consideration needs to be given to an external review system.

Question 2.43

We are concerned that regulators so not always have access to sufficient actuarial expertise with which to challenge the views given by actuaries. In particular the resources allocated to the Pensions Regulator will mean they are unlikely to be able to access actuarial advice when necessary.

Questions 3.1 to 3.2

We are not direct service users of GAD but many of our members are affected by GADS advice on issues such as contracting out rebates and the advice given to public sector schemes.

Our only concern is that there is some lack of transparency in the advice being given by GAD. The identity of the client is not always clear. Neither are the interfaces between political decisions and actuarial advice.

As an example, it is clear that there are significant differences between the actuarial bases used in setting contracting out rebates and in determining contribution rates for some public sector schemes. The latter are significantly weaker than the former and significantly weaker than those used in private sector schemes. The reasons for these differences are not clear and the question of whether the differences are due to political pressure could be raised. The lack of clear lines of responsibility makes it difficult to be clear about who is taking responsibility for what. We would suggest this lack of transparency is against the general movement in policy.

We would be happy to expand on or further explain any elements of our response if the review team would find this useful. Please contact the Secretary, Sue Ward at the address shown on the first page if this would be helpful.