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

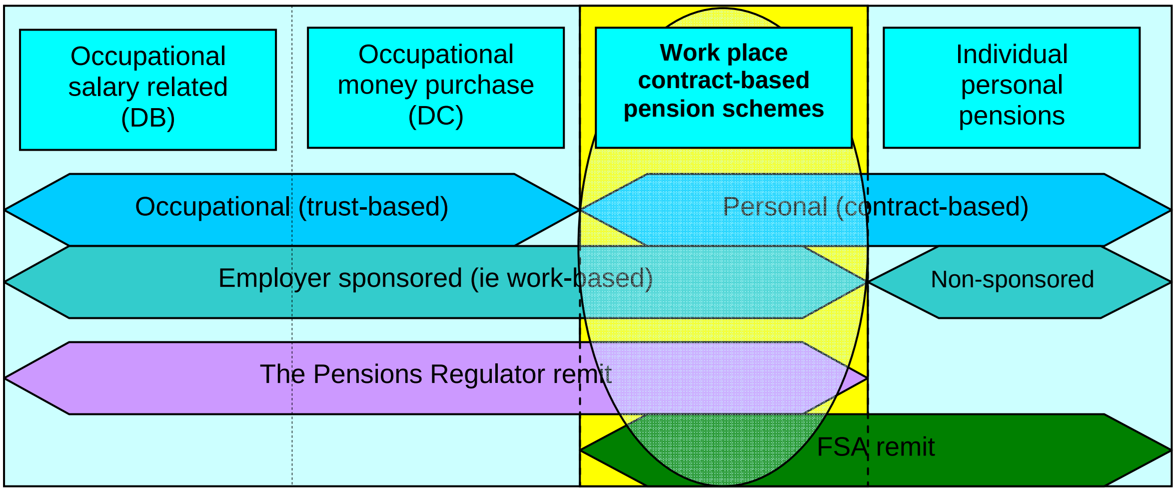
The Pensions Regulator also has certain responsibilities in relation to stakeholder pensions outside the workplace, and these are covered separately in the stakeholder section of the Pensions Regulator's website.

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>
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* 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.