



THE SOCIETY OF PENSION
PROFESSIONALS
making pensions work

The Society of Pension Professionals (SPP) response to the HMRC technical consultation “*Inheritance Tax on pensions: liability, reporting and payment*”

Executive summary

- 1.1. **The SPP accepts that Pension Scheme Administrators (PSAs), i.e. typically the trustees of the scheme, can be liable for reporting and paying Inheritance Tax (IHT), but we believe that the proposed method is very problematic and that there are better alternatives.**
Alternatives, such as those set out below by the SPP, are likely to be less costly for schemes to administer, result in benefits being paid quicker, and ultimately prove more effective for all interested parties.
- 1.2. **One simple alternative is to continue using existing payment methods, and to leave the calculation and payment of IHT to the Personal Representative (PR) and HMRC.**
For non-taxable lump sum death benefit payments, the PSA could continue to pay the gross amount, and HMRC would then contact beneficiaries directly for any tax payable. For taxable lump sum death benefits, a similar approach could be taken, and if the PR identifies that IHT is due, the PR could use a simple HMRC tax calculator to determine and pay the correct amount of IHT offset against any overpaid income tax. For unused pension funds, a scheme pays process could be adopted, similar to the settlement of annual allowance charges.
- 1.3. **Another alternative would be for the benefit to be taxed in full at 40% (or whatever the main rate of taxation is) and paid promptly in the minority of cases where a pension is subject to IHT.**
This would not apply in most cases as there will be no liability e.g. where the spouse is the beneficiary. The impact could be further moderated by being subject to a de minimis provision and an option for the PR to voluntarily certify to the PSA that no IHT is payable on the proportion of the estate represented by the pension scheme. This means HMRC gets its tax quicker, and beneficiaries get their money quicker – a genuine win-win solution.
- 1.4. **In relation to the current proposals, some of the proposed timescales appear unrealistic and impractical.**
For instance, it is proposed that the timescales for paying and reporting IHT apply from the date of death. In contrast, the current time limits that PSAs are subject to for paying lump sum death benefits apply from the date that the PSA first knows, or could reasonably have been expected to know, of the member's death. The SPP strongly believes that the same principle should be used for determining the start of the period in which PSAs are required to report to HMRC and pay IHT. Likewise, PSAs should not be liable for penalties for late payment or reporting where the delay is caused through no fault of their own (e.g. if they have been unable to obtain the necessary information from PRs despite reasonable endeavours).
- 1.5. **It does not seem fair or reasonable that PSAs will be subject to interest charges for failing to report and account for an IHT charge, or to penalty charges for late submission / payment of an Accounting For Tax (AFT) return, in cases where they could not have known they had to make the submission or pay the tax charge.**
- 1.6. **HMRC's desire for PSAs to report and pay IHT and late payment interest charges via the AFT return is understandable as it is administratively easier for them.**
However, from both a beneficiary and industry perspective, this proposal could lead to significant delays for paying out benefits on death, causing unnecessary financial hardship to some and giving rise to unnecessary interest charges, which could erode the benefits that are payable.

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- 1.7. **The SPP strongly disagrees that the PSA and beneficiaries should become jointly and severally liable for the payment of IHT 12 months after death.**
 Instead, once the relevant benefits have been paid out to a beneficiary, liability for any additional IHT that becomes payable should follow the money and sit with the beneficiary, as the PSA will no longer have assets relating to that beneficiary from which any additional IHT could be paid.
- 1.8. **The process and information sharing requirements set out in the consultation are likely to cause significant delays in the settlement process for death benefits, leading to an increase in complaints and, more importantly, to some beneficiaries receiving monies later, potentially much later, than under the current regime, which could result in financial hardship.** Such a system fails to put the members/ beneficiaries first and sits uncomfortably with the FCA's Consumer Duty requirements.
- 1.9. **Clarification is needed at the very earliest opportunity over what is (and what is not) exempt from these proposals.**
 If death benefits from registered pension schemes that are backed by group life insurance are exempt, the burden on pension schemes will reduce and the practicalities will reduce, but PSAs will need to know this now. If they are not exempt, will it make a difference if the scheme is operating under its own Standalone Trust or is using a Pension Scheme Trust or even an Insurer GLA Master Trust? There has not been any reference made to excepted group life assurance schemes, which are used by some employers as an alternative to providing death in service benefits from a registered pension scheme. The SPP is keen to understand if this is deliberate or an oversight. Excepted schemes sit outside of LSDBA considerations but under specific circumstances they do carry a potential IHT consideration already.
- 1.10. **Clarification is also needed over when a pension fund becomes unused.**
 If unused pension funds are to be in scope, pension schemes need to know when they become in scope. Is it from state pension age, normal pension age, normal retirement date or normal minimum pension age? All of these reflect some of the possible dates that an individual may access their pension benefits. Consistency is key, so logically, either state pension age or age 75 should be used to avoid different treatment for different schemes and different members within schemes. Normal minimum pension age is too early as there is no requirement for individuals to take their benefit at such an early age and would unnecessarily penalise all members.

