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Lord Oakeshott
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07 November 2008

Dear Matthew

Pensions Bill: Memorandum of Understanding between the FSA and Pensions Regulator

Thank you for your contribution to the important debate on the Pensions Regulator's powers during Report stage of the Pensions Bill. During the discussion on the arrangements for protection of the Pension Protection Fund on 27 October, you asked to see the Memorandum of Understanding between the Financial Services Authority and the Pensions Regulator. (Hansard: 27 October 2008: col 1455).

I am pleased to enclose a copy of this document. The Memorandum concerns the co-operation and the co-ordination between the Financial Services Authority and the Regulator in carrying out their respective responsibilities for the regulation of occupational and personal pension schemes, including stakeholder schemes. It sets out the relevant legislation relating to the two regulators' responsibilities and provides a framework for joining up activities. It is normally reviewed annually, and the two bodies are currently in the process of undertaking the latest review.

I mentioned during the debate that there is regular contact between the two bodies at both a senior level and at working level to ensure that there is appropriate linkage between their respective roles. The regulators have worked together on a number of important outputs, including a joint guide on the regulation of workplace contract-based pensions – this document sets out the respective roles of the two bodies in this area, and I am enclosing a copy for information.

I should add that Regulator and the Financial Services Authority work together on the regulation of risks where they have a common interest, and this includes regular engagement, information sharing and monitoring of the pensions buyout market.

During the same session of Report we also had a debate on the use of a form of consent on purchase of an annuity. You mentioned your discussions with Legal & General about the possibility of specific requirements on annuity providers in this area. I would be happy to arrange for yourself and Legal & General to meet Treasury officials to discuss this if that would be helpful – or indeed to meet with you myself. Please contact my office on 020 3267 5035 if you would like to set up a meeting.

I hope this response has been of assistance. I have copied this letter to Lord Skelmersdale and Baroness Noakes and will arrange for a copy to be placed in the House Library.

Yours sincerely

B.Y

Bill McKenzie

Memorandum of understanding between the Financial Services Authority and the Pensions Regulator

6 April 2005 (updated October 2007)

MEMORANDUM OF UNDERSTANDING (‘Memorandum’) BETWEEN THE FINANCIAL SERVICES AUTHORITY (‘FSA’) AND THE PENSIONS REGULATOR ('TPR')

1. SCOPE AND PURPOSE

1.1 This Memorandum concerns co-operation and co-ordination between the FSA and the Pensions Regulator in carrying out their respective regulatory responsibilities for the regulation of occupational and personal, including stakeholder, pension schemes.

1.2 Its purpose is to assist co-operation and co-ordination between the FSA and the Pensions Regulator by setting out:

(i) the respective regulatory responsibilities of the FSA and the Pensions Regulator; and

(ii) arrangements for co-operation and the exchange of information.

The arrangements set out in sections 3 and 4 are subject to what is permitted and required by law (including the obligation of each organisation to separately consider each case to which the arrangements will apply).

1.3 The FSA and the Pensions Regulator have a significant number of similar regulatory responsibilities under the Financial Services and Markets Act (FSMA), the Pensions Acts and other legislation. These responsibilities complement each other as they mostly extend to different activities and objectives.

The FSA’s statutory objectives

1.4 The FSA’s objectives are: maintaining confidence in the financial system; promoting public understanding of the financial system; securing the appropriate degree of protection for consumers; and reducing financial crime.

The Pensions Regulator’s statutory objectives

1.5 The Pensions Regulator’s objectives are: protecting the benefits of members of workbased pension schemes; reducing the risk of situations arising that may lead to compensation being payable under the Pension Protection Fund; and promoting, and improving understanding of, the good administration of work-based pension schemes. Work-based pension schemes are occupational pension schemes; personal pension schemes where direct payment arrangements exist in respect of one or more members of the scheme who are employees; and stakeholder pension schemes.

Scope

1.6 The FSA's responsibilities include the regulation of advice on and the sale and marketing of investments such as personal, including stakeholder, pensions and the prudential regulation of pension providers such as insurance companies and friendly societies. The Pensions Regulator regulates work-based pension schemes. It will focus mainly on employers, scheme trustees and managers, and their advisers. There will be some areas of common interest with the FSA in relation to work-based pensions.

2. RELEVANT LEGISLATION AND REGULATORY RESPONSIBILITIES

2.1 The key pieces of legislation that govern the FSA's and the Pensions Regulator's responsibilities are set out in Annex A.

2.2 The main regulatory responsibilities of the FSA and the Pensions Regulator are summarised below:

2.3 The FSA:

- regulates firms that provide, promote, market, advise on or sell personal, including stakeholder, pensions and annuities – occupational pension schemes are specifically excluded from its remit;
- regulates the establishment, operation and winding-up of personal pension schemes;
- regulates the prudential risks of firms who provide personal, including stakeholder, pensions and annuities;
- has an indirect interest in occupational pension schemes because it regulates firms which provide investments and investment services to occupational pension schemes (e.g. investment managers, insurers selling insurance-based pension products, advice given to scheme trustees on investments);
- is accountable, in a number of significant respects, for the Financial Ombudsman Service (FOS)[1], which handles complaints about personal, including stakeholder, pensions – FOS shares this complaints handling role with the Pensions Ombudsman;

[1] It is noted that the Thornton review has recommended that the FOS is merged with PO, so the scope of FOS's role may be subject to change

- is accountable for the Financial Services Compensation Scheme, which covers the liabilities of FSA-authorised firms which provide or advise on personal, including stakeholder, pensions; and

- has a statutory responsibility to promote public awareness and understanding of the financial system, which extends to all forms of pension provision.

