Auto enrolment, pension trusts and ethical finance: Banks and regulators have an increasing role in promoting Shariah finance

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ABSTRACT The Islamic Pension Trust scheme introduced in the United Kingdom in 2014 has allowed the Muslim employers and the Voluntary sector to contribute towards non-interest bearing retirement funds. The Auto enrolment retirement plan for those in industry is aimed at Muslim employees who will have the opportunity to generate their pensions from investments that are Shariah compliant. This will have a mechanism to ensure that the pension funds are ethical when they are ready to be paid to the Muslims after they reach retirement. It is based on a financial system in which banks, insurance companies and regulatory bodies all have a stake in making the funding sustainable for a global economy.

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INTRODUCTION

The Occupational and Personal Pension Schemes Automatic Enrolment Regulations 2010 made it binding for employers to compulsorily offer a company pension scheme for employees (Secretary of State). This makes it mandatory for employers to enrol their employees on a pension scheme with a life insurance company of their choice. It is an innovative scheme that has been extended in the United Kingdom to cover Muslims in 2014 by creating trusts that will invest in ethical finance. By comparison in the United States the legislation that protects against religious

discrimination has not been granted to cover pension schemes and the need arises to examine if this can be circumvented within the framework of the Employers Equal Opportunity Act 1972, so that employees can invest in pension plans that are more diffuse and are Shariah compliant.

In the United Kingdom a workplace pension is a way of saving for your retirement that is arranged by the employer and these schemes are called 'occupational', 'works', 'company' or 'work-based' pensions. There is a percentage in the pay invested into the pension scheme automatically every payday and in most cases, the employer also contributes into the pension scheme there is tax relief available from the government. The accumulation of funds from the pension plan is recouped at the age of 55 at

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the earliest. The workplace pension is paid on top of the State Pension, using April 2015 rates, this is maximum sum of £115.95 per week for a single person.

The Pensions Regulator staging date calculator is programmed to check if the new law applies to the employer (www.gov.uk/workplace-pensions/about-workplace-pensions). It has opened the gateway for Muslim employers and voluntary sector to implement a workplace retirement pension. It meets the industry shortfall where not a single scheme existed before that was non-interest generating before this initiative by the government through the National Employment Savings Trust (NEST). The need has arisen because the expected rise in the Muslim population who are of working age and who will retire with an occupational pension.

Owen and Green (2000) state that between 1999 and 2009, the working age population in the United Kingdom was expected to increase by 963 500 people (a growth of 2.7 per cent); while that of UK minority ethnic groups was projected to increase by 507 700 people (to 2 880 400), equivalent to 52 per cent of the total projected increase. At the same time, the working age population of UK Pakistanis and Bangladeshis was anticipated to rise by 146 200 people (to 628 100); equivalent to 15 per cent of the total increase in the working-age population, or 28 per cent of that for BME groups (pp. 16–17).

The latest figures show a large proportion of the Muslim population who are eligible employees but who are not in a company pension scheme.¹ They are earning more than £10 000 a year (2014/2015) and aged over 22 but are still under the State Pension Age. There are 72 per cent of adult Muslims who are aged 18–45, compared with 51.5 per cent for the whole of the United Kingdom, and 59.1 per cent of British Muslims are in full time employment compared with 50.3 per cent of the overall adult population.

The Islamic Pension Trust will be issued by the Carey Pension UK, LLP, and it will allow the financial planning for the future without compromising the Muslim beliefs such as not

investing in interest bearing ventures that are forbidden by the faith. This will meet the requirements of the Shariah compliant workplace pension in accordance with the Government's criteria for an auto-enrolment scheme. The principle that it will adopt have been confirmed by the services that include investment packages as the Discretionary Portfolio Service.²

This portfolios of fund management have been designed to meet the varying needs of the employees and takes into consideration their profile, the timescale of the likely employment and other individual circumstances. Moreover, the DPS includes a de-risking programme that starts before retirement and guarantees against investment risk. It is a tailor made investment and pension instrument, which is Shariah compliant that ensures any investments must not be interest bearing because usury or *riba* is forbidden in Islam. The subscribers to the Pension Trust will be able to select any individual investment strategy through their Independent Financial Adviser (IFA), when they determine the suitability of the insurance policy.