2. Consultation response

- 2.1. **Question 1: Do you agree that PSAs should only be required to report unused pension funds or death benefits of scheme members to HMRC when there is an Inheritance Tax liability on those funds or death benefits?**
- 2.2. The SPP agrees that PSAs should not be required to report unused pension funds or death benefits of scheme members to HMRC when it is known that there is no IHT liability on those funds or death benefits.
- 2.3. This non-reporting would include pension funds or death benefits paid to a spouse or civil partner, or those paid as a dependant's scheme pension, charity lump sum death benefit or any exempt payments. However, there may be a place for a nil AFT return where payment is made based on the PR certifying that no IHT liability is due but where payment is made to another beneficiary.
- 2.4. We would welcome clarification that pension funds or death benefits passed due to an irrevocable death benefit nomination made at least seven years ago would also be free from any IHT liability and should not be reported to HMRC. Such a nomination may affect the total IHT due on the estate and so it could still be reported to the PRs. This view is based on existing HMRC guidance on irrevocable nominations, in particular IHTM17071 and IHTM17072.
- 2.5. Whilst the SPP appreciates that there are a number of pre-existing deadlines (see paragraph 2.10 for details) under the IHT regime, including the six-month time limit for paying IHT, it should also be noted that the deadlines currently applicable for PSAs following the death of a member start on the date the PSA first knows, or could reasonably have been expected to know, of the member's death. This is because, in practice, it can take some time for a PSA to be aware that a member has died (and in some cases more than six months).

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- 2.6. The SPP strongly believes that the same principle should be used for determining the start of the period in which PSAs are required to report to HMRC and pay IHT. In addition, PSAs should not be liable for penalties or interest for late payment/reporting where a delay has been caused through no fault of their own (e.g. if they have been unable to obtain the necessary information from PRs despite reasonable endeavours, or they have not been informed of a member's death in good time). It would probably make sense for a good faith exemption to be included within the legislation to cover scenarios such as this.

Recommendation 1: HMRC should confirm that pension funds or death benefits passed due to an irrevocable death benefit nomination made at least seven years ago would be free from any IHT liability and should not be reported to HMRC.

Recommendation 2: Government should include a good faith exemption within the legislation to cover the scenario where the PSA is unable to or does not have enough time to report and pay the IHT due.

- 2.7. **Question 2: How are PSAs likely to respond if they have not received all the relevant information from the PR to pay any Inheritance Tax due on a pension by the 6-month payment deadline?**
- 2.8. Our experience would suggest that PSAs are likely to find themselves in this position quite frequently – indeed, particularly in cases where a pension scheme member dies before their pension has started. In some cases, PSAs may not be aware that a member is deceased before the proposed six-month deadline has passed.
- 2.9. Even where a death is notified to the PSA promptly, it is often the case that it can take some time to establish who the PRs of the deceased member are. Where someone is requesting information in the capacity of a PR, PSAs will often require evidence that they do hold this position to avoid any breach of confidentiality. We are not probate experts, but we understand that the process of obtaining probate is often not swift. In the case of a recent Pensions Ombudsman Determination¹ the PSA did not receive evidence of who the PRs were until 6 years after the member's death. While this case was extreme and a very unfortunate set of circumstances, it illustrates that PSAs are not in control of the information gathering process and cannot force PRs to provide them with information as and when they need it.
- 2.10. We note that existing legislative timescales for pension schemes settling lump sum death benefits (which permit PSAs a maximum of two years to make a decision on who should receive the benefit and settle the benefits without potentially adverse tax consequences) run from the date that the PSA knows, or should have reasonably known, of the member's death, rather than the actual date of the member's death. It does not seem either fair or reasonable that PSAs would be subject to interest charges for failing to report and account for an IHT charge, or to penalty charges for late submission / payment of an AFT return when they could not have known they had to make the submission or pay the tax charge.
- 2.11. Based on the current proposals, it would seem to us that any PSA who finds themselves approaching the 6-month deadline, or who is notified of a death after the 6-month deadline has expired, would have to choose one of the two following options:
- Assume that there would be no charge to IHT for the case and elect not to report it via the AFT. This carries a risk that, should it later come to light that IHT was due on the death benefits, then the PSA would be subject to additional interest and penalty charges from HMRC – although this risk could be mitigated by providing a good faith exemption as recommended above at 2.6.
 - Assume that all of the benefit would be subject to IHT and report this to HMRC. If it later transpires that there was no IHT due, or only part of the benefit is subject to IHT, the PSA will then need to submit a revised return to HMRC and reclaim any overpaid tax. This would likely lead to delays in settling benefits and a poorer experience for those receiving the benefits who, in most cases, are likely to be the bereaved family of the deceased.