2.4 The Pensions Regulator:

- regulates occupational pension schemes, including their funding, governance and administration;

- regulates, in respect of stakeholder pensions, registration, designation, and compliance with the charge cap, as well as the other duties imposed on employers, trustees and managers in relation to all work-based pensions e.g. timely payment of contributions;

- regulates certain aspects, including administration, of work-based personal pension schemes;

- provides information, education and assistance in relation to work-based pension schemes to:

  - those involved in the administration of work-based pensions;

  - those who advise trustees and managers on the operation of work-based pensions;

  - employers who sponsor work-based schemes and those who advise them

2.5 Work place contract-based schemes

Both the FSA and the Pensions Regulator have regulatory responsibilities in relation to work place contract-based schemes. These are personal pension or stakeholder policies where contributions are paid into them through direct payment arrangements, ie the mechanism of employer payments, whether these payments are employer contributions or are employee contributions deducted from pay. A provider may operate one or more personal pension schemes and each work place contract-based arrangement will be a subsection of one of these schemes.

The FSA's main areas of focus are advice to employees and the regulation of providers. They do not have a significant role in relation to employers. The Pensions Regulator's main focus is on promoting good administration, and the requirements on employers around the payment of contributions.

Work place contract based schemes fall under the remit of both regulatory bodies. The FSA's remit embraces all personal pensions, both individual and work place contract based schemes, whereas TPR’s remit covers occupational schemes and work place contract based schemes.

In the event of significant risks affecting work place contract based schemes, the regulators will liaise regarding any action to be taken.

Where significant risks are identified which relate across a provider's individual personal pension portfolio (i.e. individual personal pensions and work place contract based schemes), the FSA is more likely to lead on this area as it goes wider than TPR's remit. The risk will be assessed by the FSA in line with its risk based approach.

Where there are problems which primarily relate to GPPs then the regulators will liaise TPR is more likely to take the lead, particularly where there are issues which relate to the employer.

If the matter is particularly serious there may be occasions where both regulators will seek to address issues. This would be done following discussions between the regulators as to how this can be done in a complementary manner.

3. CO-OPERATION, CO-ORDINATION AND EXCHANGE OF INFORMATION

3.1 The FSA and the Pensions Regulator will seek to co-operate in a timely way in the regulation of occupational and personal, including stakeholder, pension schemes. In particular, the FSA and the Pensions Regulator will seek to ensure that time is allowed for a proper exchange of views. This co-operation will help ensure that:

(i) those involved in pensions (e.g. FSA-authorised firms, employers, consumers, scheme members, scheme administrators, scheme trustees etc.) are aware which regulator is responsible for different aspects of pensions regulation;

(ii) the application to pension schemes of each regulator’s governing legislation will, so far as possible, be complementary and transparent; and

(iii) the FSA’s and the Pensions Regulator’s public communications on issues of common interest will be appropriately co-ordinated.

3.2 The FSA and the Pensions Regulator will meet as necessary to ensure that these benefits are achieved, including regular meetings at staff level and an annual meeting at senior management level. Meetings at staff level will take place at least quarterly and more frequently on an ad-hoc basis as necessary, including when it is not possible to reach agreement on a particular issue. These will involve relevant departments (e.g. policy, supervision, enforcement) as appropriate.

Public awareness and understanding

3.3 The FSA's public awareness objective extends to the education of consumers (including members of all types of pension scheme, whether occupational schemes or personal pensions) in all financial matters. The Pensions Regulator's objective of promoting and improving the understanding of good administration of work-based pension schemes is focused mainly on employers, trustees, scheme administrators and other people involved in the day-to-day running of work-based pensions. There will also be circumstances where the Pensions Regulator will have an interest in the information and advice given to scheme members about their pension scheme rights and benefits.

The FSA and the Pensions Regulator will liaise closely to ensure that their separate awareness activities are complementary and achieve maximum effectiveness. In their activities they will bear in mind any relevance to or impact on the other organisation's wider strategic objectives. An example of this close liaison is with the separate information leaflets produced by TPR and FSA for members of occupational and personal pensions respectively outlining members' options as they approach retirement. These have been designed to convey the same messages - for example those around the open market option and the range of annuity features. Another example of the regulators' liaising is in relation to the FSA's 'Financial Capability' strategy.

Consumer protection

3.4 The FSA and the Pensions Regulator will liaise with each other with the aim of ensuring that FSA activities undertaken for the purpose of its consumer protection objective and Pensions Regulator activities undertaken for the purpose of its objective of protecting the benefits of members of work-based pension schemes are complementary and effective.

Supervision and enforcement

3.5 FSA and Pensions Regulator staff involved in supervision and enforcement will seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other as appropriate and as set out in paragraph 3.2 on issues of common interest and exchange information, including information listed in paragraphs 3.10-3.11.

Complaints and redress

3.6 A separate Memorandum of Understanding between the Pensions Ombudsman and the Financial Ombudsman Service governs the handling of complaints relating to occupational and personal, including stakeholder, pensions by these bodies. The FSA and the Pensions Regulator will liaise with each other as necessary on pensions-related complaints arrangements.