This article considers the principles of the UK structure of an auto enrolment pension plan for Muslims that provides equal opportunity in terms of investment schemes; the need for it to prevent discrimination of in the industry and the basis of Shariah finance the concept of which still lacks universal dissemination. There will be a comparison with the US pension scheme frameworks that are statutory and where employers are bound under equal opportunity legislation. It will need a discussion of the Employers Equal Opportunity Act 1972 that will establish whether the protection for religious employees can be extended to cover qualified pension plans, and if an option to avoid interest can be more made available for Muslims by further interpreting the legislation.

AUTO ENROLED PENSIONS AND ELIGIBILITY

The law on Automatic enrolment works was implemented in the United Kingdom on the

basis that every employer must compulsorily enrol workers into a workplace pension scheme if they are aged between 22 and State Pension age which is no longer a fixed limit, earn more than £10 000 a year and work in the United Kingdom. The default retiring age of 65 has been phased out and if the employee wants to work longer they cannot be discriminated against. Compulsory age retirement can be set but the employer has to justify it.

The auto-enrolment pension schemes are a contract-based agreement between the provider of the scheme which is the insurance company and their members who are the employers. The latter is conveyed the information about the personal pension, including the terms and conditions of the agreement and then the employer signs the contract. For the enrolment to be carried out it will be up to the employer and the pension scheme provider to establish an agreement on behalf of the entitled jobholder.

The launch of the Islamic Pension Trust in 2014 enables British Muslim employers and charities to provide a workplace pension that meets all of the government's criteria for an auto-enrolment scheme without compromising the religious beliefs of the beneficiaries. The most important is the preclusion of interest that is forbidden in Islam as usury, that is, *riba*, and all transactions where its accrued in payment are voidable.

This retirement plan for Muslims in employment as a mandatory requirement was inaugurated by the government regulated NEST.³ It began with the offer of a Shariah-compliant fund with a 0.3 per cent annual management charge (AMC) and 1.8 per cent charge on monthly contributions, broadly equivalent to 0.5 per cent AMC over a lifetime premium payment (p. 20). However, the NEST will only supply the workplace pension provider with the framework and it then for the employer to make the deductions from the employees as their retirement fund.

The Shariah-compliant self-invested personal pension (SIPP) is intended to be part of the terms and conditions of an employment

contract. The contributions paid can then be invested in one of the 22 banks that provide Islamic financial services in the United Kingdom, most of which have a Shariah Board made up of academically qualified who rule on its compliance with non-interest bearing industrial sector. The investment portfolios framed under the Islamic Pension Fund may be held within general investment accounts of banks which are an Individual Savings Account (ISA) or a SIPP.

These portfolios consist of a range of assets including cash, property, Shariah compliant bonds known as Sukuks, equities and commodities. This provides investors with access to a series of portfolios called the Discretionary Portfolio Service (DPS), which is sponsored by the SMART fund Administration Limited and accredited as Shariah compliant by Al Rayak Bank. The investment options have been designed to meet the varying needs of the investor, and take into consideration their risk profile, the duration of investment and other personal circumstances.

Furthermore, the DPS includes a de-risking formula that commences before retirement and is aimed to safeguard against investment risk. The portfolios of the DPS can also be held within general accounts, such as an ISA or a SIPP. This is a specialised investment feature for pension structures that are Shariah compliant and the subscribers to the IPT will be able to select any single investment strategy or an amalgam of schemes through their IFA, in order to proceed with the choice of a retirement pension.

