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BY POST & BY EMAIL

Dear Keith

Financial Services and Markets Act Proposed Article 77

Following our meeting at the NAPF this morning let me just jot down my own thinking, as arranged. I am copying this to Christine Farnish at the NAPF so that she can dissent, supplement, vary and generally articulate the NAPF policy line.

A NAPF background, concerns, views etc.

I think it would be fair to say that NAPF members' concerns as to the FPO attach, in descending order of importance, to the following topics.

Product/area	FPO issues
Main employer sponsored pension scheme	Description and promotion outside FPO
AVCs (Additional Voluntary Contribution arrangements bolted in to main pension scheme)	Ditto
Individual investee funds within a defined contribution employer sponsored pension scheme	Ditto
Transfers into and out of pension scheme	May be some FPO consequence depending on nature of incoming or exiting product



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Product/area	FPO issues
Annuity purchase out of scheme on retirement	Query outside FPO because trustee to beneficiary communication on “management or distribution of funds”, therefore excluded
Annuity purchase out of scheme on divorce	Query outside FPO because trustee to beneficiary communication on “management or distribution of funds”, therefore excluded
Stakeholder schemes	Guidance “Helping your Employees...” by FSA records that giving scheme provider contact and contact details, and giving the provider access to the workforce is outside FPO net because fulfils legal duty. This exclusion is narrower than any positive promotion of the stakeholder on the part of the employer (point made by Terry Faulkner of Rexam at the meeting), and recognised in Chapter 4.
Group personal pensions (<i>N.B. would be seen by NAPF members as very much third best after employer’s own scheme and stakeholders</i>)	Promotion within FPO.
Inter-pension product comparisons (<i>Not a product itself of course but if unavailable then workplace advice becomes meaningless</i>)	-
Employee share schemes	FPO special exemption
Medical cover	What is the final outcome of the debate of including general insurance products into the FPO following implementation of the IMD in January 2005? Question consulted upon at 3.25 “Regulating Insurance Mediation – Consultation Document” – HMT. In general Articles 4(4A), 68 (9) to (11) and 69(10) to (12) RAO give very modest cover for “advising”, “arranging” and “dealing as agent” post January 2005 anyway. Is it the case that all general insurance is to be within the FPO but some of the promotional restrictions excluded via Arts 28, 28A etc.
Death in service benefit cover	
Ill-health cover	
Prolonged disability cover	
Travel etc. insurance/cover	
“Cafeteria” plans allowing plans to opt into any of the above	

B Points on FSMA two year review

Q10 *Do you agree that there should be an exemption for both real time and non-real time promotions made by employers (option 1(c))? If not, which of options 1(a) and (b) do you prefer?*

My answer would be yes: certainly I would see 1(b) as essential.

Q11 *Do you agree that any exemptions should be subject to conditions and not be unrestricted?*

Plus Q12 – do you agree...

The policy initiative is to free up financial advice through the workplace so achieving this goal would require, I would suggest, extending the ambit of FPO controlled investments to any on the shopping list in section A of this letter that is not or will not be otherwise embraced.

Freeing the FPO regime for arrangements to which the employer contributes; the exclusion might usefully be widened to embrace anything towards the **cost of which the employer has contributed**. The general idea is not to prescribe some contribution threshold or duty on employers so much as to identify those FPO covered products which are the subject of genuine endorsement and adoption by the employer. I can well see that HMT would wish to discourage the exploitation of a trusted workplace platform by the providers of products to which the employer has made no particular selection or commitment.

I floated the alternative approach of “any arrangement towards the cost of which the employer has contributed”, since this mirrors what is already the case to obtain Inheritance Tax freedom in the case of certain death in service arrangements; and is particularly apt to embrace different components of some cafeteria plans where the employer has arranged, at its own cost, the set-up, but each member thereafter contributes, solely and directly.

Employer receives no benefit: The sense here is more “...direct financial benefit from the provider or intermediary.” Stewart Ritchie instanced an “associate” of an employer who might have received financial benefit; Terry Faulkner raised the issue of combined employers’ risk pools for a large group where the particular “employer” at the end of the year might receive some experience-related “dividend”, or whatever, from the central pool if the cost of the pooled risk proved to be lower than the total of individual company contributions inwards.

Q13 *Do you think there should be other conditions?*

The general idea of the relaxation, of course, is for arrangements for the bona fide advancement of the employer’s business – and, I would suggest, the need to discourage “platform” exploitation as rehearsed above. Possibly some wider test along these lines might be considered.

Q14 to Q17 *Individual advice; individual circumstances; link with “advising” activity; unfavourable comparisons*

It is quite unrealistic to expect employers to undertake any workplace roadshow or whatever in this area and that there will ensue no individual advice then or later. It is simply beyond human nature. If some such restriction were to be strictly enforced and promulgated, one doubts

whether employers would pursue such a hollow course of merely describing but then refusing questions affecting individuals.

My view, and this is shared by the NAPF in submissions to Mr Takada, your colleague, is that after January 2005, with the implementation of the IMD, the “advising” activity Article 53 RAO is needlessly circumscribed as regards insurance products in the context of pension etc. arrangements and the like.

Unfavourable comparisons: It is axiomatic of any intelligent presentation of a product that one has to make a comparison with contenders in the field. To exclude the possibility of drawing unfavourable comparisons would make the exercise both meaningless and potentially deceitful.

Q18 *Do you agree that there should be no restriction on which employers’ representatives can promote the employers’ pension schemes?*

Agreed.

C Proposed Article 77

77(1) – Query widen relaxed class from GPPs and stakeholders towards all employer related workforce products whose promotion might otherwise be controlled through the FPO either following implementation of the IMD or currently.

77(2)(a) – Query adopt test of employer contributing to cost of arrangement rather than “financial contribution to the pension”. One consultee raised the question whether a commission waiver by the employer/sponsor in favour of enhanced allocation within the product could be said to constitute “financial contribution”. Your tentative view was “no”.

77(2)(b) – Points already made as to “employer or associates etc.”; using test of “any direct financial benefit from the provider or intermediary”; and the issue of a dividend or rebate from group risk pools.

Yours sincerely

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