Compensation arrangements

3.7 The FSA and the Pensions Regulator will liaise with each other as necessary on the compensation arrangements provided by the Financial Services Compensation Scheme, the Pension Protection Fund and the Fraud Compensation Fund. In particular, this will include careful co-ordination and exchange of information, where relevant, in cases where defaults or potential defaults under any of these compensation schemes could have a bearing on the other regulator's responsibilities – see section 3.10.

Europe

3.8 The FSA and the Pensions Regulator will liaise with each other and co-ordinate their activities as appropriate on European developments relating to pensions, including the work of CEIOPS (the Committee of European Insurance and Occupational Pension Supervisors), of which both the FSA and the Pensions Regulator are members.

Other areas of mutual interest

3.9 The FSA and the Pensions Regulator recognise that there will be other areas of common interest. The FSA and the Pensions Regulator will liaise with each other in connection with such issues. For example, in the event of maladministration of a pension scheme, the FSA and the Pensions Regulator will seek to work closely to establish where the source of the problem lies. Where appropriate, the Pensions Regulator will take responsibility for administration where it relates predominantly to group personal pensions, and the FSA for administration problems which indicate difficulties within an FSA authorised firm more widely.

Exchange of information

3.10 The FSA and the Pensions Regulator will exchange information as appropriate in connection with the carrying out of their respective responsibilities for the regulation of pension schemes. This will include, where relevant:

- information about any action taken against a person by one regulator which may be relevant to the functions of the other. This will include for example notification in advance in appropriate circumstances – for example prohibition orders, the FSA's withdrawal of an approved person's approval, the Pensions Regulator's improvement notices, the Pensions Regulator's third party notices, etc;

- information held by the Pensions Regulator which give rise to concerns or potential concerns about an FSA-authorised firm's prudential soundness, fitness or propriety. For example the issuing by the Pensions Regulator of a contribution notice

- any concerns arising from a pre-clearance request by an authorised firm under the so-called 'moral hazard' provisions in the Pensions Act 2004;

- any concerns about an authorised firm's compliance with statutory funding requirements for defined benefit pension schemes;

- information held by the FSA which indicate problems with the solvency of pension providers or of employers which sponsor schemes eligible for the Pension Protection Fund;information about any decision by the Pensions Regulator that has a material impact on a listed company's finances in relation to its liabilities to its defined benefit pension scheme;

- any proposed FSA / Pensions Regulator public announcement that may be relevant to functions of the other regulator;

- proposed Pensions Regulator codes of practice that may be relevant to the FSA;

- information held by either regulator about fraud / criminal or any other activity that might cast doubt on the fitness and propriety of an FSA-authorised firm, an approved person, or a pension trustee; and

- information held by the Pensions Regulator which indicates that there may be a failure of an FSA-authorised firm's systems and controls.

3.11 In particular, information will be exchanged on request in connection with:

- applications to the FSA for authorisation and/or permission;
- applications to the Pensions Regulator for registration;
- EEA insurance undertakings that provide, or apply to provide, occupational pension schemes where the UK is host or home state; and
- enforcement action under consideration or taken against pension scheme operators, employers, managers or trustees.

Requests and referrals

3.12 The FSA and the Pensions Regulator may request information from each other or refer a matter for action if the other body is considered more appropriate to deal with the matter having regard to its resources, expertise, powers and objectives. Any such request or referral shall include details of the information or action sought, and the legal powers or legislative gateways it considers are available. It may suggest a reasonable deadline for response, including an explanation of any urgency. The recipient of the request or referral will respond within the deadline or, if it is unable to do so, it will inform the other party as soon as reasonably possible indicating the date by which it expects to give a full response.

Freedom of information

3.13 The FSA and the Pensions Regulator will seek to co-operate with each other when requests are received by one party that includes information received from, or which might affect the interests of, the other party.

4. INVESTIGATION AND ENFORCEMENT

4.1 The FSA and the Pensions Regulator recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law:

(a) neither the Pensions Regulator nor the FSA will begin an investigation or enforcement action without informing the other if it has previously agreed that the other should be the sole investigator or enforcer;

(b) in cases of parallel investigations, the FSA and the Pensions Regulator will notify each other of significant developments and discuss in advance the steps they propose to take.

5. COLLABORATION ON GUIDANCE, POLICY AND STANDARDS

5.1 Representatives from the FSA and the Pensions Regulator will work collaboratively on guidance, high-level policy, industry standards and recommendations to Ministers that may have an impact on the work of the other. This will include, for example, proposed Pensions Regulator codes of practice that may be relevant to the FSA, or FSA consumer alerts concerning pensions matters. The body initiating a project will have regard to the need to allow a reasonable time for the other body to input effectively to it. Both organisations will share communication and publication plans to facilitate joined up messages and effective resource planning.

5.2 The FSA are a member of both the TPR Advisory Panel and also the DC working group set up by TPR. The FSA does not have any standing stakeholder groups that look particularly at pension issues. Where there is stakeholder consultation in relation to work place contract based schemes on an ad hoc basis TPR will be involved.

5.3 TPR and FSA have committed to build on existing joint working arrangements and will implement, in relation to areas of common interest and where appropriate, more joint project working and combined publications. Areas of common interest include the regulation of work-based personal and stakeholder pensions and the level of financial capability of members of pension schemes. These are likely to form the focus for much of the collaborative activity between TPR and FSA.

5.4 TPR and FSA will be members of the Pensions Institutions Forum. The forum is designed to encourage more joined up working on pensions issues between regulators and across government, providing a richer channel for communication, as well as facilitating resolution of issues and agreement on specific joint activity.

