

Customer Forum – Minutes of the Ninth Meeting

Contents:

1. Attendees	1
2. Minutes of last meeting	2
3. Opra Presentation	2
4. Simplification Update	2
5. Terms of Reference for Forum	3
6. Simplification Operational Matters	3
7. Furbs and NICs	3
8. Update on Overpaid Age Related Rebates	3
9. Elections Transfer to Nottingham	3
10. Other Issues from Attendees	4
11. Any Other Business	5
12. Next Meeting	6
13. Appendices	6
Appendix A.....	7
Appendix B.....	12
Appendix C	16
Appendix D	17
Appendix E.....	19
Appendix F.....	21

1. Attendees

Jayne Banner	SPSS Deputy Director
Les Shaw	APSS Customer Relations & Learning
Jim Kitson	SPSS Business Development
Ann Walker	APSS Operations Manager
Alan Bateman	APSS Technical
Terry Maddocks	APSS Customer Liaison Manager
Peter Hopkins	Simplification Project Team
Katharine Musto	Opra
Ian Long	ABI & Norwich Union
Teresa Sienkiewicz	KPMG/PRAG
Liz Hinchliffe	SPC & Scottish Amicable
Ian Neale	Aries Pension & Insurance Systems
Teresa Preece	Mercers HR Consulting
Pete Cottingham	Prudential
Mark Howard	APT & Barnett Waddingham
David Seaton	James Hay
Peter Williams	SOFA
Clive Hodgson	G E Pensions
Simon Ireland	G E Pensions
Cliff Vidgeon	IPPM

2. Minutes of last meeting

The minutes of the last Customer Forum held on 14 November 2002 were agreed.

3. Opra Presentation

Katharine Musto gave a short presentation on the creation of a new kind of regulator (NKR) to replace Opra. It followed and was based on the handout covering the slide show attached at Appendix A.

In the following question and answer discussion session Katherine explained that the DWP response to the Green Paper was still awaited. (This was subsequently published on 11 June 2003 and confirms the intention to create "The Pensions Regulator".) Consequently the precise format of and terms of reference for NKR had not yet been established. It was envisaged that NKR would continue to maintain the Pensions Registry. Given the NKR would complement the FSA, it may be necessary to risk assess any requirement for extra scheme data with what was already held elsewhere including that held by the FSA. As regards the interaction with the Revenue, Jayne Banner felt we would need to consider carefully the use and scope of joined up information provided under the Single Gateway registration process and also review the Memorandum of Understanding between IR APSS and Opra to look for opportunities to share information to avoid asking schemes to provide the same details to several organisations.

4. Simplification Update

Peter Hopkins gave an overview on simplifying the taxation of pensions. It also followed and was based on the handout covering the slide show attached at Appendix B.

In the following question and answer session Peter provided answers to a number of questions:

Q. Given the awareness that Simplification will be in next year's Finance Bill despite the industry's reservations on timing, will it take account of the prospective 2005 DWP changes?

A. The Simplification Team is working closely with DWP. Whilst it may be the case that Simplification may be in 2004 Finance Bill, implementation may be either 2004 or 2005 but this is a matter for Ministers. Nevertheless Ministers would be made aware of the difficulty early implementation poses for the industry. (Inland Revenue Press Release 11 June 2003 now confirms that implementation will be on 6 April 2005.)

Q. What are the tax consequences of schemes going unapproved? And linked with this, how does Simplification impact upon funded unapproved retirement benefits schemes (FURBS) which are currently in use in scheme member's employment contracts?

A. The next consultation document will provide our views on these matters.

Q. Will there be clear guidance for Trustees?

A. Yes. (To be considered in agenda item 6.)

Q. Under the transitional arrangements will scheme members' current pension arrangements be ring-fenced?

A. We are considering representations on this matter.

Q. Is it acceptable to have a limit on tax relief for input/contributions and a lifetime limit?

A. This is a matter for Ministers to decide. The Consultation Document recognises both so it may be viewed as reasonable but the decision lies with Ministers.

5. Terms of Reference for Forum

At the last meeting reference was made to establishing formal Terms of Reference for the Customer Forum and deciding how the Forum should go forward. Les Shaw handed out a paper setting out our thoughts on the Terms of Reference, Appendix C. He asked that attendees consider and let us have their views on this and the format of the meeting e.g. are they content that a guest speaker attends. No objections to the terms of reference were made.