¹ Teachers' Pension Scheme (CAS-56741-P0P6), November 2024:

<https://www.pensions-ombudsman.org.uk/decision/2024/cas-56741-p0p6/teachers-pension-scheme-cas-56741-p0p6>

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- 2.12. The 6-month deadline could also have an impact on the trustee decision making process. In cases where information is late or not forthcoming, a trustee could be faced with a choice between breaching its fiduciary duty to consider all relevant factors or missing the IHT deadline with the consequent financial penalties.
- 2.13. It would greatly assist industry if HMRC were able to clarify which option it expects pension schemes to take so that this can be clearly explained to members (pre-death) and beneficiaries.
- 2.14. Once the Government has decided which of these options it expects PSAs to follow, we expect that PSAs will seek legal advice on how they should deal with such scenarios. It seems likely that unless there is a good faith exemption, PSAs will take the approach with the lowest financial risk i.e. the second approach set out above. Unfortunately, this is likely to result in a poorer experience for bereaved families and beneficiaries and may cause unnecessary financial hardship.

Recommendation 3: If PSAs are to be liable, HMRC should clarify which of the two approaches above it would expect schemes to take.

- 2.15. **Question 3: What action, if any, could government take to ensure that PSAs can fulfil their Inheritance Tax liabilities before the Inheritance Tax payment deadline while also meeting their separate obligations to beneficiaries?**
- 2.16. PSAs already face significant challenges in relation to death benefits, particularly in relation to lump sums (but also relevant to dependant's scheme pensions). PSAs commonly deal with potentially competing claims from multiple families and/or unmarried partners, and pension scheme trustees have legal fiduciary duties to make all reasonable enquiries and gather the necessary evidence before they exercise their discretion regarding the recipient(s) of death benefits.
- 2.17. Realistically, it often takes a long time to (1) identify who the potential beneficiaries are and (2) obtain the information necessary to make a proper assessment as to how to exercise their discretion. This is particularly the case where there may be competing "claims" within a family, and where tensions may be high. Trustees cannot sidestep their fiduciary obligations – if they were to do so, they may create an additional liability for their scheme or, in extreme cases, they may face personal liability. Discretionary nominations made by members are not always kept up-to-date and circumstances can change. Schemes therefore have to make sure any nominations are still relevant as part of their information-gathering process to identify potential beneficiaries.
- 2.18. The current proposal assumes that it will be known at the outset whether a recipient of a death benefit is a spouse/civil partner (relevant to whether or not IHT exemptions apply). In practice, whilst it will be known that a benefit is payable on a member's death, it is likely to be some time before the recipient(s) are known, even where there is a current spouse/civil partner in existence. As explained above, where they have discretion over the recipient, trustees are required to consider all potential beneficiaries and all relevant factors before deciding on who the recipient(s) should be.
- 2.19. PSAs are familiar with their obligations under the FA04 regime relating to lump sums and, where they receive an appropriate notice, the annual allowance. But in both of these cases, the PSA's obligations relate to information they must have before a payment arises, and there are 'forgiving' provisions under the FA04 where a failure to meet those obligations is outside their control. The obligations that are now being proposed for PSAs under the IHT regime are fundamentally different, as they arise from the date of death, whether or not the PSA is aware of the death. PSAs will also be entirely reliant on information provided by PRs about the relevant tax liability split. The proposed deadlines assume PRs are appointed promptly (which in reality is often not the case) and then communicate promptly, too. In some cases, there will be no PRs, or no material assets justifying the appointment of PRs.
- 2.20. In addition, individuals may have pension assets subject to IHT from multiple sources. In due course, pension dashboards may help assess this, especially if their scope is extended to pensions in payment and drawdown funds, but at present each PSA may be unaware of other potential pension obligations which change the IHT liability profile – on which they will be reliant on information from PRs.

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- 2.21. In any event, any tax liability will depend on the decision around exercise of discretion. In some cases (e.g. payment to a surviving spouse), there will be no tax liability, but until the discretion is exercised and a benefit entitlement to that person (or persons) crystallised, this will remain unknown.
- 2.22. The SPP therefore suggests that the clock should only start ticking for PSAs at the point when they are made aware, or should reasonably be aware, of a member's death, at which point PSAs should be obliged to notify HMRC under the normal reporting obligations applicable to PSAs under FA04 in relation to other chargeable events.
- 2.23. In addition, at that point there should be a presumption that PSAs can rely on information provided by PRs at that date. If no information from the PR is provided, PSAs should be able to make a reasonable assumption that the IHT liability is restricted to the pension benefits for which the PSA is responsible, with any further IHT liability a matter for the estate/PRs/beneficiaries. In other words, once any IHT has been paid based on the information received from the PR and the benefit(s) have been paid by the scheme, there should not be any further liability on the PSAs in the event that the PRs are required to amend the IHT liabilities based on new information received. At this juncture, liability should fall on the PRs/beneficiaries and not the scheme which has acted in reliance of the information it received and no longer has the assets to pay any further tax.
- 2.24. Good faith or 'forgiving' provisions should also be included, along similar lines as for the scheme sanction charge outlined in PTM135400. That is, the PSA should not be liable to the IHT charge if the PSA reasonably believed that the payment was not liable to IHT, and it would not be just or reasonable for the PSA to be liable to the IHT charge in respect of the payment².

