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General Levy Consultation Team

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Dear General Levy Consultation Team

LCP's response to consultation on The Occupational and Personal Pension Schemes (General Levy) Regulations review 2023

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Introduction

We welcome the opportunity to comment on your proposals for further increases to the General Levy for pension schemes.

We support funding strong and effective regulatory bodies, but we are concerned about your preferred option 3 and do not think you should proceed with it. We recognise that the levy deficit has to be cleared and therefore believe that, of the options put forward, most schemes will accept option 2. However, this consultation has also raised questions about how the levy is set, oversight of the levy-funded bodies and whether these bodies are efficiently managing costs.

Question 1 - Which option do you prefer?

We believe that option 2 is preferable out of the three that you suggest.

Question 2 - In respect of your answer to Question 1, why do you support your preferred option?

Of the three options that you suggest, option 2, namely a cumulative and universal increase for all schemes of 6.5% for each of the three years between 2024/25 to 2026/27, is the most straightforward.

We agree that option 1, maintaining the current levy rates, will not deal with the deficit. However, we think that you should have quantified the overspends relative to the levy budget that have arisen in each of the levy-funded bodies (TPR, TPO and MaPS) and also set out an estimate of the levy needed once the deficit has been paid off and how this might be expected to increase, such as for inflation, into the future. One example of overspends that stands out in your consultation is reference in paragraph 21 to the cyber-attack on TPO "*unavoidably [giving] rise to some additional cost to the levy*", however, this additional cost is not quantified.

Our views about option 3 are set out below.

Question 3 - What is the impact on your scheme/business of raising the levy under Option 2?

We expect that our clients will be reasonably understanding if option 2 is chosen, but they do need to be reassured about the future path of the levy once the deficit has been paid off. In particular, it is not clear whether or not you intend to draft regulations to explicitly just cover 2024/25 to 2026/27 or whether they will be drafted to continue "ad infinitum" beyond that timescale unless amended in the future. In raising this we note that paragraph 45 states "*The Government will consult again **if** it subsequently proposes to change the rates for any of these years, and for the years that follow*." That wording implies that the option chosen following this consultation will continue for the foreseeable future.

Question 4 - What is the impact on your scheme/business of raising the levy under Option 3?

We have many concerns about option 3, mainly centred around its £10,000 premium element. We don't believe that option 3 is a "small change" (paragraph 29). It will result in a substantial additional levy that penalises a scheme just for being "small" irrespective of how well it is governed and what member outcomes it delivers.

Uncertainty over the duration of the £10,000 premium

We do not think your proposals are clear about whether the £10,000 additional premium for "small" schemes is a one-off for 2026/27 or will be due every year thereafter. If you intend to charge the additional £10,000 premium every year from 2026/27 onwards then this is unjustifiable since according to your own table A3 it will raise more than £100m pa which would then clear the levy funding deficit in two years and thereafter build an increasing surplus.

We note that your revenue projection for option 3 assumes that 50% of all schemes will consolidate by 31 March 2026 and so cease to exist. By contrast, it is not clear that the same assumption has been made for options 1 and 2.

Differing views as to when a scheme is "small"

You refer to "small" schemes as being those with less than 10,000 members. This is not consistent with the generally accepted view of what a "small scheme" is. For example, TPR's DC schemes survey published in July 2023 defines[1] a "small scheme" as having "12-99 members" and a "large scheme" as being "1,000+ members". And, on 19 October 2023, Nausicaa Delfas, CEO of TPR, used this definition in her speech to the PLSA. Further, in paragraph 39 of your consultation you state that "Most schemes with under 10,000 members have two to eleven members". If this is the case then why have you set the threshold for "small" schemes at 10,000 members?

There are many DB schemes with less than 10,000 members, but only those with, say, less than 100 members would regard themselves as being small. Subjecting such DB schemes to a £10,000 premium is arguably even harsher than for DC schemes as the ability to consolidate through DB master trusts is very limited and buyout may not be a possibility. Until and unless a legislatively sanctioned DB consolidator (different from the existing superfund model) is available, as has been explored in a recent consultation, it is unfair to apply such a levy to small DB schemes.

The consolidation issue

We are troubled by your statement in paragraph 38 that option 3 would "*support wider government initiatives to encourage a cultural shift across the pensions market from focussing on cost to overall value and encouraging market consolidation.*" The purpose of the levy is to fund the appropriate bodies as set out in legislation. We do not think that the levy being set to explicitly support government policy is appropriate in this context.