The financial critics of the Pension scheme have called into question the cost that makes these investments available to insurers. In a survey carried out by the *Financial Times* into its terms as a prudent saving and the beneficial impact for the employees it shows that the investment fund annual charges of 1.05 per cent were 'excessive' considering they was near double what many automatically enroled savers are now paying in workplace funds (Cumbo, 2014).

The rates of pension considered to be average entitlement in the workplace pension schemes

consist of 'default' funds that were now averaging 0.75–0.5 per cent. The report quotes the True and Fair Campaign is quoted in the FT report as stating the 1.05 per cent annual fee for the Shariah compliant pension was unlikely to include the fund charges. The reason is that: 'By the time these and the underlying transaction costs are added it may well be that the true total cost is 2 per cent or more, which seems excessive when you consider that the long-term real return from equities is just 5 per cent per annum'.

The workplace pension charge cap that has come into effect in April 2015 was set out as 0.75 per cent. An individual earning £20 000 would save about £35 500 over their lifetime if they contributed to a pension scheme with a 0.75 per cent charge, compared with a 1 per cent charge, according to figures released earlier this year by the Department for Work and Pensions.⁴ The Islamic Pension Fund is a new product that is essentially reliant on employers assessing the religious preference of all their employees, and consequently running two parallel auto-enrolment schemes for Muslims and non-Muslims.

However, in order to prevent the employee increased sums there is an in-built checking function that extends to those which are Shariah compliant. The Automatic Enrolment Regulations 2010 state that for all industry the employee contribution is the main cost associated with the pension scheme and the minimum contribution for every automatic enrolled staff starts at 10 per cent rising up to 3 per cent and qualifying earnings and other costs vary depending on the insurance firm and scheme chosen. If the employer pays Income Tax, the government will contribute money to pension plan in the form of tax relief, but if it is not paid there will still be tax relief available if the pension scheme uses relief at source for accruing to the pension total.

In terms of the annual charges they are levied at 1.05 per cent over the 'Qualifying earnings' threshold that are either the amount earned before tax between £5772 and £41 865 a year

of the employee's entire salary or wages before tax. The employer will elect how to compute the qualifying earnings and if a defined contribution scheme is offered the minimum amounts will increase in October 2017 and October 2018. The minimum that is paid by the employee is 0.8 per cent of the 'qualifying earnings' rising to 4 per cent by 2018; the minimum that the employee pays is 1 per cent of their 'qualifying earnings' rising to 3 per cent by 2018; and the government will pay 0.2 per cent of individual 'qualifying earnings' rising to 1 per cent by 2018.

The impact of the scheme is that while the employee's salary will be reduced it will increase the tax credits, income-related benefits and minimise the student loan repayments. The option to pay less towards the pension exists as long as the employer contributes the legal minimum and the pension sum builds up incrementally with the employer's contributions and tax relief paid into the retirement fund. The difference for the Muslim employees is that these schemes are ethically bound and interest free which is not necessarily the case with the private retirement schemes such as the stakeholder pension option or the SIPP.

SHARIAH COMPLIANT FUNDS AND AVAILABILITY

As religious law, the Shariah controls Muslims' lives and actions wherever they live and whatever their secular obligations they are bound to observe its financial stipulations. The Islamic Pension scheme has to be non interest bearing through the period until the employee's retirement. The NEST has included the non-interest derived option in pensions as an indication that this market has an upwards trajectory and that it will progress by advancing opportunities for asset managers and banking institutions.

The reception of interest on capital, investment or saving is strictly prohibited in Islam. It is called Riba and the terms of finance that leads to the generation of funds that lead to interest is forbidden in Islam. Chapra (2006, p. 87) argues

that it is deemed as prohibited in transactions because it is equated with usury and deemed as a form of commercial exploitation.