5.5 In areas of mutual interest TPR and FSA will aim to develop, where appropriate, more jointly managed projects to create a common regulatory response on specific issues. Steps will be taken to increase stakeholder awareness of the roles of the respective regulators so that there is understanding over what each regulator does in areas of common interest, for example, contract-based schemes. In addition, combined communications and enhanced signposting by each regulator to the other's web site will provide the regulated community with greater clarity on the roles of the two bodies and more accessible and joined-up guidance on regulatory requirements. The scope for combined communications will be influenced by a number of factors. For example, the target audience, the relevance of the topic to the objectives of the respective regulators and respective timescales.

6. REVIEW OF MEMORANDUM OF UNDERSTANDING

6.1 The FSA and the Pensions Regulator will consider formally at least annually as appropriate:

- any issues that have arisen from the operation of the Memorandum;
- the content and application of this Memorandum and any changes which need to be made;
- the exercise of the FSA's and the Pensions Regulator's respective responsibilities;
- whether any procedures need to be changed;
- whether any FSA rules need to be amended; or
- whether any recommendations need to be made to Government for amendments to legislative requirements.

7. PUBLICATION

7.1 Copies of this Memorandum are available on the FSA and Pensions Regulator websites (http://www.fsa.gov.uk and http://www.thepensionsregulator.gov.uk).

Signed…………………………………	Signed…………………………………
Hector Sants	Tony Hobman
for the Financial Services Authority	for the Pensions Regulator
Date 17th October 2007	Date 17th October 2007

Annex A

LEGISLATIVE FRAMEWORK

Key pieces of legislation relating to the FSA and the Pensions Regulator are:

1. The FSA
   - Financial Services and Markets Act 2000
   - Handbook of Rules and Guidance
   - Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (SI 2001 No 544)
   - Financial Services and Markets Act 2000 (Financial Promotion Order) 2001 (SI No 1335)
   - Income and Corporation Taxes Act 1988
   - Finance Acts (annual)

2. The Pensions Regulator
   - Pension Schemes Act 1993
   - Pensions Act 1995
   - Pensions Act 2004
   - Occupational Pension Schemes (Preservation of Benefits) Regulation 1991 (SI 1991 No 167)
   - The Occupational and Personal Pension Schemes (Levy) Regulations 1997 (SI 1997 No 666)
   - The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996 No 1655)
   - The Stakeholder Pension Schemes (Amendment) Regulations 2002 (SI 2004/1480)
   - The Stakeholder Pension Schemes (Amendment No 2) Regulations 2002 (SI 2002/2098)

3. Applicable to both
   - Welfare Reform and Pensions Act 1999
   - The Stakeholder Pension Schemes Regulations 2000 (SI 2000 No 1403)
   - The Stakeholder Pension Schemes (Amendment) Regulations 2001 (SI 2001 No 104)
   - The Stakeholder Pension Schemes (Amendment) (No 2) Regulations 2001 (SI 2001 No 934)
   - The Stakeholder Pension Schemes (Amendment) Regulations 2005 (SI 2005 No 577)
   - Data Protection Act 1998
   - Freedom of Information Act 2000
   - Public Interest Disclosure Act 1998
   - The Human Rights Act 1998
   - The Regulation of Investigatory Powers Act 2000

FSA

The Pensions Regulator

A guide on the regulation of work place contract-based pensions

This guide has been produced jointly by the Financial Services Authority (FSA) and the Pensions Regulator and sets out the respective roles of the two regulators in relation to work place contract-based pensions.

November 2007

Who should read this guide?

The guide is aimed primarily at the main parties involved in running work place contract-based pensions, namely providers involved in the operation of work place contract-based pensions, employers, and advisers. Members may wish to refer to other sources of information, including those listed in the 'Other useful information' section of this guide.

Why is there a need for this guide?

Both the FSA and the Pensions Regulator have a regulatory role in relation to work place contract-based pensions. The FSA and the Pensions Regulator have a Memorandum of Understanding that sets out how the regulators work in practice, and the FSA and the Pensions Regulator have always worked together closely. However, feedback to both the Pensions Regulator's defined contribution (DC) risks consultation and the Thornton review this year included requests for clarity in certain aspects of how work place contract-based pensions are regulated which this guide is intended to deliver.

Work place contract-based pensions

There are three main types of work place contract-based schemes:

- Group personal pensions (GPPs)
- Group self-invested personal pensions (group SIPPs)
- Group stakeholder pensions

For the purposes of this paper we shall use the term 'GPP' to cover all these types of arrangements.

