

**Comments Template on  
Consultation Paper on Further Work on Solvency of IORPs**

**Deadline  
13 January 2015  
23:59 CET**

Name of Company:	JMC Jane Marshall Consulting LLP (JMC)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; <b>if you change numbering, your comment cannot be processed by our IT tool</b></li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment/response in the relevant row. If you have <u>no response</u> to a question, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments/responses which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:CP-14-040@eiopa.europa.eu">CP-14-040@eiopa.europa.eu</a> . Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions refers to <b>Consultation Paper on Further Work on Solvency of IORPs</b>.</p>		
<b>Reference</b>	<b>Comment</b>	
General Comment	<p><b>About JMC</b> JMC is a business consultancy with a particular focus on and experience of corporate pension provision of all kinds in the UK and internationally.</p> <p>We believe that pension arrangements should be operated transparently, that their governance should be robust and that regulation should deliver protection for members within a framework</p>	

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that enables and encourages the companies and bodies which sponsor those arrangements.

We believe in the importance of a successful business sector, which is able both to contribute to the growth that Europe needs and to help provide good retirement provision.

We note that many EU member states have very few, if any, IORPs.

**JMC's views on current consultation**

We support the objectives identified by EIOPA as fundamental to any regulatory framework: enhanced sustainability, strong governance and full transparency.

Unfortunately the consultation scope and the assumptions underlying it (which relate to the extension of an EU regulatory framework to solvency and the adoption and use of the holistic balance sheet) while well presented and thorough, are most unlikely to help achieve these objectives if adopted by the Commission. Rather, they are likely to hinder the continuation and inhibit the growth of employer sponsored pension provision within the EU, whether nationally or cross border, without materially improving member security.

At the same time they will create material unnecessary business costs, and potentially impede corporate business plans and impact investment markets and available investment capital. They do not appear to facilitate the Commission's own objective of smart and sustainable growth.

There is no competition between IORPS and insurers. IORPS are sponsored by employers and are not open to general consumers. The possibility of regulatory arbitrage between financial sectors is a concern that appears to have been overstated: it is difficult to imagine in practice. Single market considerations cannot therefore be considered as justification for flawed regulation.

The significant numbers of certain kinds of IORPs in very few member states means that sponsoring businesses located in those states will be disadvantaged in a way that distorts rather than enhances the single market.

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	Provided national law and regulation is robust and risk based, there is no need for the suggested intervention at EU level and no point in harmonization for harmonisation's sake.	
Q1	No.	
Q2	No.	
Q3	It is not a question of merely finding a more appropriate description.UK pension provision, for example,involves a complex interaction between trust law,contract law,pensions law and regulation.Each scheme is governed by separate sets of rules.Analysing the correct position for each scheme to identify'contract boundaries' could be onerous.	
Q4	In the UK, because each scheme is different and member rights depend on the detailed review and interpretation of a number of scheme rules,compliance with detailed and prescriptive requirements would be likely to be onerous and costly while at the same time making no material difference to proper risk management.It would be more practical if analyses of scheme specific issues and risk were left to those who are accountable (trustee boards in a UK context) who are better placed to evaluate the context and work within a developed regulatory system. There is no need for a EU wide harmonised system of this detail and complexity where national law and regulation is robust and risk based.	
Q5	As each UK scheme is governed by its own rules which sit alongside general law and regulation,answering this question means a complex legal analysis of where each scheme sits.There is no point in this where domestic law and regulation provides a robust risk based framework . It should also be noted that UK schemes are not generally permitted to reduce accrued rights.The assumption that arises more than once in the paper, that this ability might enable liabilities to be reduced and make the holistic balance sheet more flexible than it would otherwise be, is incorrect as far as the UK is concerned. The same point relates to the termination of accrual or to benefit changes. There is often a requirement for trustee consent ,albeit that in practice trust law modifies the substance of this consent requirement.	