6. Simplification Operational Matters

Les Shaw spoke briefly about our desire to take this opportunity to consult and involve our customers as much as possible in the design of help and guidance for the new pensions tax regime and the transitional period. Paul Cottis's paper at Appendix D set out our thoughts and proposals, with some questions covering this process and how Paul can be contacted to feedback responses. It will be sent electronically to all attendees and absentees so that it could be distributed as widely as possible throughout the industry to help maximise feedback.

7. FURBs and NICs

Les Shaw handed out an advance copy of an article to appear in Tax Bulletin on 13 June about NIC liability on payments into FURBS, Appendix E. He explained that the Revenue did not agree the recent court ruling. Any comments on this should be sent to Paul Cottis/Les Shaw for onward transmission.

8. Update on Overpaid Age Related Rebates

Les Shaw gave a verbal report covering the latest developments on the recovery of overpaid rebates regarding those members who have already died or retired - Appendix F.

9. Elections Transfer to Nottingham

At the last meeting Jim Kitson announced that the operational work involved in electing to contract out of S2P at a scheme level was being moved from Newcastle to Nottingham. This had now been successfully completed by 12 May as announced on our Website on 8 May. However following the move of the work there was a significant training need required for our staff at Nottingham which will not be completed until 20 June. During this transitional period contact on this matter should be made with either Newcastle (tel. No. 0191 225 0150) or Nottingham (tel. No. 0115 974 1444) as appropriate. In view of the advent of Simplification the April 2004 proposed implementation date for the improved 'single gateway' process to provide a joined up scheme registration and application for approval system may well be deferred until the new regime commences.

10. Other Issues from Attendees

- Les Shaw reported that due to Simplification the scheduled Large Self Administered Scheme Audits would not now be implemented.
- Ann Walker confirmed that the Risk Intelligence Analysis Team was set up on 1/7/02. The aims of the RIAT are
 - to make better and more effective use of information received in APSS
 - to improve identification of risk in order to focus on the highest risk areas
 - to identify the reasons for non-compliance and apply the right solution.

To achieve this it is necessary to move from a paper information system to an electronic one. In addition to this the foundations and new processes have to be put in place. This inevitably takes time. The RIAT's priorities have been to develop the foundations and produce cases for take-up but this is on the old basis. As it takes time to move from one system to another so far no particular problems have been identified. But when the IT arrangements are fully operational then Ann would be in a position to give a more informed answer to this. She hoped to have more information to report at the next meeting.

- Currently Les Shaw did not envisage any change in the future of the Customer Forum after A day.
- Les Shaw confirmed the new Double Taxation Agreement (US/UK) does not affect the current position on pension transfers to the USA.
- Some concern was expressed at the announcement in Update No 136 that with effect from 30 November 2003 there would only be electronic delivery of our Updates. In order to keep up to date with current practice Practitioners felt there was a real need to have amended pages (with highlighted changes) attached to the electronic version of the Update so that they did not have to rely solely upon the periodic complete updates of PN. Alan Bateman explained that the planned 6 monthly updating of the guidance mentioned in Update 136 was a transitional measure while pensions guidance fitted in with the wider Inland Revenue guidance. On the positive side it is unlikely there would be so many Updates leading up to Simplification. Also we would try to synchronise the issue of Updates to as near a date as possible with that of the periodic PN/IR76 changes and flag PN changes in Updates. Hopefully, taking these factors into account, we expect to be able to manage the situation.
- In relation to Update No 143, loans made by SSASs, and its associated FAQs some concern was expressed about the difficulty to obtain confirmation that such loans were a commercial transaction. Alan Bateman explained that the intention, as the Update says, was to clarify and reinforce existing practice and emphasise that the scheme purpose was to increase funds for provision of relevant benefits and ensuring any loans were commercial was part of that. Scheme trustees should apply the same criteria as commercial lenders, and if they did so, there would be no compliance difficulties from the Inland Revenue. Getting evidence to show the commerciality of a loan was a way of ensuring that the decisions trustees made accorded with what would be acceptable in the market. The APT had been fully involved in the consultation leading to the issue of the Update.
- Les Shaw announced that the FAQ area of our part of the website has been restructured slightly e.g. provision of a better category identification. It was hoped that these minor changes would assist in making any additions, changes or amendments in this area more obvious.
- As regards the matter of "change to SERPS – related calculations", NICO advised the

SPC in March that due to the complexity of the calculations involved, it is taking longer than anticipated to resolve and prepare the information required. Whilst some progress has been made, that remains the position.