Whilst each of the types of arrangements has differentiating characteristics they all have an individual contract between the provider and the member. The employer's main role is usually:

- to choose a GPP provider
- to give information to the employee to enable them to join the scheme
- to collect employee contributions via payroll deduction
- to remit employer and/or employee contributions to the provider

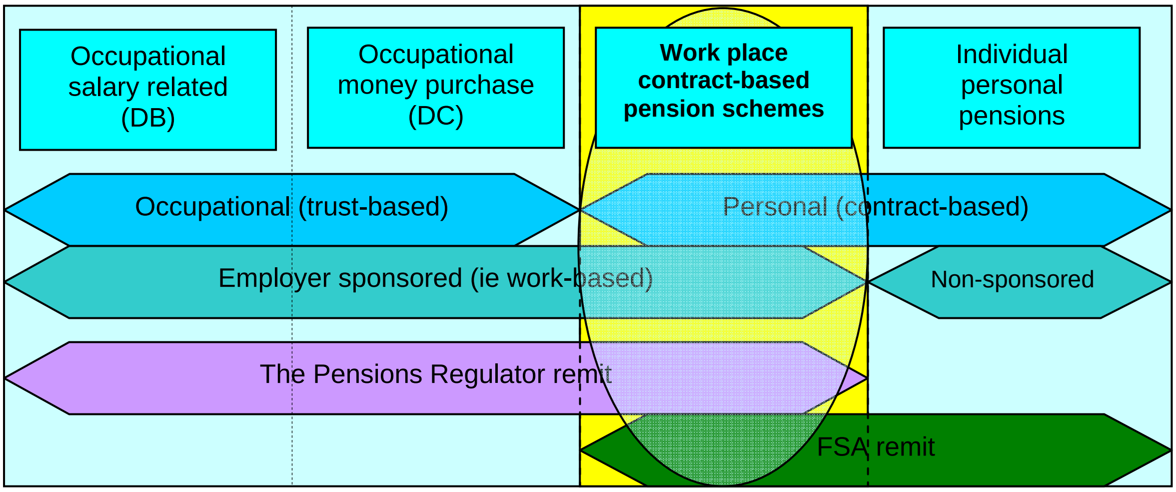
The Pensions Regulator also has certain responsibilities in relation to stakeholder pensions outside the workplace, and these are covered separately in the stakeholder section of the Pensions Regulator's website.

A pension provider may operate one or more personal pension schemes and each individual contract will be part of one of these schemes. A GPP arrangement will not typically be a separate pension scheme run by the provider but will be part of a larger scheme encompassing other GPP arrangements and sometimes individual personal pension contracts as well.

Where contract-based schemes fit in

Table 1 below shows where GPPs fit into the regulatory framework for pensions. Traditionally pensions in the workplace have tended to be provided via occupational schemes set up by employers. However, there has been a trend for some employers to offer pensions via contract-based schemes. This means more work place pensions now fall within the regulatory remit of both the Pensions Regulator and the FSA as highlighted in the third column.

Table 1



The regulatory approaches of the FSA and the Pensions Regulator

The FSA and the Pensions Regulator are both independent regulators. The FSA regulates the financial services industry in the UK. The Pensions Regulator is the UK regulator of work-based pension schemes. The organisations and individuals we regulate are, on the whole, different. Both regulators have different powers and different objectives:

The FSA - **http://www.fsa.gov.uk/Pages/About/Aims/Statutory/index.shtml**,
The Pensions Regulator -
http://www.opsi.gov.uk/acts/acts2004/ukpga_20040035_en_2#pt1-pb2-l1g5

The Financial Services Authority

The FSA aims to promote efficient, orderly and fair markets and help retail customers achieve a fair deal. The Financial Services and Markets Act 2000 gives the FSA power to make and amend rules. The FSA has a handbook of rules and guidance which forms the basis of its regulation of authorised firms.

The FSA takes a risk-based approach to regulation which means that resources are targeted at those risks which will have the biggest impact on achieving the FSA objectives – with regard to the probability of the risk crystallising.

Complementing this risk-based framework, the FSA is currently moving further towards more principles-based regulation which means placing greater reliance on high level rules and principles to achieve its regulatory aims, and a reduced emphasis on detailed or prescriptive rules. This approach lets firms achieve compliance while using their judgement about what suits their particular business needs and still delivering the FSA's required regulatory outcomes.

As part of this move to a more principles-based approach the FSA is placing more emphasis on providing support to regulated firms to enable them to meet the requirements. It is doing this through the use of case studies, examples of good and bad practice, through the endorsement of industry guidance where appropriate and also through the wider use of discussion papers.

The FSA has an objective to promote public understanding of the financial system and leads the National Strategy for Financial Capability as part of this. The Pensions Regulator is linked in to elements relating to workplace pensions.

The Pensions Regulator

Established under the Pensions Act 2004, the Pensions Regulator works to improve confidence in work-based pensions by protecting members' benefits and encouraging high standards and good practice in running pension schemes. Its overall approach can be summarised as educate, enable and enforce. Broadly this means first educate, then enable if necessary, with enforcement only used in exceptional circumstances or as a last resort.

The Pensions Regulator concentrates its resources on schemes where it identifies the greatest risk to the security of members' benefits. The Pensions Regulator has a number of tools which it uses within a regulatory framework set out in legislation. These include codes of practice which have legal effect, and guidance for those involved in running schemes, including case examples and sharing best practice. Where necessary, it takes steps such as appointing and removing trustees. The Pensions Regulator also promotes good governance of GPPs, and works to ensure that those involved in running GPPs have the necessary skills and knowledge.

Roles in GPP regulation

There are a number of parties involved in setting up and running a GPP:

- the employer who is offering the scheme to its employees;
- the provider of the contracts that make up the GPP; and
- the adviser who advises the employer on the pension (in some cases the adviser may also be offering advice to individual employees)

The personal pension contract is between the provider and the employee (who is, for the Pensions Regulator's purposes, a member) and the employer generally has no contractual role with the provider. The employer typically has a contractual agreement with the employee to deduct and remit to the provider a specified level of contribution from the employees pay, plus paying a specified level of employer contribution to the provider.