Recommendation 4: The SPP suggests that the clock should only start ticking for PSAs at the point when they are aware, or should reasonably have been aware, of a member's death, at which point PSAs should be obliged to notify HMRC under the normal reporting obligations applicable to PSAs under FA04 in relation to other chargeable events.

- 2.25. **Question 4: Do you have any views on PSAs reporting and paying Inheritance Tax and late payment interest charges via the Accounting for Tax return?**
- 2.26. The SPP can understand why this makes administrative sense from HMRC's perspective, but this proposal will create issues for both beneficiaries and the industry.
- 2.27. The proposal could lead to significant delays for paying out benefits on death, causing unnecessary financial hardship to some. This is not limited to multiple of salary death in service benefits, but also funeral grants, refunds of contributions, five-year guarantee payments and trivial commutation of survivor's pensions on death.
- 2.28. Under the consultation proposals, PRs will need to liaise with the PSAs in respect of every death benefit payable for the deceased member, regardless of how significant it is or whether an exemption applies. Before the PRs can confirm to the various PSAs any IHT that is due, they will need to value the whole estate which, in some cases, may be complex. They will also need to wait for confirmation from all of the deceased member's PSAs of the gross amount of death benefits payable, or alternatively for confirmation that the benefits are payable to an individual for whom an exemption applies.
- 2.29. This process could be delayed by a number of factors (including many beyond a PSA's control) and in turn significantly delay the payment of death benefits. This would not be in the best interest of beneficiaries, especially where the deceased member was the only or primary source of income. The following are just a few such examples:
- Delay in probate process to appoint the PR – the government states that current wait time is typically 16 weeks (i.e. more than half the proposed IHT payment deadline, although, gov.uk adds *"It can take*

² HMRC Tax Manual, updated November 2024:

<https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm135400>

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longer if you need to provide additional information.”³). This will inevitably increase further when unused pension and death benefits are being brought into scope.

- Late notification of the death to the pension scheme by the PR – it may take them time to obtain details of all of a member’s pension schemes and establish their contact details.
- Late provision of information/documentation by the PR and/or the next of kin to the respective pension schemes – this is required before Trustee discretion can be exercised and the beneficiary(ies) established.
- Benefit payments requiring Trustee discretion – the decision may be made at scheduled meetings of regular intervals depending on the size of the scheme (i.e. monthly, quarterly etc). With death benefits being brought into IHT scope, this may end up complicating Trustee decisions as they could now have important IHT consequences.
- Delay in PR notifying pension schemes how much IHT nil-rate band is apportioned to them – where this is later than the six-month payment deadline for IHT late payment interest will accrue, and the pension scheme/beneficiaries will be liable for this through no fault of their own. Although this may (presumably) be deducted from the beneficiary’s payment, it is another layer of unnecessary cost and bureaucracy, and it will further reduce the amount payable to a member’s beneficiaries (who may be dependent on this benefit to support themselves and other dependants following the member’s death).
- Particular complexities where, as is commonly the case, a deceased individual has unused defined contribution funds under more than one pension scheme. A scheme’s trustees may well feel (as suggested above) that their decision about distribution of the relevant pot should be informed by the IHT position. For example, they may wish to distribute to the individual’s children so far as possible within the nil rate band, but to pay anything beyond that to the spouse. However, the extent to which the nil rate band is available will depend, in part, on decisions made by the trustees of the other scheme or schemes. The process of liaison between PRs and respective trustees could be significantly longer and more convoluted than the one described in Part 3 of the consultation paper.

2.30. The PSAs cannot arrange payment via the AFT process until the PR has informed them of the proportion of IHT payable, and the PR cannot calculate this until they have the necessary details from each of the member’s pension schemes. The SPP notes that none of the case studies contained within the consultation document cover the payment stages of the process. It therefore appears that HMRC have not considered the different timescales involved with their proposal:

- Payment of IHT – the due date for this is 6 months after the end of the month in which the death occurs, after which late payment interest applies.
- Payment of death benefits – where the deceased member was under age seventy-five and payment made within 2 years of the scheme being notified of the member’s death, or the date Trustees could have reasonably been expected to know of the member’s death, the payment is measured against the Lump Sum and Death Benefit Allowance (LSDBA) and usually tax-free. Where payment is made outside this period, or the member is seventy-five or over, the payment is taxable at the beneficiary’s marginal tax rate.
- AFT process – submission and payment cannot be made until the end of the quarter in which the amount is payable, with each quarter ending 31 March, 30 June, 30 September and 31 December. It is unclear what the effective date for an IHT submission would be, and therefore which period it would end up falling in.

2.31. Therefore, late payment interest could end up applying on the IHT payment due from a pension scheme, through no other reason than the timescales involved with the different processes.