- In the meantime, NICO advise that there is no interim arrangement in place for administrators whose calculations of GMP's or other amounts differ from the Inland Revenue. NICO will, of course, continue to investigate and answer any query where a possible discrepancy has been identified.
- Once NICO have all of the information, an addendum to the CA14 will be issued. Unfortunately they are still unable to provide a timescale for this at the moment.
- NICO wish to assure their customers that they are giving this matter their highest priority.
- Ian Neale raised a question about an old outstanding issue and inferred there were long delays in responses to written requests for clarification from APSS Technical. In particular his concern was the absence of a full reply to a SPC letter of 10/4/02 concerning Update No 121, about which he had e-mailed Martyn Rounding. In response Alan Bateman asserted that overall APSS Technical is meeting our published turnaround times for correspondence. The problem in this instance was that the issue concerned the interaction of IR and DWP legislation and in the background of DWP legislation which was being further developed. In fact a public apology for the delay had been given last November at a meeting of the Joint Working Group (JWG). And currently the difficulty has still not been resolved though we have undertaken to provide a response before the due date of the JWG meeting next month (now postponed until July at earliest).
- It was made clear that in cases of delay involving technical issues Martyn Rounding should be approached to resolve matters. In this case, however, there were special and unusual circumstances that prevented an early solution to the problem. Jayne Banner echoed this approach and said she would be happy to look into such delay cases.

11. Any Other Business

The following points were raised:-

- Teresa Preece asked about the inclusion in recent letters of a confusing and misleading sentence requesting the APSS reference and the practitioners direct dial telephone number. Jayne Banner explained this was the new corporate standard approach letterhead which was designed to cater for all of our millions of customers ranging from those making benefit claims to Corporation Tax and PAYE customers. She mentioned it was being considered whether, when corresponding with professional people, an exception to this standard corporate approach could be granted. In the meantime our customers should continue to respond as normal.
- Mark Howard enquired whether prior to A day APSS could exercise a little more flexibility e.g. where schemes are in surplus and it would be imprudent to reduce the surplus at this stage. Jayne Banner said we would take the matter away for consideration. The difficulty here is that at present the law is as it currently stands. Until more was known about the implications of Simplification it is essential we adopt a cautious approach. In the current climate, however, we would consider carefully whether it was appropriate to introduce new measures.

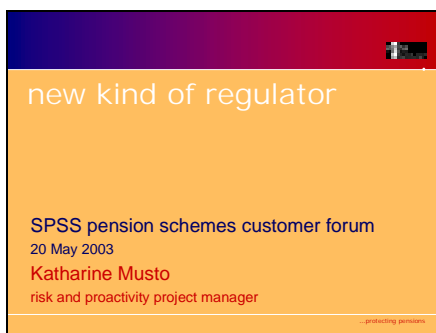
12. Next Meeting

The next meeting was scheduled for Wednesday 19 November 2003 at Euston Tower. The Room is confirmed as the Main Conference Room, 1st floor.

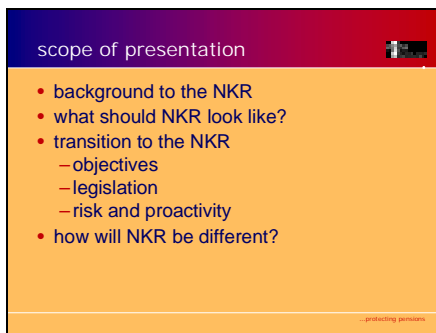
13. Appendices

p.t.o.