GPPs fall under the remit of both regulatory bodies. The FSA's remit embraces all personal pensions, both individual[1] and GPPs, whereas the Pensions Regulator's remit in regard to personal pension covers only GPPs. The vast majority of GPPs operate without any requirement for regulatory intervention in the scheme. In the event of significant risks affecting GPPs, the regulators liaise with each other to determine what action, if any, should be taken and which regulator should take the lead. Whilst each situation is looked at individually, where the risks relate primarily to GPPs only, then the Pensions Regulator is likely to take the lead, but if the risks apply across the provider's whole personal pension portfolio, then the FSA is likely to lead.

Risks can be identified via a wide range of sources including:
- reports/returns by employer, provider, adviser or member;
- thematic investigation/supervision

It is neither the FSA nor the Pensions Regulator's role to routinely deal with individual member complaints. Individual members should formally raise any complaint they have directly with the relevant party (eg provider, adviser, employer) or, if appropriate, the Pensions Advisory Service or the relevant Ombudsman. Both regulators operate a risk-based approach and therefore focus on issues that affect larger groups of consumers/members, and/or have a significant impact on the scheme or provider firm.

In the event of significant risks affecting GPPs, the regulators will liaise regarding any action to be taken.

Where significant risks are identified which relate across a provider's individual personal pension portfolio (i.e. individual personal pensions and GPPs), the FSA is more likely to lead on this area as it goes wider than the Pensions Regulator's remit. The risk will be assessed by the FSA in line with its risk- based approach.

Where there are problems which primarily relate to GPPs then the regulators will liaise with each other. The Pensions Regulator is more likely to take the lead, particularly where there are issues which relate to the employer.

[1] Individual personal pensions are arranged directly between the provider and individual and payments are made directly by the individual

If the matter is particularly serious there may be occasions where both regulators will seek to address issues. This would be done following discussions between the regulators as to how this can be done in a complementary manner.

When an employee leaves the service of an employer and there are no longer payments being made from the employer then the policy reverts to being an individual personal pension for regulatory purposes and the Pensions Regulator no longer has any regulatory remit in relation to that policy*. However, FSA regulation continues.

* The Pensions Regulator also has certain responsibilities in relation to stakeholder pensions outside the workplace, and these are covered separately in the stakeholder section of the Pensions Regulator's website.

Case examples

The following are examples of how different scenarios may be dealt with. Please note that these are indicative only and that the action taken on a specific case will be based on its particular circumstances.

Example one – member administration complaint

A member telephones the FSA to complain that contributions have been deducted from his salary for three months but he has not signed an application to join his employer's GPP. The FSA notes this potential breach but advises the individual that it does not deal with individual member complaints and recommends that the member takes the matter up with his employer and, if applicable, the adviser.

The member instead complains to the Pensions Regulator, and the Pensions Regulator gives the same advice to the member.

The member liaises with his employer's HR department who arranges for the member pack to be issued and the policy is set up and the three contributions allocated to his policy.

Because both regulators are risk-based and have large regulated communities, it is neither practical nor appropriate for either regulator to routinely deal with individual member complaints. These are generally resolved directly with the relevant party or, where applicable, the Pensions Advisory Service or the relevant Ombudsman.

Example two – late payment of contributions
An employer has not made the due payments of contributions in the amount of £2,500 pm for 3 months under the GPP. The provider reports the £7,500 unpaid contributions to the Pensions Regulator in accordance with the Pensions Regulator's code of practice on reporting the late payment of contributions to personal pensions. A report is also received from an employee alleging that the employer has 'stolen' his contributions. The Pensions Regulator checks whether the employer has gone into administration/liquidation as this issue would then become a matter for the insolvency practitioner to deal with. The employer is still trading.

The Pensions Regulator writes to the employer regarding the unpaid contributions. There is no response and the provider advises that a further contribution has been missed, so total outstanding contributions are £10,000. The Pensions Regulator sends a further letter to the employer to which there is no response. The Pensions Regulator makes telephone contact with the employer and a cheque for overdue payments is sent to the provider.

This matter is dealt with by the Pensions Regulator as it relates to the employer not complying with its legal obligations. The Pensions Regulator does not liaise with the FSA as the FSA has no regulatory remit in respect of late payment of contributions by employers.

Example three – unit pricing error
A provider discovers that due to a system error, the price of units in their personal pensions unitised with-profits fund has been incorrectly calculated for the past three months. This affects members of both individual and group personal pensions and means that the wrong number of units and inaccurate policy valuations apply on these policies. The provider reports the matter to the FSA together with their action plan to address it. The provider ensures that the error is corrected for future transactions and puts in place a project plan to correct all transactions, both purchase and sale of units, to ensure that no member suffers loss as a result of the error. The provider gives updates at agreed intervals to their nominated supervisor at the FSA confirming progress in addressing the matter. The supervisor requests a further report on the cause of the systems error and clarification of what steps have been taken to prevent a recurrence. This is an isolated incident at the provider and due to the prompt action taken to report and rectify matters, the FSA takes no further action.

This matter is dealt with by the FSA as it arises in the carrying out of an FSA-regulated activity e.g. safeguarding and administering investments.

Example four - allocation of contributions
The Pensions Regulator receives three reports from separate employers that they have paid contributions to the same provider with whom they have GPPs. However, the provider has not allocated contributions to the GPPs for the past two months. The Pensions Regulator contacts the provider and the provider advises that the allocation of contributions on GPPs is currently subject to delay due to reconciliation difficulties.