³ Applying for probate, November 2024:

<https://www.gov.uk/applying-for-probate/after-youve-applied>

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- 2.32. For example, if a scheme member dies on 29 April, the due date for payment of IHT would be 31 October. The PR notifies the pension scheme of the IHT liability in relation to their scheme on 1 October. If we assume the trigger date for the AFT is the 1 October, the date the PR notifies the scheme of the IHT liability, this would be submitted as part of the AFT for the quarter ending 31 December. The earliest date a submission and payment could therefore be made is 1 January, although the scheme has 45 days from the end of the quarter to submit the AFT and make payment of the relevant charges. This means that, purely due to the AFT process, the IHT payment will be over two months late, and therefore subject to late payment interest through no fault of the pension scheme or the PR.
- 2.33. There are many variations of the above example. For instance, if the member's date of death is the trigger for the AFT, this would make the relevant AFT period the quarter ending 30 June. The deadline for an AFT for the quarter ending 30 June would be 14 August. Therefore, while the pension scheme could avoid late payment interest on the IHT, they would fall foul of a charge for late filing of the AFT and interest on the payment due in respect of the AFT, again through no fault of the pension scheme or PR.
- 2.34. Under the proposals contained within this consultation, it would appear that the current IHT payment deadlines, along with the AFT process, make the payment of any IHT liability by the pension scheme via the AFT impractical and will lead to late interest being applied for a majority of cases. As a result, a more practical and effective solution would be a separate process for the payment of IHT via the Managing Pension Schemes service which is not restricted to a quarterly AFT cycle, or an exemption on the late payment interest where this is purely down to the process. Alternatively, the AFT process needs to be updated to enable IHT payments on death benefits and unused pensions to be reported and paid as and when required.
- 2.35. It is often the case that pension schemes are notified late of a member's death, either because the next of kin were not aware of the pension scheme, or there was no next of kin and hence they may have been identified via mortality screening. Indeed, we understand that most providers of mortality screening services use electronic information held by the General Registrar Office (GRO), which records where death certificates have been issued, to identify deaths occurring in the UK and such information may take up to 6 months to be available electronically via the GRO, potentially longer if the death is registered in Scotland.
- 2.36. It is also worth noting that interim death certificates issued while inquests are being performed are not included and these will only appear once a final death certificate has been issued, which may be several months after the death.
- 2.37. In addition, HMRC should note that overseas deaths will potentially not appear on mortality screening results unless someone also registers the death in the UK with the GRO.

Recommendation 5: There should be a separate process for the payment of IHT via the Managing Pension Schemes service, which is not restricted to a quarterly AFT cycle, or there should be an exemption on the late payment interest where this is purely down to the HMRC prescribed process.

- 2.38. **Question 5: Do you agree that 12 months after end of the month in which the member died is the appropriate point for their beneficiaries to become jointly and severally liable for the payment of Inheritance Tax?**
- 2.39. The SPP strongly disagrees that the PSA and beneficiaries should become jointly and severally liable for the payment of IHT. Instead, liability for any IHT that becomes payable after a payment has been made by a pension scheme to a beneficiary should follow the money and sit with the beneficiary.
- 2.40. This is because, as the consultation recognises, once the relevant benefits have been paid out to a beneficiary, the PSA is unlikely to have any assets relating to the beneficiaries out of which any additional IHT could be paid.

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- 2.41. In addition, under the proposed system for calculating and paying IHT on unused pension savings and death benefits, PSAs will be reliant on a member's PRs to provide them with accurate and complete information for the PSA to calculate how much, if any, IHT is payable. It is vital that PSAs can rely on the information they are given, and they should not be responsible or liable for any additional IHT that becomes payable due to that information subsequently being found to be inaccurate or incomplete.
- 2.42. Where death benefits are being split between multiple beneficiaries, it may be that some, but not all, of the benefits have been paid out when any additional IHT liability is discovered. In these cases, the PSA should only be liable to account for any additional IHT that is payable on the proportion of the benefits that remain undistributed, with the liability for any additional IHT that is due on benefits already distributed sitting with the recipient of those benefits.
- 2.43. That said, if HMRC disagrees with industry's views and decides to proceed with its proposals to make beneficiaries and PSAs jointly and severally liable, this should apply from the date on which the benefits are paid to the beneficiary, rather than after 12 months, as proposed. In addition, the legislation should make clear that the liability of the PSA is limited to the value of any unused pension savings or death benefits still to be distributed in respect of the deceased member.

Recommendation 6: The PSA and beneficiaries should not become jointly and severally liable for the payment of IHT. Instead, liability for any additional IHT adjustment that is identified later, after payments have been made by a pension scheme, should follow the money and sit with the beneficiary.

