



## MASTER TRUST CODE OF PRACTICE CONSULTATION

Issued 8 May 2018

ICAEW welcomes the opportunity to comment on the Master trust code of practice consultation published by The Pensions Regulator on 27 March 2018, a copy of which is available from this [link](#).

We note that the short, six week consultation period (which is half the recommended 12 week period, see <https://www.gov.uk/government/publications/consultation-principles-guidance>) and which spanned both Easter and the May Day bank holiday was too short to allow ICAEW to undertake a detailed consultation of nearly two hundred pages of the code and associated papers and draft guidance with our members affected by these changes. Therefore, we have not been able to provide detailed responses to all the questions. We are also concerned about the TPR's ability to draw valid conclusions from the consultation exercise, given that respondents have had so little time to review so many pages of code and underlying guidance.

This response of 8 May 2018 has been prepared on behalf of ICAEW by the Audit and Assurance Faculty. Recognised internationally as a leading authority and source of expertise on audit and assurance issues, the Faculty is responsible for audit and assurance submissions on behalf of ICAEW. The Faculty has around 7,500 members drawn from practising firms and organisations of all sizes in the private and public sectors.

This ICAEW response of 8 May 2018 reflects consultation with the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

Copyright © ICAEW 2018

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: [representations@icaew.com](mailto:representations@icaew.com)

## RESPONSES TO SPECIFIC QUESTIONS

### Part 1: General questions

**Q1: In your view, are there any barriers to meeting the expectations set out in the new code, and if so, what are they?**

1. Yes. The only significant barrier that we can foresee is the very tight timescale for completing applications as the application process requires the gathering and analysis of large amounts of information, and the knock on effect that has on the practicalities around schemes trying to satisfy all the actual and evidential requirements within the requisite timeframe. For example, mapping all the IT systems before the end of the authorisation window (i.e. April 2019) when the IT is spread across many service providers will be very challenging.
2. As we mention in more detail (at paragraph 37) on Systems and Processes below, we have concerns about the statement on page 4 of the Systems and Processes Guidance “*Where evidence of independent external assessment is submitted, it should be less than six months old at the date of application*”. Assurance reports are typically issued on an annual basis and (given the very short timeframe for applications) master trust trustees will wish to use those reports as part their evidence to demonstrate compliance with systems and processing requirements. It would be more reasonable to permit the most recent reports to be submitted in conjunction with a bridging letter from the relevant service provider confirming to the master trust trustees that there have been no significant weakening of controls since publication.
3. There will be a large amount of data submitted to TPR during the application process and this will require careful planning and scheduling of resources at TPR in order for TPR to conclude their initial assessments of applications within four months (as proposed at paragraph 6 of TPR's draft decision-making procedure) and we would have a concern if this forward planning has not been carried out. We would also suggest that some form of forward scheduling of submission of applications may help TPR manage the process and smooth the workload. Furthermore, the order in which authorisations will be publicised is currently unclear. Given this could skew the market, in the interests of transparency and fairness TPR should provide clarity around their proposed process for publicising authorisations so applicants can make an informed choice regarding when to submit within the application window. For example, will the list of authorised schemes be updated piecemeal, with early applicants listed first and thus potentially gaining a commercial advantage by applying early within the application window? This could influence schemes into applying early within the window when they may otherwise have left it until later to avoid the risk of experiencing teething issues from being one of the first schemes to be assessed.
4. It is also evident that there is a considerable resources requirement for master trusts over a concentrated period of time to collate all of the information required for an authorisation application. We would be particularly concerned with any impact on business as usual activities and if there were to be any blackout period for new business or switches.

**Q2: Is the language used in the code clear and unambiguous? If not, what would provide clarity?**

5. Subject to our comments below, the code is (on the whole) comprehensive and, in terms of direction, it is fairly clear. It is a little vague in certain areas, but we assume this is because TPR is building in some flexibility as TPR recognises that there are differences between the various different master trusts that the code is intended to

cover, and where appropriate more detailed requirements are contained in the underlying guidance. However, it is difficult to comment meaningfully on the code when certain areas of the underlying guidance are not yet available (and given further guidance will be published following the conclusion of TPR's readiness review, which is not due to conclude until after this consultation closes). It is also unhelpful that the available draft guidance is not linked to from the consultation page, meaning some commentators are unaware that it has been issued.