The Pensions Regulator discusses the matter with the FSA, and the FSA advises that there are not any other administrative issues with the provider and it is agreed that the current issue regarding the allocation of contributions to the providers' GPPs should be dealt with by the Pensions Regulator who will advise the FSA, as appropriate of their progress and the outcome.

The Pensions Regulator requests details of the sum of the unallocated GPP contributions and in view of the large amounts involved it arranges to visit the provider to understand the current position and the action that the provider is taking to rectify matters. The Pensions Regulator requests a schedule from the provider confirming what action they will be taking to rectify matters, and the provider gives monthly reports to the Pensions Regulator. The provider agrees to allocate contributions using a unit price that ensures the member is not disadvantaged due to the delay in allocation.

This matter is dealt with by the Pensions Regulator following discussions with the FSA as it relates to GPPs and there are no wider issues regarding the provider's systems and controls. The Pensions Regulator ensures that, as appropriate, the FSA are aware of the progress and outcome of the matter.

Example five – Investments
The Pensions Regulator receives a complaint from a member of a GPP that the investment performance of the fund he has invested in has underperformed comparable funds over both the short and the long term. The Pensions Regulator refers the member to the adviser who sold the contract. The member takes up the matter with the adviser and also the provider, both of whom are regulated by the FSA. They have rejected his complaint, explaining to him that they do not believe that the advice or the information given to him was at fault and if he wants to take the complaint further, he will need to go to the Financial Ombudsman Service.

He rings the FSA who explain that the performance of investment funds is unpredictable. They explain that the performance of funds with comparable objectives may still differ as the funds may have different underlying investments and investment decisions may be made at different times. Therefore investment performance of a fund is not usually a valid reason for a complaint - or a matter for the FSA or the Pensions Regulator. It may exceptionally be of interest to the regulators if, for example, the performance is affected by unexpected or excessive charges or if the individual was given incorrect or misleading information about the product. In this instance the individual accepts that the advice and information provided to him was not at fault and therefore accepts that he has no basis for a complaint.

The respective roles of the FSA and the Pensions Regulator

Table 2 summarises the focus of the regulators in respect of the different parties involved in the provision of GPPs and also in respect of the life cycle of a GPP. Appendix 1 gives more detail on the roles of the parties involved in GPP provision and the regulators' roles in respect of these parties.

Table 2: Key areas of focus for regulators of GPPs

<table>
<tr><th rowspan="2"></th><th rowspan="2">Setting up the arrangement</th><th rowspan="2">Employees joining the arrangement</th><th rowspan="2">Ongoing running of policies</th><th colspan="2">Employees leave the sponsoring employer</th></tr>
<tr><th>Retirement</th><th>Change job</th></tr>
<tr><td rowspan="2">The FSA</td><td rowspan="2">No regulatory role</td><td>FSA disclosure requirements</td><td>Regulation of providers</td><td>Regulation of annuity provision</td><td>FSA regulation continues</td></tr>
<tr><td colspan="4">Regulation of advice to employees where it is given</td></tr>
<tr><td rowspan="2">The Pensions Regulator</td><td rowspan="2">Support through information for employers</td><td colspan="3">Administration/ provision of information up to point of retirement</td><td rowspan="2">The Pensions Regulator’s role ceases in relation to that individual’s pension*</td></tr>
<tr><td></td><td>Payment of contributions by employer</td><td></td></tr>
</table>

***** The Pensions Regulator also has certain responsibilities in relation to stakeholder pensions outside the workplace, and these are covered separately in the stakeholder section of the Pensions Regulator’s website.

Other useful information

- For the Memorandum of Understanding between the Pensions Regulator and the FSA, see **http://www.thepensionsregulator.gov.uk/pdf/mouFsa.pdf**

- For information on occupational pension schemes, see the Pensions Regulator's website at: **http://www.thepensionsregulator.gov.uk** as this guide is focused on GPPs.

- For information on non-work place personal pensions, ie those with no employer involvement, see the FSA website at: **http://www.fsa.gov.uk** as this guide is focused on GPPs.

- For specific requirements in relation to stakeholder pensions, see guidance on the Pensions Regulator's website at: **http://www.thepensionsregulator.gov.uk/stakeholderPensions/index.aspx**

- The FSA has produced a guide for employers on how they can promote their GPP to employees without it becoming a regulated activity. Go to: **http://www.fsa.gov.uk/pubs/other/guide4employers.pdf**

- The Pensions Regulator's codes of practice are available at: **http://www.thepensionsregulator.gov.uk/codesOfPractice/**

- Information for employers - promoting good practice in employer pension provision at: **www.pensionsatwork.org**

- **The Pension Advisory Service** is an independent non-profit organisation that provides free information, advice and guidance for members on the whole spectrum of pensions including work place contract-based pensions. Go to: **www.pensionsadvisoryservice.org.uk/**

This guide sets out current legislative requirements. These are subject to change from time to time. One example is the government's plan of major pensions reform in 2012 including introducing new requirements on employers.

This guide is intended to be an overview of the requirements relating to contract-based schemes and the respective regulatory regimes of the FSA and the Pensions Regulator. It is not a comprehensive description of the legal requirements and those involved in contract-based schemes should ensure that they comply with the relevant legislation applicable to their situation.

Appendix 1

The following table sets out the roles played by the different parties involved in work place contract-based pension provision and describes the main features of the remit of the two regulatory bodies in respect of these.