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	The result is that the prescriptive regulation envisaged may not realistically reflect the risk in a particular scheme. The impact of the valuation requirements suggested is therefore potentially more onerous for the UK than it may be in some other member states.	
Q6	Liabilities of IORPS arise in different ways.The consultation paper is right in its analysis.	
Q7	No.	
Q8	No.	
Q9	Most sponsors do not intentionally try to generate surplus.Surplus is generally an overpayment of contributions required to finance liabilities.Since investment conditions change from time to time,there seems little point in making complex distinctions which are meaningless in the long term appraisal of a scheme.Equally,short term 'fixes' to solve what may be temporary deficits which result from market conditions not only provide unnecessary distortion of cash flows but may result in 'trapped surplus' which cannot easily be recovered.	
Q10	Of course.All schemes which are in deficit pay out benefits without them being fully funded.The obligation is a matter of trust law and the scheme rules.	
Q11	No.In final salary schemes the correct reference is to service on which accrual is based.	
Q12	The approach underlying the consultation is likely to result in significant compliance costs for business and IORPs.	
Q13	This section illustrates once again the likely cost and complexity of compliance that is envisaged without any corresponding benefit were the holistic balance sheet to be adopted.It is disproportionate in its application to schemes which have a robust risk based regulatory system as in the UK.	
Q14	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
Q15	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
Q16	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
Q17	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk	

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	reduction terms that is not already catered for in domestic law and regulation.	
Q18	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
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Q20	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
Q21	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
Q22	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation.	
Q23	The approach suggested here will be costly and onerous for UK schemes with no benefit in risk reduction terms that is not already catered for in domestic law and regulation	
Q24	No.	
Q25	As with many other issues such as the termination of accrual or contributions, or of benefit changes, discretionary benefits are complex matters of interpretation of particular scheme rules and other matters. There has in the UK been litigation on the meaning of such rules in particular schemes, which indicates the difficulty of compliance for some schemes unless they incur material legal costs and risk potential disputes. It is difficult to see that there would be any possible benefit in a new regulatory system that gave rise to such issues when robust risk based regulation already applies.	
Q26	No. The proposals are far too detailed and prescriptive already and will constitute an unnecessary burden on business.	
Q27	No. The proposals are far too detailed and prescriptive already and will constitute an unnecessary burden on business.	
Q28	No. The proposals are far too detailed and prescriptive already and will constitute an unnecessary burden on business	
Q29	Yes. However, the proposals are far too detailed and prescriptive already and will constitute an unnecessary burden on business.	

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Q30	Yes.	
Q31	The second is more realistic, but creates more difficulty in calculation.	
Q32	Yes.	
Q33		
Q34		
Q35	UK law does not generally allow for benefit reduction mechanisms. Compliance with the proposed holistic balance sheet will be more onerous for UK schemes than in other member states where these adjustments are permitted.	
Q36	There does not need to be a EU approach to the valuation of sponsor support at all whether principles based or not. This is a matter which should be left to national regulation. Regulation in the UK is risk based and is evolving to meet changed circumstances. It is difficult to envisage what additional benefit would be obtained from a EU wide system to replace or add to existing requirements. It is clear that the costs of compliance for UK schemes would be material and will constitute a disproportionate and unnecessary cost for business.	
Q37	Valuation of sponsor support (to the extent that it needs to be quantified) should be left to national authorities.	
Q38	The valuation of sponsor support (to the extent that it needs to be quantified) should be left to national authorities.	
Q39	Sponsor support is of course a balancing item.	
Q40	None, where it is a legally enforceable obligation.	
Q41		
Q42		
Q43	Yes.	
Q44	No. National authorities are the appropriate body to determine the overall balance of protection afforded by a pension protection scheme, including one which protects less than 100 percent of benefits as long as EU obligations on protecting member benefits on insolvency are observed.	
Q45	No. National authorities should make these sorts of judgements.	
Q46	Valuation of sponsor support (to the extent that it needs to be quantified) should be left to	