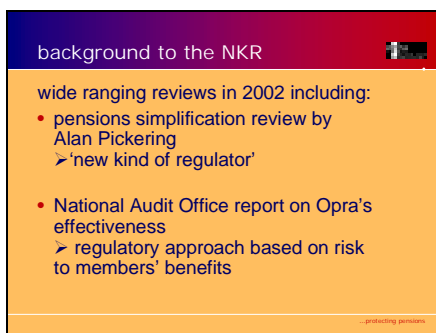
Slide 1



Slide 2



Slide 3



Slide 10

legislation

- Bill expected in November 2003
- flexible
- powers linked to objectives rather than breaches
- ability to be proactive or reactive depending on circumstances

...protecting pensions

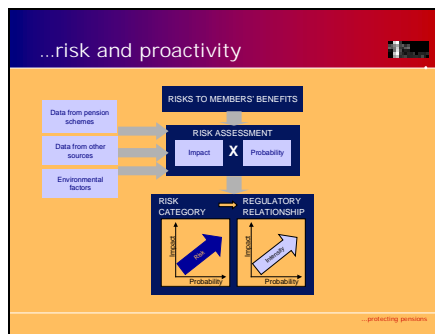
Slide 11

risk and proactivity

- identify and assess risks to members' benefits
- develop risk categories and regulatory responses
- identify information needs

...protecting pensions

Slide 12



Slide 13

how will NKR be different?

- focus on risks
- more research
- more guidance
- more contact with providers and administrators
- fewer but more significant cases
- more emergency action

...protecting pensions

Slide 14

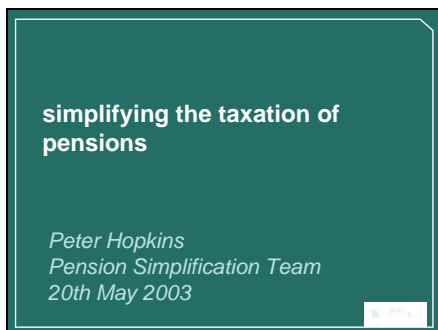
questions?

...protecting pensions

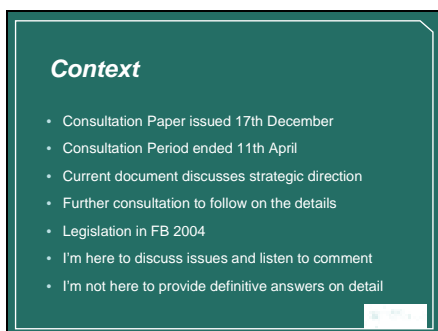
Slide 1



Slide 2



Slide 3



SPSS Customer Forum

Terms of Reference

1. The Forum is established as a consultative not decision-making body to enable APSS and its customers
 - to discuss operational issues of general interest
 - to raise understanding/awareness of issues common to all parties
 - to discuss solutions to areas of operational difficulties
 - to seek customer views on proposed changes to operating practice
2. Although not a technical forum (there are other more appropriate bodies for technical discussion) it is acknowledged that technical topics may be raised and if not able to be answered at the meeting they will be taken away for further research.
3. The Forum is not the appropriate place for discussion of individual performance either of the Revenue or practitioner, though may well provide the opportunity for such discussion outside the meeting.
4. Attendees for the Revenue will generally be members of the senior Management Team of APSS and someone from the Pensions Policy area.
5. Industry attendees will generally but not exclusively be representatives of industry representative bodies.
6. Meetings will be held at regular intervals, generally twice a year.
7. An attendance of no more than 20 is seen as ideal.



**Audit & Pension
Schemes Services**
Yorke House
PO Box 62
Castle Meadow Road
Nottingham
NG2 1BG

Customer Forum Members

As part of Pensions Tax Simplification, in addition to the formal consultation documents, we would also like to take the opportunity to involve our customers as much as possible in the design of help and guidance for the new pensions tax regime and the transition period. We also propose to work as closely as possible with the DWP, Opra and the FSA to ensure that information we provide is consistent.

As part of this process, we would like to invite comments from Customer Forum members and/or the bodies and organisations that they represent on the following proposals and questions.

- It is intended that a second consultation document (condoc) containing most of the proposed detail for the new tax regime will be published in due course. We propose to run a series of seminars to coincide with this, similar to those that went with the first condoc. It is proposed to run 5-6 half-day events to give people the opportunity to talk to SPSS representatives about the proposals. As with the seminars that we ran to coincide with the first condoc, we propose to have speakers from both SPSS and from outside the Revenue to provide respectively the Revenue and industry views of the proposals.

Q. At least two of the events would be in London, but do forum members have any suggestions on the best locations for regional events?

Q. As with the first events, we would like an industry view of the next set of proposals but would also welcome views on the role of external speakers. What are forum members views and are there contacts who might perhaps like to volunteer to participate at (some of) the proposed events?