- 2.44. **Question 6: What is the most appropriate means of identifying or contacting beneficiaries if either the PR or HMRC realises that an amendment is needed after Inheritance Tax has been paid? Should PSAs be required to retain the details of beneficiaries for a certain period?**
- 2.45. If either the PR or HMRC realises that an amendment is needed after IHT has been paid, they should pursue any adjustment required based on the details provided by PSAs which should include the beneficiaries' contact details held at the time of payment.
- 2.46. However, if PSAs are to be required to retain information for the purposes of IHT adjustments, the SPP's view is that the PSAs should not be required to hold more than minimal details such as the type and value of the benefits, the amount of IHT paid, and the name and contact details of the recipient(s).
- 2.47. The SPP notes that, even where a PSA initially holds contact details in relation to a beneficiary, by the time any IHT adjustment is due those details may have changed, or an individual may not respond (or may die). The SPP does not consider that PSAs should be subject to any additional liability because of unforeseen changes in an individual's estate and because beneficiaries are uncontactable (or to spend disproportionate time and expense maintaining contact with beneficiaries in case of this eventuality).
- 2.48. The SPP also notes that an increasing number of schemes are reaching the point of winding-up. Notwithstanding our response to Question 5 above, the SPP considers that PSAs should not be liable for any adjustments for IHT following the winding-up and termination of a scheme, and no beneficiary information should be required to be retained beyond that point.

Recommendation 7: PSAs should not be required to hold more than minimal details such as payment amounts and contact details of the recipient(s) at the time of payment. Furthermore, PSAs should not be required to retain IHT beneficiary information following the winding-up and termination of a scheme.

- 2.49. **Question 7: What are your views on the process and information sharing requirements set out above?**
- 2.50. As highlighted in response to Question 4, in some cases, PSAs are not notified of the death until several months or years have passed. It is often not the PRs who inform the PSA of the member's death, and in many cases, the scheme will not know who the PRs are or will not be contacted by the PRs. We have also noted in Question 4 the impracticality of using the current AFT return for paying any IHT charge and reporting details to HMRC.

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- 2.51. Although PSAs often use mortality screening to identify possible deaths, this is not used as an official notification of death as it is not 100% accurate. As a result, PSAs will conduct their own investigations unless they are notified in the meantime. This takes time.
- 2.52. Having established the death, it is standard practice for pension schemes to carry out enquiries and to request that full details of all potential beneficiaries are provided to assist the trustees with their decision-making process. This can take months, depending on the case. Assuming the PSA is made aware of who the PRs are, the trustees can share information with the PRs once they have decided on the recipients. However, the decision-making process can take several months or even longer in cases where additional information is needed. Trustee decisions may also be challenged in some cases which can lead to further delays.
- 2.53. The SPP agrees with the HMRC proposal that PRs should use an HMRC provided calculator to produce standard information in a standard format which can be sent to the PSA. To avoid unnecessary delays, while maintaining accessibility for all, this statement should be able to be provided both electronically and by paper.
- 2.54. The proposed process is likely to lead to significant delays in the settlement process for death benefits, leading to an increase in complaints and, more importantly, to some beneficiaries receiving monies later, potentially much later, than under the current regime. Such a system fails to put the members and their beneficiaries first, could lead to financial hardship, and sits uncomfortably with the FCAs Consumer Duty requirements.
- 2.55. To mitigate this issue, there should be an option for the trustees to pay a lump sum death benefit without waiting for any information where the benefit is payable to a legal spouse or registered civil partner living in the same country as the deceased.

Recommendation 8: HMRC should consider introducing an option for the trustees to pay a lump sum without waiting for any information if it is to a spouse or registered civil partner resident in the same country as the deceased.

- 2.56. **Question 8: Are there any scenarios which would not fit neatly into the typical process outlined above? How might we address these?**
- 2.57. The SPP believes that although some scenarios would fit into the process outlined, there are numerous scenarios that do not.
- 2.58. For instance, what would the process be where a member dies intestate?
- 2.59. It is also worth noting that it is proposed that dependant's pensions would not be in scope of IHT, but trivial commutation death benefits would be where they are paid to a dependant who is not a spouse. This could discourage the exchange of a small spouse's pension for a lump sum, meaning that the potential benefits and efficiencies of this approach are lost.
- 2.60. There can be rectification exercises that are Government, regulator, industry or scheme-led depending on the circumstances involved. The SPP is keen to understand how any additional benefits awarded or clawback of benefits would impact on IHT calculations and the proposed process.
- 2.61. Other issues to consider include:
- It is unclear if contingent annuities payable on a member's death are in or out of scope, and this must be urgently clarified. If they are in scope, when and how would these be valued (i.e. at date of death)? Would they be subject to the seven-year rule? And how would any IHT be paid given that the funds will have already been paid to the insurer on retirement?
 - Likewise, it is essential that the Government clarifies if the remaining instalments of a member's annuity for a guaranteed term are in or out of scope. The schemes continue to pay these instalments as a pension, while others provide a "guarantee" lump sum equivalent to the remaining instalments.

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The intention behind these two forms of benefit is the same, to give members a minimum guaranteed payment from their pension savings, so it will be important to know if the IHT treatment of these otherwise equivalent benefits will differ as it leads to benefit design considerations.