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	national authorities.	
Q47	We do not think that EIOPA has a role in specifying guidance.The matter is one for national authorities.	
Q48		
Q49	These questions illustrate the problems with valuing sponsor support for the holistic balance sheet.The national authorities and trustee boards are better placed to assess and monitor sponsor support and to take appropriate action.The holistic balance sheet may be academically satisfying but is both unnecessary and unsatisfactory for practical risk based regulation.	
Q50		
Q51	These questions illustrate the problems with valuing sponsor support for the holistic balance sheet.The national authorities and accountable managing bodies of the IORP (the trustee board in the UK) are better placed to assess and monitor sponsor support and to take appropriate action.The holistic balance sheet may be academically satisfying but is both unnecessary and unsatisfactory for practical risk based regulation.	
Q52	These questions illustrate the problems with valuing sponsor support for the holistic balance sheet.The national authorities and trustee board are better placed to assess and monitor sponsor support and to take appropriate action.The holistic balance sheet may be academically satisfying but is both unnecessary and unsatisfactory for practical risk based regulation.	
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Q54		
Q55		
Q56		
Q57	A one size fits all approach is clearly not possible.The best approach is to leave the assessment of sponsor support to accountable IORP managers (trustees in the UK) working within a robust and risk based national regulatory system.	

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Q58	No.	
Q59	These judgements are best made by accountable managers of the IORP (trustees in the UK) working within a robust and risk based regulatory system.	
Q60	These judgements are best made by accountable managers of the IORP (trustees in the UK) working within a robust and risk based regulatory system	
Q61	This proposal is too prescriptive.Trustee boards are best able to make these judgements within robust domestic regulation.	
Q62		
Q63		
Q64		
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Q66		
Q67		
Q68		
Q69	We do not agree with the rigid approach of the holistic balance sheet which requires the valuation of each part of the scheme’s assets and liabilities.	
Q70		
Q71		
Q72	<p>The rationale for establishing EU capital/funding requirements is unclear.As has been stated on numerous occasions by industry figures and social partners,company pension schemes are not the same as insurance companies.Membership is retricted to employees of the company and schemes are not open to general consumers.They cannot be said to be in competition with insurance companies. The concern about regulatory arbitrage between different financial service sectors which has been expressed in some quarters is overstated.It is difficult to see how this could have any effect in practice.</p> <p>The failure of an IORP (as where the sponsor becomes insolvent) does not create the same systemic issues created by the failure of an insurance company or a bank.EU law already provides</p>	

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protection for employees' pension rights where an IORP fails.

No single market issue therefore arises if regulation is made at the national rather than EU level. A single market issue may on the contrary arise if EU requirements are introduced which unnecessarily and disproportionately affect business in certain member states, given that any mischief which the requirements are intended to address is adequately covered by the law and regulation in those member states.

The introduction of EU capital/funding requirements on top of or replacing national prudential law and regulation, bringing as it would additional cost, regulation and reduced corporate flexibility will accelerate the closure of open final salary schemes. For those which are already closed to new entrants or to accrual the 'two tier' work force issue would be greatly exacerbated. The more a business must devote to the legacy final salary scheme the less there will be to invest, and to create and maintain jobs, good salaries and pension provision for employees who are not in the legacy final salary scheme. We are not suggesting that sponsors should have a free hand in the financing of their schemes. We have made clear our belief in strong governance (which in the UK requires informed trustee boards with an independent mindset) within a robust regulatory framework. We are however concerned at the prospect of funds being unnecessarily tied up.

If such funding requirements were to be introduced it is likely that investment markets would be affected as trustee boards sought to focus on certain asset classes in order to reduce risk. The general economy would also be affected by the need for sponsors to tailor their corporate investment to ensure that EU solvency requirements were met.