The HSBC Global Asset Management's Amanah Pension Fund is delegated by NEST to provide the finance to meet the investment needs and it follows the Dow Jones Islamic Titans 100 index, a global equity index screened that is structured in accordance with Shariah principles. This precludes benefiting from the interest payments that eliminates the inclusion of traditional bonds in portfolios. The fund provides exposure to a number of companies an investor could expect to find in a conventional portfolio and this includes stocks in high-profile Western companies quoted on the stock exchange.⁵

The HSBC is working in conjunction with NEST in order to develop future products and this has received a boost recently with the expectation of fixed income options available through the supply of Islamic bonds. The issuance of the Sovereign Sukok by the United Kingdom in middle of 2014 will increase the demand from the investors in finance that is compliant with religious requirements of not being an interest bearing security. The long-term benefit of the auto-enrolment pension scheme will be to develop the marketplace, which will be less discriminating and provide more opportunity in pension plans. The regulatory task will be to set out rules in investment in the service industries as opposed to institutional investors because most Muslims are employed in this sector of industry than any other (National Audit Office, 2008). The range of products and funds available has been limited in the past, but this will change as the number of Shariah products available and the total assets under management increases to be level with conventional finance.

The need for compliance is very great because the investors will be interested in selecting a product that ensures a return that is truly ethical in its composition. The Dow Jones Islamic index is overseen by a prominent international Shariah Board of scholars to ensure

compliance. Bakar (2002, pp. 74, 80) sets out the legal underpinning as crucial because of their expertise to augment the growth of Islamic finance.

The HSBC also has its own exclusive forum of scholars who oversee the portfolio in the form of a three-tiered Shariah oversight structure, that has at its top a global advisory board, then at the middle level consists of a central committee and then at the lower end is the four regional Shariah committees. The diffuse nature of the organisation that exists will be governed by the bank's Global Asset Management that determines the audit in terms of risk management. The consensus in the market is that the weakness in the growth of Shariah investment has been uncertainty around avenues to market. The institutional investors often depend upon the advisers or large asset managers to assist them with asset allocation, and the extra cost and complexity that accompanies investing in accordance with Shariah principles has acted to impede progress in this form of investment.

The FTSE White Paper issued in 2013 states that compliant products relatively high cost structure is because of 'time, resources and analysis required to derive the appropriate screening at a global level'. It offers the solution of 'widely accepted and transparent indices, may encourage the introduction of lower cost investment products with well defined exposures'.⁶

The possibility for the creating the investment opportunities within this framework was considered by the financial institutions. Gopalan (2009) in a study indicates that 'by 2006, there were more than 300 Islamic financial institutions in over 75 countries worldwide with approximately \$400 billion capital market assets'. The Bank of England's Consultation Paper in March 2014 that sets out proposals to make amendments to the Prudential Sourcebook for Banks, Building Societies and Investment Firms (BIPRU).⁷

The proposals are directed at banks, building societies and designated investment firms whose operations are entirely Shariah compliant. It states that 'The Prudential Regulation Authority

(PRA) proposes to amend eligibility criteria in BIPRU to allow Shariah compliant firms to include a wider set of assets in their liquid assets buffers. These proposals are intended to help reduce the risks of concentration in Shariah-compliant firms' liquidity buffers and they are intended to help remove potential barriers to growth and entry' (2.2). The PRA report also states that 'Shari'a-compliant firms have greater exposure to concentration risks due to the limited number of investments they may hold. This creates two risks in relation to liquidity risk management: (i) Shari'a-compliant firms will optimise liquidity mismatch to a greater extent than similar non-Islamic firms would do limiting balance sheet growth and entry of Shari'a-compliant firms; and Shari'a-compliant liquid assets (3.1). That is, whose entire operations are structured and conducted in accordance with Islamic commercial jurisprudence and its investment principles' (3.2).

The PRA considers this initiative as part of its statutory obligations aimed at (4.1) 'contribute to the PRA's general objective to promote the safety and soundness of firms (1) as they are intended to help ensure that Shari'a-compliant firms' liquid assets buffers are not concentrated in one asset' and (4.2) for these proposals 'to apply to banks, building societies and designated investment firms subject to BIPRU 12, including mutuals,(2) who are unlikely to be affected as we do not believe any mutual currently meets the definition of Shari'a - compliant firm'.

