

**MITCHELLS & BUTLERS EXECUTIVE PENSION TRUST LTD
MITCHELLS & BUTLERS PENSIONS LTD**

Mike Bramley
Chairman
Pensions Department

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
EC4M 7DY

20 May 2011

Public Consultation Paper PCP2011/1

Dear Sirs

This letter is in response to the proposed amendments to the Takeover Code (Public Consultation Paper PCP2011/1).

The two companies named above are trustees of occupational pension schemes with assets in excess of £1,400 million and responsibilities for the future benefits of around 27,500 members and their families.

Our schemes' main sponsor (Mitchells and Butlers plc) has previously been the subject of high profile corporate events including take-over speculation so we speak from direct experience of the matters to which your consultation relates. However, we also believe the comments we are making will be relevant to many trustees of pension schemes whose sponsoring employers may be subject to future "hostile" or recommended bids.

We agree that it is appropriate for amendments to the Code to provide greater recognition of the interests of the Offeree company employees; however we note that the interests of pension trustees (and beneficiaries) are completely excluded. In particular:

- amendments are only being developed for current employee representatives. We would have expected the same right apply to trustees looking after the continuing interests of current and past employees in the company particularly where there is a deficit in the scheme.

In your paragraph 6.1(a)(ii), you acknowledge the interests of employees and "creditors". Since at least 2006, the Pensions Regulator has encouraged pension fund trustees to regard themselves as an unsecured creditor of the sponsoring

27 Fleet Street
Birmingham
B3 1JP
www.mbutlcpensions.com
Switchboard +44(0) 870 609 3000
Fax +44(0) 870 191 0914

Mitchells & Butlers Executive Pension Trust Limited
Registered in England No. 1248728
Mitchells & Butlers Pensions Limited
Registered in England No. 476473
Registered office: 27 Fleet Street, Birmingham B3 1JP

company if their scheme is in deficit. Code amendments are not being proposed to deal with the particular circumstances of defined benefit pension funds (who are very important quasi creditors of Offeree companies) in takeover bids. We would have expected some recognition of defined pension funds in this respect.

The Trustees of the Mitchells & Butlers Executive Pension Plan and the Mitchells & Butlers Pension Plan are concerned about the lack of focus on pension fund interests in the current consultation and would urge the Panel to consider that at the very least the obligations created by the Takeover Panel in respect of employee interests are replicated for the trustees of relevant defined benefit pension schemes in both hostile and recommended situations. These could include:

1. A requirement for an Offeror to disclose its intentions regarding the pension scheme including the impact of the offer and associated financing on the scheme or a statement no impact is intended or expected.
2. A requirement that an Offeror must adhere to the statements made in 1 above for a minimum period (say 12 months).
3. A requirement that an Offeree must disclose its views on the effect of the offer on the interests of the pension scheme.
4. A requirement that all Offeror and Offeree information disclosed is made available to the pension scheme through its trustees.
5. An obligation on the Offeree to inform trustees of their right to express an opinion on the offer and for that opinion to be published by the Offeree company and the costs of forming such an opinion to fall to the Offeree.
6. If the opinion in 5 above considers that material detriment might arise as a result of the offer and no satisfactory mitigation has been agreed with the Offeror by Day 43 of the offer period, the Takeover Code should require that the terms of the offer should be referred to the Pensions Regulator for clearance or the determination of appropriate mitigation.

We would be pleased to clarify or expand on any of these points if you so wish.

Yours sincerely

Mike Bramley
Chairman

cc: NAPF
The Pensions Regulator