Even if it were, over the years the pensions industry has made several representations to you that there are several blocks to consolidating some schemes. These include DC schemes with underpins. Until you legislate to help

[1] See paragraph 2.2.1 of the survey linked from here: https://www.thepensionsregulator.gov.uk/en/media-hub/press-releases/2023-press-releases/too-many-small-dc-schemes-failing-to-meet-expectations-on-value

solve these problems, option 3 will put small schemes in a very difficult position where they have to find an additional £10,000 which will not benefit their members.

In paragraph 40 you state that introducing this option from 2026 would give "smaller" schemes time to consolidate. This may be true for schemes that have already started a consolidation process but for those that have not (for valid reasons) this is an unrealistic statement to make given the time it takes to consolidate a scheme, even for a DC scheme.

Small self-administered schemes (SSAS)

We believe that option 3 will have a dramatic impact on relevant small schemes ("SSASs") possibly to the point of extinguishing them as a viable pension option. We ask whether you have considered this since there is no indication in your consultation that they will be exempted from the £10,000 additional premium. (By contrast, we understand that SSASs and Executive Pension Plans are intended to be exempted from the Value for Money framework.) Based on our SSAS clients, we estimate that the £10,000 additional premium could increase running costs for such schemes by 50% - 100%. If SSASs are targeted in this way then there will be a knock-on effect to the wider economy since SSASs tend to be used by small to medium enterprises and SSASs are far from straightforward to replace with other pension provision.

We are also confused by your statement in paragraph 39 that *"most schemes with under 10,000 members have two to eleven members and are frequently found in research to have lower governance standards, lower knowledge and awareness of pensions and low compliance levels."* We agree that even the smallest of pension schemes should be well managed, but SSASs are exempt from legislation covering many of these points, such as having to appoint a chair of trustees or producing an annual chair's statement and the trustee knowledge and understanding requirements. We are concerned that you appear to be assuming a higher bar exists for SSASs than legislation requires.

We recognise that SSASs are much more bespoke for their members than non-SSASs. However, SSASs operate within the pensions regime introduced by the Finance Act 2004 and "freedom and choice" in 2015. If you have concerns about their governance or purpose then you should legislate for that instead of applying a £10,000 additional premium across all schemes below 10,000 members.

Question 5 - How will your scheme respond to a levy increase and/or premium? (For example: would it be absorbed by the scheme, passed on to members, or employers?)

We expect that for our clients with contract-based DC schemes the providers will pay the levy increase. However, ultimately this cost will have to be passed on to their savers. This is also likely to apply for master trusts.

In connection with the impact on these schemes we question your statement in paragraph 46 that "*the pensions industry has benefitted hugely from the inflow of AE members and the Government therefore accepts that the sector, rather than the taxpayer, should pay for the employer compliance regime*." This may be true for commercial master trusts that have been set up to make a profit for their owners, but it is not true for either DB or DC single-employer schemes or non-commercial master trusts. We also point out that a strong private pension industry benefits the taxpayer by reducing the potential burden on social security costs and that therefore there is an argument that some of the cost of the compliance regime should be met by the government.

For clients with single-employer DC schemes in the short term we also expect that most employers will meet the levy increase, although this is less certain. But in the long term, if option 3 is chosen then it will increase the pressure to close such schemes.

For our clients with DB schemes in the short term the levy increase will either be absorbed by the scheme or met by the employer. In the longer term, again, if option 3 is chosen then it will only increase the likelihood of smaller DB schemes consolidating, to the extent that it is feasible for them to do so.

We also believe that this consultation and particularly the possibility of a sudden additional sizeable premium on "small" schemes under option 3 will cause many trustees and employers to ask questions as to why the funding deficit for the levy-funded bodies has been allowed to grow to this extent and what oversight and accountability there is between the DWP, the regulatory bodies, particularly TPR, and the industry in setting the levy. We would not be surprised if our clients call for more partnership and input from its stakeholders about TPR's objectives and management as a "quid pro quo" for a further large levy increase.

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Question 6 - If you were to consider passing on costs to employers to absorb the levy increase, what is the size composition of employers using your scheme? (For example: are they mainly small, with less than 50 employees or larger employers?)

Our client base consists of pension schemes and employers of all sizes ranging from SSAS schemes all the way up to some of the largest pension schemes in the country (both DB and DC). We expect that our clients will adopt varying approaches about how to absorb a levy increase.

Conclusion

As will be clear from the above, we are concerned about your preferred option 3 and believe that option 2 is preferable. We are happy to discuss this further with you if that would be helpful.

Yours sincerely

By email only 15.30 8 November 2023

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About Lane Clark & Peacock LLP

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