The proposals are meant to provide equal opportunity because the liquid assets specific to Shariah compliant firms is different from the general definition. This gives rise to concerns because conventional firms can hold non-Shariah assets to meet their liquidity requirements and the intention is to allow compliant firms to hold a similarly diverse liquidity buffer. This consideration stems from giving separate treatment for companies that leads to an inconsistent liquidity measure. The comparison of individual liquidity guidelines across the Islamic and conventional sectors will be more difficult

given that the assets held are different, but the limited number of such firms in the United Kingdom means its impact is not significant.

Grewal (2013) states that Shariah compliance needs to be underwritten by fiduciary responsibilities in order to be an ethically sound investment.

Islamic finance essentially promotes financial transactions with links to the real economy and abstains from financing activities that are detrimental to society. It supports financial inclusion by offering instruments suited to different socioeconomic groups. Apart from Islamic banking that meets the normal retail needs of consumers (e.g. mortgage and automobile financing, savings accounts), it also serves small and medium-sized enterprises. Moreover, there are institutions that help improve the livelihoods of low-income groups by offering Shari'ah-compliant microfinance products based on profit-sharing. Islamic finance is ultimately founded on the principle of partnership and cooperation, which calls for a system of equity participation and risk-sharing. Such a system should promote equal distribution of risk and cooperation between the providers of funds (investors) and the users of funds (entrepreneurs) (p. 37).

This argument supports the notion of an Islamic infrastructures that could incorporate an automatic pension plan that is 'community-oriented' and 'entrepreneur friendly', and that promotes economic production and services. The transfer is from the overall concentration from 'financial collateral or the worth of a borrower to the trustworthiness and the project's viability and usefulness'. It is intended for the distribution of credit risk as well as systemic stability in the product that has been selected for the investment.

Khan and Mirakhor (1991) argue that the Islamic banking is a growth industry and that its significance has to be understood at a global level. They attach its significance to the rise of

the financial institutions that are Shariah compliant and the recognition of alternative finance alongside the regular products that are available from banks and insurance companies that cause the securities to be bought and sold in the economy (IMF Working Paper 91/88).

However, the challenge has always been to create the space for the key variables used to assess the impact are the changes in profitability, bank lending, bank assets and external bank ratings. The countries of the Gulf Cooperation Council (GCC) have the largest Islamic banks and they have constructed an economy in which banks play a leading role for venture capital. Many of these banks have their subsidiary in Western countries.

In dealing with formulating a legal framework the regulators keep in different emphasis of Islamic financial structures. Mahir (2007) in an analysis of the institutions and their sustainability especially in boom and bust scenarios argues that the circulation of Shariah compliant finance argues that 'While conventional intermediation is largely debt-based and allows for risk transfer, Islamic intermediation, in contrast, is asset-based, and centers on risk sharing. In addition to providing Islamic banks with additional buffers, these features make their activities more closely related to the real economy and tend to reduce their contribution to excesses and bubbles' (Seminar, IMF).

The growth in Islamic finance has given rise to the issue of how Islamic financial structures work and are concerned with the impact of alternative finance in the economy. Balz (2008) states that it is not exclusively an 'application of Islamic law' but rather a contractual practice that evolved in international finance. This is the prescription of the principals entering into a contract in which there is privity and the financial institutions play the role of the fiduciary. These agreements then become optimal and profit sharing (Harvard Law School).

An example that can be provided by an formula adopted by Wilson (1991) in the creation of a device based on transactions under Islamic law in order to avoid the prohibition

against interest. This can be accomplished that is akin to the sale and repurchase. The lender 'sells' an item to the borrower for US\$120 to be paid in 1-year's time and then the lender immediately repurchases the item for \$100. In the commercial context the lender has given the borrower \$100 and the borrower is obligated to pay the lender \$120 in 1-year's time (pp. 210–211).