- Once the detail of the new Pensions Tax regime has been finalised we intend to raise awareness amongst scheme providers and others through supported seminars. Based on our experience of other initiatives we see these as being developed and run in partnership with the pensions industry and representative bodies.

Q. Do forum members support this approach and if so, can they let us know who in their areas would be the appropriate contact to take forward this issue? Can you also indicate whether you are answering this question on behalf of an individual firm or a representative body. Initially we would be seeking input from individuals with knowledge of the training requirement in their business area and an awareness of the delivery opportunities in the coming months.

- As part of the Pensions Tax Simplification process we will be producing guidance on the

new legislation and checking the relevance of current material. Guidance will be based on customer needs and delivered via the Internet, so that customers can be directed to the appropriate area of the website where the query could be answered.

Q. We would welcome input from customers as a "readers panel". Would forum members or their associates like to volunteer, bearing in mind that timescales may well be tight requiring turn-round within days rather than weeks?

Q. It is appreciated that until people have had the chance to study the second condoc they will not be able to comment fully on the sort of guidance that they feel will be required. We would however welcome as soon as possible feedback from forum members on this issue.

Q. While all guidance in future will be web based only, do forum members feel there will be any requirement for a one off issue of the guidance on paper or CD at A day?

- The new tax regime will mean potential changes for individuals who have not traditionally been our customers. It is our intention to produce a leaflet that covers the tax implications for all members of saving in a tax-registered scheme and about how and when benefits can be taken. We would not anticipate having a major publicity campaign covering the changes although we will explore the possibility of working with DWP to have some form of publicity around about A day. With the new opportunities for saving and for flexibility for pensions products, we are assuming that where appropriate the industry will be making their existing members aware of the changes and any requirements on them for the registration of pre A day rights.

Q. Will the forum members be producing their own material and would early sight of IR products be helpful? How do forum members see our respective roles working in this area?

- In addition to the second condoc, there will be a number of procedural issues that we may wish to consult on. We would like to be able to have as wide a pool as possible of people who would be available to discuss these issues at short notice.

Q. Do forum members wish to be involved in these separate consultations and if so can they let us know the names of any volunteers?

Please can you send any responses or thoughts on these matters to Paul Cottis (Tel 0115 974 1692 or e-mail PaulCottis@ir.gsi.gov.uk) at APSS in Nottingham at the letterhead address above by Friday 20th June 2003. If there are any other issues that you would like to raise at this stage, please feel free to do so.

Paul Cottis
APSS Customer Relations
19 May 2003

National Insurance contributions liability on payments into Funded Unapproved Retirement Benefits Schemes

Introduction

You may be aware that, as a result of the High Court decision in *Tullett & Tokyo Forex International Ltd and Others v The Secretary of State for Social Security* [2000] EWHC Admin 350, the Inland Revenue has been reconsidering its position on the National Insurance contributions (NICs) liability on payments into a Funded Unapproved Retirement Benefits Scheme (FURBS). This article sets out the conclusion of its deliberations. It confirms the Revenue's existing and published view that such payments are liable for Class 1 NICs.

All the legislative references mentioned in this article are those which apply in Great Britain. Northern Ireland has its own legislation which, in the main, is the same as that for Great Britain. But, for ease, we refer only to the latter in this article.

Background

In May 1998 the Secretary of State (SofS) for Social Security decided, under section 17 of the Social Security Administration Act 1992 (SSAA 1992), that bonuses made by way of additional payments in the form of short-dated gilts to life assurance policies were earnings and liable for Class 1 NICs.

The three employers involved appealed against the SofS's decisions. In May 2000, the High Court gave judgement, when it decided in favour of the companies and allowed the appeals. Under section 18(6) SSAA 1992, a decision of the High Court is final.

Legislation

Subject to certain conditions, section 6(1) Social Security Contributions and Benefits Act 1992 (CBA 1992) provides that a Class 1 NICs liability arises when "earnings are paid to or for the benefit of an earner [employee]". "Earnings" are defined in section 3(1) CBA 1992 as including "any remuneration or profit derived from an employment".