- Similarly, it is unclear how buy-in and buy-out insurance transactions will be treated.
 - There is no scope to transfer IHT due across multiple schemes or policies. This would be helpful, particularly if some funds are held in illiquid assets (e.g. commercial property in a SSAS/SIPP).
- 2.62. Other scenarios that may not be common, but do occur from time-to-time, include where a scheme member dies whilst in the process of making a transfer or taking benefits (including where this is a serious ill-health lump sum). These cases involve trying to determine what stage a transfer, or taking benefits, reached to work out who legally has the funds and how they should be paid. Depending on the outcome, funds may then fall into or out of IHT scope.
- 2.63. There is also the prospect that IHT interest could eat away at the value of a small pension pot/lump sum, where it is considered reasonable to for the IHT interest to be deducted from the benefits, and where the provisions of the scheme allow this.
- 2.64. The SPP also believes there is a strong risk of pension fraud – with consumers being offered vehicles with the promise of keeping benefits outside of IHT. Government will be very conscious of the existing vulnerabilities of consumers and the proposed changes are likely to exacerbate this, so the need for an appropriate focus on customer protection is considerable. Care should therefore be taken around the communication of IHT on pensions, and this should be factored into the PensionWise guidance process.
- 2.65. There is also ambiguity and potential inconsistency around what payments are in scope. For example, scheme pensions (typically DB) payable to a dependant are taxed as income at the recipient's marginal rate, whereas dependant's annuities (typically DC) are included under the IHT regime. This could drive member and industry behaviours and lead to unintended consequences.
- 2.66. Similar considerations apply to excepted life assurance schemes, which are often used instead of pensions for lump sum life cover under their own trusts. Our understanding is that, under these proposals, insured multiple of salary lump sums payable on death will be tax-free, but scheme-funded (self-insured) versions will not. It is not clear why the tax-treatment of a benefit should depend on whether it is insured, and in our view consistency of treatment is desirable. It is also essential that HMRC provides clarity as to whether an insured defined benefit lump sum death benefit under a registered scheme is in or out of scope as this will be relevant to benefit design decisions well before 2027. This benefit is particularly important for younger members and their families/dependants and is a longstanding feature of occupational provision rather than something which has emerged from individuals' IHT planning.
- 2.67. It is also worth noting that the spouse/civil partner or other dependant (such as a financial dependant or child) may decide to take a trivial commutation lump sum death benefit at any point after a member's death. This could therefore be many years after a member's estate has closed, for example when the beneficiary is in financial difficulty, or when such an option is offered by the Trustee of the scheme as part of an exercise to reduce any ongoing liability. As such, it is unclear how this would impact on this process. Should the estate be reopened by the PR to assess the position again?
- 2.68. We need clarity on when a pension fund becomes unused. Is it from state pension age, normal pension age, normal retirement date or normal minimum pension age? All of these are likely to be different and reflect some of the possible dates that an individual may access their pension benefits. Consistency is key, so logically, either state pension age or age 75 should be used to avoid different treatment for different schemes and different members within schemes. Normal minimum pension age is too early as there is no requirement for individuals to take their benefit at such an early age and would unnecessarily penalise all members.

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Recommendation 9: Clarification is needed at the very earliest opportunity over what is and what is not within the scope of these proposals and how the process will work in the numerous non-standard scenarios.

- 2.69. **Question 9: Do you have any other views on the proposal to make PSAs liable for reporting details of unused pension funds and death benefits directly to HMRC and paying any Inheritance Tax due on those benefits? Are there any feasible alternatives to this model?**
- 2.70. In addition to the issues noted above, the proposed changes will mean schemes will have to conduct communication exercises with existing members on the impact of the changes. Existing documentation, literature, systems and processes will need to be updated too. This is a considerable, time consuming and costly undertaking, the costs of which will ultimately be borne by all pension savers.
- 2.71. Furthermore, the Government's proposals will almost certainly lead to changes in practice to what we see now. This could be prompted by scheme members and their advisers devising new strategies relating to IHT, or from schemes or providers changing their current processes and options for death benefits. We could see changes to discretionary and non-discretionary nominations used by schemes and providers. The option for members to make a death benefit nomination to a scheme or provider is a long-standing one but there could well be changes in practice as a result of the proposed IHT change. This will necessitate changes to processes, revised forms, changes to documentation (rules, terms and conditions or policy conditions) and a communication exercise to inform members. The latter could impact new nominations made in the run up to April 2027 and existing nominations that are in place already.
- 2.72. However, there are alternatives to these proposals, which will in our view be less costly, quicker, and ultimately more effective. Without such an alternative solution, the numerous concerns and issues expressed in response to questions 1-8 above will make implementation incredibly challenging, costly and, in many circumstances, potentially ineffective.
- 2.73. Alternative solutions
- 2.74. Rather than adding significant complexity and slowing the process for settling death benefits as these proposals will, a simple alternative approach for all parties is to continue using existing methods of payment:
- For non-taxable lump sum death benefit payments, the pension scheme could continue to pay the gross amount, i.e. not to be involved with the payment of IHT other than providing information to beneficiaries, and HMRC contacting beneficiaries directly for any tax payable. This would be consistent with the current process of paying lump sum death benefits – the PRs assess the deceased member's Lump Sum and Death Benefit Allowance usage and, where this has been exceeded, notify HMRC who in turn contact the beneficiaries for the relevant tax. Such a process would then allow HMRC to collect the correct amount of tax from the beneficiary where tax is due for both the IHT and due to the deceased member exceeding their LSDBA usage.
 - For taxable lump sum death benefits, a similar approach could be taken. If the PR identifies that IHT is due, the PR could use a simple HMRC tax calculator to calculate the IHT due on the gross amount of lump sum with the beneficiary liable to pay the correct amount offset against any overpaid income tax.
 - For unused pension funds, to avoid members being subject to income tax, a scheme pays process could be adopted, similar to how it works for settling annual allowance charges.
- 2.75. The key advantages of this alternative approach are that beneficiaries will receive their monies quicker, PSAs will be able to simply administer the pension, and the communication process would be vastly simplified.
- 2.76. However, if HMRC do not believe this approach to be viable, a further alternative is for the benefit to be taxed in full at 40% (or whatever the main rate of taxation is) in the minority of cases where there is an IHT liability, and then paid promptly, effectively as a form of emergency taxation. It is worth noting that:

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- This would not apply to most cases because there will be no liability e.g. the spouse is the beneficiary.
- The impact could be further moderated by being subject to a de minimis provision (see below).
- The impact could be moderated further still by an option for the PRs to voluntarily certify to the PSA that no IHT is payable on the proportion of the estate represented by the unused pension or death benefits (again see below).

2.77. This further alternative approach would also mean that beneficiaries receive their monies quicker and be simpler for PSAs to apply. It would also mean that HMRC is paid the IHT quicker. Another benefit of this approach is that pension assets are very often more liquid than other personal assets (like a family home), and so better able to meet the IHT charge that will apply on the estate.

2.78. However, there are downsides for beneficiaries in comparison with the approach set out at 2.74 above, as they may be taxed when no tax is due, and any overpayments may not be reclaimed. With PSAs having to balance Consumer Duty requirements with simplicity, this may be a step too far.

2.79. We also recognise that a 40% charge will not be appropriate in cases where there would be no IHT liability, so we propose the following solutions to this issue:

2.80. De minimis amounts

2.81. For small amounts and for estates where no IHT was due, we recognise that deduction of a tax at 40% by default would be inappropriate. For that reason, we recommend a de minimis amount that would see no tax deducted. For example, this could be set at £30,000 (the current limit for trivial commutation), £50,270 (the income at which higher rate tax is levied), or £32,500 (10% of the main Inheritance Tax threshold). Given only 4% of all estates are currently liable to IHT, and accepting this figure will grow with the inclusion of unused pension pots and death benefits from April 2027, it would make sense for the de minimis amount to be fairly high. Otherwise, the numbers of beneficiaries paying IHT where there is no or limited liability, and then having to reclaim the overpayment from HMRC, could become unreasonably high.

2.82. Option for PR to certify no IHT payable

2.83. Many estates will have pension funds greater than the de minimis limit, but still have no IHT liability. In such cases, the PSA would inform the PR of the benefits payable (and ask for the standard information and documents needed to prove identity, determine beneficiaries, and be in a position to make payment). At the same time, the PSA could also issue a standard note with a set pro-forma certificate. The note would advise the PRs that they can complete and sign the certificate if they believe that no IHT is due on the estate. All benefits could then be paid without deduction of IHT. If the PRs subsequently discover that some IHT was due, they can report the payment to HMRC and would be liable to pay the tax due. The PSA would not be involved further.

2.84. The PSA's standard note would make it clear that if the certification was not provided from the PRs when the other papers were submitted, then the payment would be subject to the standard 40% deduction. It may also be appropriate to set a time limit of four weeks in cases where all the relevant information is given to the PSA at the time of notification of death.

Recommendation 10: The Government should consider the above alternatives to the current proposals, which are less costly, quicker and ultimately more effective.

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3. About The Society of Pension Professionals

- 3.1. Founded in 1958 as the Society of Pension Consultants, today SPP is the representative body for a wide range of providers of pensions advice and services to schemes, trustees and employers. These include actuaries, accountants, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and pension specialists.
- 3.2. Thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds.
- 3.3. The SPP seeks to harness the expertise of its eighty-five corporate members - who collectively employ over 15,000 pension professionals - to deliver a positive impact for savers, the pensions industry and its stakeholders including policymakers and regulators.

4. Further information

- 4.1. For more information about this consultation response please contact SPP Head of Public Policy & PR at: phil.hall@the-spp.co.uk or telephone the SPP on 0207 353 1688.
- 4.2. To find out more about the SPP please visit the SPP web site: <https://the-spp.co.uk/>
- 4.3. Connect with us on LinkedIn at: <https://www.linkedin.com/company/the-society-of-pension-professionals/>
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