The growing Muslim population requires strategic input in industry and the need for a pension plan cannot be understated. The national statistics reveal that nearly three-fourth of adult Muslims are aged between 18–45, compared with nearly half for the whole of the United Kingdom who will reach retirement and the planning has to be commenced for their future. There is also a higher preponderance of Muslims in full-time employment which means that they will be eligible for a retirement pension at the age when they retire. The Auto enrolment pension scheme creates a source of funding that is Shariah compliant and it will create a framework of insurance cover that is culture specific and non-discriminating by its inclusive framework.

The Auto enrolment pension scheme will cover approximately 11 million people in the whole of the United Kingdom. It is an ambitious scheme which will not be fully effective until 2017 when it will cover the different employees under the employers' insurance schemes. The pension plans have not needed the intervention of the Equality Act 2010 in the United Kingdom because the pension schemes are an independent initiative based on legislation that are based on a framework of insurance cover against default by the employer in the industry at the time of retirement.

The introduction of this pension scheme for Muslim employees will make it mandatory for auto enrolment and they will be able to avail the funds upon their retirement. These investments are guaranteed to Muslims as interest free unlike the stakeholder pension option or the self invested personal pensions schemes that determine their own investment strategy.

The need that the government identified under NEST has taken on the necessity of providing a retirement plan that are non-discriminating because they cover the needs of the Muslim employees by their contributions accumulating in non-interest bearing funds upon retirement.

The pension plan in terms of an investment opportunity are a reliant on the finance made available by the banks to the insurance companies who can then invest it in the securities that will turnover the capital. It is essential that in order to prevent discrimination that the knowledge of Shariah finance and structures which regulate its transactions are widely available. This information is still not widely disseminated that could assist in the understanding of these instruments and make it possible for anti-discrimination legislation to be extended to cover them. It will then be possible for equal opportunity legislation to cover the workplace more effectively in regulating the schemes that comply with ethical finance.

NOTES

- 1 Al Rayek Bank statistical information <http://www.alrayanbank.co.uk/useful-info-tools/about-us/latest-news/jan-dec-2014/islamic-bank-of-britain-accredits-the-islamic-pension-trust>, accessed 1 July 2014.
- 2 SMARTfund Administration Limited is accredited as IBB Sharia compliant investment secures wider option for retirement (www.alrayanbank.co.uk/useful-info-tools/about-us/latest-news/jan-dec-2012/06-12-12-sharia-compliant-investment-service-widens-options-for-retirement-planning/).
- 3 IPSOS Report prepared for NEST Corporation Exploring demands for Shariah complaint pension funds 1 April 2011, p. 20.
- 4 Occupational Pension Schemes Charges and Governance Regulations (http://www.legislation.gov.uk/ukdsi/2015/9780111128329/pdfs/ukdsi_9780111128329_en.pdf).
- 5 NEST-awards-Ethical-and-Sharia-Mandates (<http://www.nestpensions.org.uk/>

schemeweb/NestWeb/includes/public/news/NEST-awards-Ethical-and-Sharia-Mandates.html, accessed 11 April 2011).

- 6 The FTSE's Sharia'h Research White Paper Indexing and Analytical Solutions 'Targeting Lower Volatility Through Ethical and Quantitative Survey' proposes a solution which is based upon 'a number of quantitative alternative weighting methodologies evolving some of which focus on risk mitigation'. The FTSE's 'Minimum Variance methodology is designed to reduce volatility based on a constrained optimisation to minimise the expected index volatility. This is because with their underlying parent indices, FTSE's Shariah indices have followed a traditional market capitalisation weighting methodology', (www.ftse.com/products/downloads/FTSE_Shariah_White_paper.pdf, accessed 13 September 2013, p. 4).
- 7 Shari'ah Compliant Liquid Assets, Occasional Consultation Paper, CP5/14 Bank of England, March 2014, (<http://www.bankofengland.co.uk/prd/Pages/publications/ocp514.aspx>).

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