Business is needed to help people throughout the EU enjoy a comfortable retirement. Individuals are not generally able to achieve this on their own, and member states are constrained in what can be publicly provided. It makes no sense at all for additional burdens to be placed on businesses at EU level when rigorous regulation at a national level (reflecting a national consensus of the right balance of risk between sponsors, taxpayers and individuals) is in place. It follows that we believe the whole concept of the holistic balance sheet is misguided. As IORPs

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	<p>are not open to all consumers it is not necessary to have a mechanism to compare IORPs so that consumers can make an informed decision between them. In those few member states with substantial number of IORPs, members, social partners and stakeholders are familiar with the complexities of their national law and regulation and there is increasing emphasis in such systems on transparency and risk.</p> <p>When many member states have an under- developed IORP sector, the emphasis at EU level should be on encouraging a simple and achievable method of encouraging more employer sponsored provision, rather than devising complex and costly regulation which is unlikely to add to the security of existing IORP members but will certainly add to the costs of those responsible employers who sponsor them.</p> <p>If contrary to good sense EU capital/funding requirements were to be established, those requirements including the holistic balance sheet, <b>should relate only to new IORPs</b>. Existing IORPs should be exempt from any such obligation in those member states where there was a robust regulatory system with a protective back up in a form which complies with EU law in the event of employer insolvency.</p>	
Q73	No. Risk management should be in the form and manner determined by national regulatory systems.	
Q74	No. The content of what should be disclosed should be for national regulators.	
Q75	No. National regulators should take supervisory action on the basis set out in their national law and regulation.	
Q76	As we make clear, we do not believe that there is a role for additional EU level regulatory action in those member states which already have a robust system of law and regulation. The additional costs and other significant impacts on business and investment are unjustified. For these reasons we do not propose to respond to questions on the detailed components of a holistic balance sheet the concept of which we believe is flawed.	
Q77	Pension protection schemes should be recognised and provide full balancing item provided they comply with EU law on the protection of pension rights on insolvency.	

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Q78	Yes.	
Q79	Such decisions are for national authorities.	
Q80		
Q81		
Q82		
Q83		
Q84		
Q85		
Q86		
Q87		
Q88		
Q89	No.We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors,the corporate sector,individuals and the taxpayer.How they do that is up to them.It	
Q90	No.We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors,the corporate sector,individuals and the taxpayer.How they do that is up to them..	
Q91	No.We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors,the corporate sector,individuals and the taxpayer.How they do that is up to them..	
Q92	We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors,the corporate sector,individuals and the taxpayer.How they do that is up to them.	
Q93	No.We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors,the corporate sector,individuals and the taxpayer.How they do that is up to them.	
Q94	We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors,the	

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	corporate sector, individuals and the taxpayer. How they do that is up to them.	
Q95	We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors, the corporate sector, individuals and the taxpayer. How they do that is up to them.	
Q96	No. We emphasise once again that member states with substantial IORPS have devised regulatory and legal systems which reflect the national consensus on how risk is shared between sponsors, the corporate sector, individuals and the taxpayer. How they do that is up to them.	
Q97	Countries such as the UK which have developed IORP systems have arrived at their current law and regulation over many years. In the UK, pensions law is a mix of trust law (which governs the IORP, each of which differs from any other IORP under specific rules) contract law (which governs the relationship between sponsor and employee) and specific pensions law and regulation. As a result, almost any issue raised in this consultation will have a very significant impact on IORPS and their sponsors and will involve substantial legal change. There have been many changes in the law over recent years, as lessons have been learnt and new regulatory requirements put in place to adapt to changing circumstances. These changes, which have involved a significant tightening of the regulatory system and material compliance costs, are now broadly understood and accepted. Further change and cost, which most will consider unnecessary and unfair, will not encourage employers. They need stability and as much flexibility as is consistent with proper member protection; the proposals subject to consultation create quite the opposite conditions. The focus of EU activity should be encouraging more employers to establish and maintain IORPs.	
Q98	Existing IORPS should be exempt from any EU prudential regime where there is a robust national regulatory and legal framework. For clarity, we believe that the UK has such a framework.	
Q99		
Q100	No. It could not and should not.	
Q101		
Q102	No. It could not and should not.	
Q103		
Q104	No. It could not and should not.	

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Q105		
Q106	No.It could not and should not.	
Q107		
Q108	No.It could not and should not.	
Q109		
Q110	No.It could not and should not.	
Q111	The simplest solution is to avoid introducing any requirement for a holistic balance sheet.If it is introduced,it should apply only to IORPs established after its introduction.	