

Pensions Authority response to consultation on the Code of Practice for trustees of occupational pension schemes and trust RACs

Introduction

In July 2021, the Pensions Authority (the Authority) launched a consultation on a draft of a proposed Code of Practice (the Code) for trustees of occupational pension schemes and trust RACs. The Authority received 38 responses from a wide variety of sources including individuals, professional and representative organisations, consultancy and law firms, and insurance companies. The Authority wishes to record its gratitude for the time, thought and effort that was put into these responses, all of which were considered carefully.

The Code takes account of a number of points raised in these responses, and also includes text related to master trusts, which reflects the outcome of the consultation on this subject which took place in 2019.

Although it is not intended to respond to every point raised in the responses to the consultation, set out below are the Authority's comments on the most important issues raised.

1. Some respondents were concerned that the Code is too prescriptive, and that it makes insufficient allowance for trustees to exercise their judgment.

In general, the Code is concerned with trustee processes, including such matters as the structure of relationships with service providers, the information that trustees will need, and the issues and decisions they need to address. The Code is intended to set a minimum standard for the Authority's expectation of trustees' governance processes, and it is open to them to go beyond it. What is prescribed is the Authority's view of the minimum that is required for proper scheme management.

However, the Code does not prescribe the substantive decisions that the trustees must make, for instance in such matters as choice of administrator, funding policy, risk tolerance, etc. These matters are wholly the trustees' responsibility, although it will be part of the Authority's supervisory activity to form a view about whether trustee decisions are reasonable, in the best interest of members and compliant with legislative and regulatory requirements.

2. A number of submissions criticised the requirements of the draft Code for not making sufficient allowance for proportionality.

There are a number of provisions in the Pensions Act, 1990, as amended (the Act), that require that ‘size, nature, scale and complexity’ (SNSC) be taken into account. Some of these relate to the obligations of the Authority (for instance in its prudential supervision) and some to the extent of specific trustee obligations, for instance in the manner in which trustees undertake their own risk assessment.

These requirements have been borne in mind in the preparation of the Code, but the following are some relevant observations:

- The SNSC provisions do not exempt trustees from any specific obligations under the Act, but rather determine how those obligations will be met. The SNSC provisions will be taken account of in the Authority’s supervision.
- The provisions of the Code relating to master trusts and to defined benefit (DB) schemes are intended to take account of the nature, complexity and scale of such schemes.

3. Some submissions suggested that the Code’s requirement that trustees should have a data strategy was already covered by the General Data Protection Regulation (GDPR).

The objective of this provision of the Code is that the trustees address the question of what data they need to fulfil their responsibilities, including its source, frequency, reliability, and timeliness. Obviously, compliance with GDPR obligations must be considered in this process.

The Code has been revised to make the distinction between data strategy and GDPR clearer.

4. Some responses pointed out that some of the requirements of the Code may not be within the control of the trustees, such as the appointment of trustees who must meet the ‘fit and proper’ obligations.

The Code has been revised to require trustees to bring such matters to the attention of those who have control, make best efforts to achieve an appropriate outcome, and to inform the Authority if there are problems.

A related matter is the question of remuneration policy, where the trustees are often not responsible for the remuneration of relevant parties. The Code has been revised to make it clearer that the trustees’ remuneration policy must address any incentives for behaviour that may not be aligned with the interests of scheme members, irrespective of who pays the remuneration.

The objective of the remuneration policy is to address the risk that some connected parties may have remuneration incentives that conflict with the



scheme members' interests – for example, an adviser may receive a bonus from their employer depending on the volume of the work they do for the scheme. The trustees should identify such conflicts and manage them, irrespective of who pays the remuneration.

- 5. A number of respondents raised concerns that the Code's requirement that trustees provide detail about how they arrived at decisions would create legal risk for trustees or would endanger legal privilege.**

The Code was revised to take account of these concerns.

The objective of this provision is that the records of trustee decisions should provide the Authority with some understanding of the basis for the decision.

- 6. Some respondents suggested that the criteria for contracts for outsourced administration should meet should apply only to new contracts.**

The Authority's view is that the criteria set out in the Code are the minimum necessary for scheme trustees to have proper control and oversight of their administration function.

- 7. A number of submissions proposed that investment objectives should be set by reference to peer group performance or benchmarks rather than quantitative targets for investment risk and return.**

The objective of this provision of the Code is that the investment objectives be based on the needs of the members. Trustees are expected to consider what are appropriate and realistic investment objectives for the specific needs of their scheme's members and beneficiaries. Trustees are unlikely to know whether peer groups have the same objectives as their own scheme, and therefore they cannot know whether they are appropriate comparators. The use of peer group or benchmark comparisons also creates a risk of encouraging herd behaviour.

- 8. Some of the responses raised particular concerns about the effect of the Code's requirements on small DB schemes.**

DB schemes are complex entities, and considerable work is required to understand and manage their solvency, risk and sustainability. The costs of this work are an especial challenge for small DB schemes. Furthermore, smaller DB schemes are inherently more risky than larger schemes, because there is less scope for pooling of risks and outcomes among members.

The Authority's view is that proper financial and risk management is as necessary for small DB schemes as it is for larger schemes. There is a comparatively large number of small DB schemes in Ireland – some with less than ten members –

and the viability of some of these must be uncertain irrespective of the requirements of the Code.

Some responses noted that it would take time to meet the requirements of the Code, and time should be allowed for that. The Authority recognises that this is a significant issue which was addressed in the announcement by the Authority published on 13 May 2021.