The High Court's decision

The court decided that payments by the employers of the short-dated gilts to life assurance policies held by their employees were not earnings "paid to or for the benefit of" the employees in question within the meaning of section 6(1) CBA 1992. Mr Justice Collins held that, in construing section 6(1), it was necessary to look at what the employee receives. As such, the "earnings paid to or for the benefit" of the employees was:

- the enhancement in the value of the life assurance policies held by the employees; and
- not the gilts paid into the assurance policies, which was merely the cost to the employers of making such payments.

The enhancement in the value of the policies was a payment in kind. As such, it fell to be disregarded, for the purposes of calculating the amount of the employees' gross earnings for Class 1 NICs purposes, by virtue of regulation 19(1)(d) of the Social Security (Contributions) Regulations 1979 (since 6th April 2001, paragraph 1 of Part II of Schedule 3 to the Social Security (Contributions) Regulations 2001 (SI No. 2001/1004; the 2001 Regulations)).

NICs liability on payments into a FURBS

Since November 1997, the view has been that employer's cash payments into a FURBS are earnings "paid to or for the benefit of" an employee within the meaning of section 6(1) CBA 1992. Where such a payment is made in respect of two or more employees, paragraph 13 of Schedule 2 to the 2001 Regulations sets out how the amount of earnings for each employee comprised in the payments into the FURBS must be calculated.

Implications of the *Tullett & Tokyo* decision on the NICs liability on payments into a FURBS

The Revenue has been considering the effect of the *Tullett & Tokyo* judgement on the NICs liability on payments into a FURBS. After full and careful consideration, the Revenue does not accept the High Court's reasoning as applying to a payment into a FURBS.

We consider that:

- in reaching his decision, Mr Justice Collins put too much emphasis on Schedule E tax case law when the three appeals concerned the interpretation of NICs legislation;
- the definition of "earnings" in section 3(1) CBA 1992 is much wider than "emoluments" in section 131(1) ICTA 1988 (from 6th April 2003, "earnings" within section 62 Income Tax (Earnings and Pensions) Act 2003);
- the wording of section 6(1) CBA 1992 – "...earnings...paid to or for the benefit of..." – further extends the meaning of "earnings"
- so in some circumstances, as in the case of employer payments into a FURBS, "earnings" includes payments made to a third party for the benefit of the employee.

All of which means that there is no change to the Revenue's stated position that a payment into a FURBS is liable for Class 1 NICs. This position is set out:

- in booklet CWG2 (2003) "*Employer's Further Guide to PAYE and NICs*":
 - in paragraph 81 on page 57; and
 - on page 76 under "retirement benefits schemes"
- on pages 02155 to 02163 of the Revenue's internal guidance, the "National Insurance Manual"

Unpaid Class 1 NICs on payments into a FURBS

Where due, the Revenue will seek payment of any Class 1 NICs which have not been paid on payments into a FURBS. It will also seek interest on the unpaid amount.

Requests for refunds of Class 1 NICs paid on payments into a FURBS

As a result of the *Tullett & Tokyo* judgement, the Revenue has received a number of requests for refunds of the Class 1 NICs which have been paid on payments into a FURBS. These requests have been refused.

A refund can only be made if the NICs have been paid in error (regulation 52(1)(a) of the 2001 Regulations). "Error" is defined in regulation 52(12) as meaning, and only meaning, an error which:

- is made at the time of payment; and
- relates to some present or past matter.

As explained above, the Revenue's view is that a payment into a FURBS is liable for Class 1 NICs. It follows that the NICs paid on a payment into a FURBS have not been paid in error within the meaning of regulation 52(12) of the 2001 Regulations. So the NICs cannot be refunded.

RECOVERY OF OVERPAID REBATES

1. Action is continuing to gather data from pension providers and schemes to establish any losses incurred as a result of our recovering overpaid NI Rebates last October. This is a sampling exercise and therefore it does not cover all affected schemes or individuals.
2. We issued letters to the schemes in our sample on the 25th February and followed this up with a reminder on 3rd April
3. So far, 63% of schemes contacted have responded.
4. From information gathered we are looking to establish the total amount of loss sustained. This will then inform our further discussions with IR Finance, AB1 and NAPF.
5. We plan to run the data gathering exercise up until the end of May.
6. At that time, we will calculate from information provided, the total amount of loss sustained.
7. We would propose to convene a further meeting with ABI, NAPF and IR Finance sometime in June to discuss the results of the exercise.