Area of activity	**FSA scope**	**The Pensions Regulator scope**
Employers **(i) Set-up** Employers can choose to set up a GPP for their employees. If they decide to do this they need to select a provider (they may wish to take advice on this). Employers may play a part in the design of the GPP to be offered to their employees and may enter into agreements with the provider about the service to be provided. Employers may want to promote the GPP to their employees. **(ii) Ongoing** Employers need to liaise with the providers to ensure that providers have the necessary information to administer the payment of contributions. Employers then pay the agreed contributions (employer's own and/or employee contributions deducted from payroll) to the provider to allocate to the GPP. Employers may wish to put in place some form of ongoing monitoring on voluntary basis (eg monitoring administration and member	Employers are not subject to FSA regulation. However, the general restriction about carrying out regulated activities which apply to all persons will apply to them as well. There is a guide for employers on promoting GPPs in the workplace which can be found at: http://www.fsa.gov.uk/pubs/other/guide4employers.pdf This guide clarifies what employers can do to promote their GPP without it becoming a regulated activity.	The Pensions Regulator has a statutory objective to promote and improve understanding of the good administration of work-based pensions, including GPPs. The Pensions Regulator's scope focuses on ongoing requirements rather than the set-up stage, although it is vital that administrative arrangements for the accurate and timely payment of contributions are in place at outset. The Pensions Regulator regulates the payment of contributions into all work-based pensions including GPPs. Employers are also required to provide, within a reasonable period, payment information requested by providers. Employers are required to notify the Pensions Regulator of any breaches of pension legislation they are aware of by other parties involved in the running of the GPP: http://www.thepensionsregulator.gov.uk/codesOfPractice/reportingBreaches/index.aspx Employers must consult their employees on significant changes to the GPP (e.g. stopping contributions, decreasing employer contributions or increasing employee contributions). The Pensions Regulator has a role in providing information and education to employers –see **http://www.thepensionsregulator.gov.uk/employers/index.aspx**

communications). Employer involvement in an individual's policy generally ceases when the employee leaves employment.		
Providers Once an employer has chosen a particular provider the provider will usually play a major role in the design of the GPP. The provider enters into individual contracts with the employees who join the GPP. The provider receives money from the employer in respect of these individual employees and invests it in the GPP according to the choices made by the individual. The investment options will often include a default fund. The provider administers the policy according to the terms of the contract and pays out benefits. The provider makes disclosures, eg statutory money purchase illustrations (SMPIs). When an employee stops working for the employer with the GPP arrangement the policy generally continues as an ordinary individual personal pension with the provider.	The FSA regulates the establishment operation and winding up of all personal pension schemes. The sales and marketing of personal pensions (including stakeholder pensions) must adhere to FSA regulations including those on financial promotions and disclosure. The FSA is also responsible for the prudential regulation of the providers who provide GPPs. Providers must have sufficient resources, adequate senior management arrangements and systems and controls in place to manage their business properly, both in normal and adverse circumstances. Providers should maintain sufficient assets to meet their operational costs and their obligations, including paying claims and benefits to customers in a timely manner. Providers of GPPs are also subject to FSA regulation more widely. The FSA requires all providers to comply with its Principles for Businesses, which include paying due regard to the interests of their customers and treating them fairly. When an employee leaves the service of an employer and there are no longer payments being made from the employer then the policy ceases to be a GPP. There is no distinction between GPPs and individual personal pensions for FSA purposes therefore the provider will continue to be regulated by the FSA.	Providers must register their pension schemes with the Pensions Regulator (note a GPP is not a pension scheme in itself – rather it will be part of one of a provider's personal pension schemes). There is a requirement on providers of GPPs to report breaches of pension legislation to the Pensions Regulator (see link to code of practice above) There is a code of practice for providers to report late payments to personal pension schemes. http://www.thepensionsregulator.co.uk/pdf/codeLpppFinal.pdf The Pensions Regulator has a statutory objective to promote and improve understanding of the good administration of work-based pensions, including GPPs. The Pensions Regulator has a role in providing information and education to providers, eg guidance on stakeholder pensions and reporting late payments. The requirements of pensions legislation (eg SMPI disclosure) are subject to regulation by the Pensions Regulator. When an employee leaves the service of an employer and there are no longer payments being made from the employer then the policy ceases to be a GPP for regulatory purposes and the Pensions Regulator no longer has any regulatory remit in relation to that policy. (The Pensions Regulator also has certain responsibilities in relation to stakeholder pensions outside the workplace, and these are covered separately in the stakeholder section of the Pensions Regulator's

		website.)
Advisers Employers may consult a financial adviser or an employee benefit consultant when deciding what pension provision to offer to their employees. This may include selection of a GPP provider and the design of the GPP. Advisers may also be involved in the ongoing monitoring and review of the GPP arrangement. Financial advisers may be involved in the implementation of the scheme, ensuring that appropriate administration arrangements are put in place. Financial advisers may be involved in advising individual employees in relation to the GPP.	The FSA does not regulate advice to employers from IFAs or employee benefit consultants in respect of work place pensions. Where an adviser gives individual advice to employees this would be a regulated activity and subject to FSA requirements including suitability of advice.	The Pensions Regulator has a statutory objective to promote and improve understanding of the good administration of work-based pensions, including GPPs. There is a requirement on those advising on GPPs to report breaches of pension legislation to the Pensions Regulator. The Pensions Regulator has a role in providing information and education to advisers.