6. Regarding the balance between including requirements in the code or the underlying guidance, there are some areas where we think too much detail is in the code (and indeed, this is acknowledged by TPR at page 8 of the consultation which states that "there is significant detail in the code"). Some of these more detailed code requirements should instead be included in underlying guidance, so that it can be more flexible and better able to keep pace with developments. For example, systems and processes requirements will need to be kept under constant review to keep pace with developments in technology, cyber security threats etc. Similarly, the detailed description of haircuts at pages 60-61 should be moved to guidance to enable TPR more flexibility to keep them up to date, as should the list of business plan requirements in paragraph 314.
7. We understand that the requirements in paragraph 189 will be updated to reflect the DWP's change in policy, and we understand from the DWP that their latest policy is that they will dis-apply various Companies Act 2006 (CA06) exemptions from scheme funders so that they are required to prepare audited accounts (copies of which will then be required to be provided to TPR), and DWP intend to require some additional disclosure regarding any third party funding being provided to the scheme funder (we have requested sight of the revised draft regulations so we have an opportunity to comment on whether they are workable in practice), but the DWP are otherwise content to rely on the existing CA06 provisions, with no further amendments or additional requirements in relation to going concern or audit. The auditor would then be expected to comment on this as necessary as part of the audit, with no additional requirements on auditors to provide a report or opinion. We note this is slightly different from the published **Government response**, which states that the draft regulations will be amended to require the scheme funder to make a declaration in its annual accounts as to whether it is a going concern and whether it relies on third party funding (where these matters are not already dealt with in those accounts), which the auditor will comment on as part of the standard audit process.
8. Please also see our comments at various paragraphs below where we raise concerns about the clarity of the code or guidance.

***Q3: Do you consider that any important areas of the authorisation criteria have been missed in the new code?***

9. Yes, as we mention (at paragraph 36) on Systems and Processes below, the code appears to be incomplete as it does not include or refer to any requirements in relation to financial record keeping, nor does it deal with the custody and safekeeping of investments and investment platforms and structures. We understand that these aspects are not going to be dealt with in the Regulations because they are covered by other sets of regulations, but we believe the authorisation process should take account of all aspects of running a master trust, and therefore financial record keeping and investment security should be dealt with in the code (or at the very least the code should contain specific cross referencing to these requirements in other codes) as they are fundamental to the proper running of a master trust and therefore should be a

prerequisite for authorisation. We also refer to the comments we made on the draft regulations in REP 7/18, available here: <https://www.icaew.com/-/media/corporate/files/technical/icaew-representations/2018/icaew-rep-0718-occupational-pension-schemes-master-trusts-regulations-2018.ashx>. Further, we note that FCA oversight of contract-based schemes does include reviewing their investment security and Master Trusts should be subject to a level playing field in this respect.

10. Paragraph 203 of the code is a little misleading as it appears to state that there is no requirement to maintain a reserve for running costs, whereas paragraph 210 of the code then states that reserves must be sufficient to keep the trust running after a triggering event (which we assume means the trust should retain a reserve before any such triggering event occurs). These paragraphs need to be amended to make it clear that a reserve for running costs must be maintained by the scheme or e.g. the funder at all times, rather than requiring such reserves to be set aside once a triggering event has occurred.
11. The code does not specify that, post authorisation, any new trustees appointed to master trust boards will need to be approved by TPR. We believe such new trustees should require TPR approval, which we suggest is dealt with under TPR's supervisory regime (which we note is to be published separately).

### Whistleblowing

12. The code also does not provide clarification of whistleblowing duties. The code should make it clear who falls within the whistleblowing requirement (e.g. trustees, founder, strategist, employers, and 'professional advisers'), and who would be considered to fall within the category of 'professional advisers'. For example, there is currently a lack of clarity around whether those acting as a Reporting Accountant providing an assurance report to master trusts under ICAEW technical release TECH 12/16AAF (the Master Trust Assurance Framework) are subject to whistleblowing duties. This issue was deliberately not addressed in TECH 12/16AAF due to the lack of certainty as to how the whistleblowing legislation applies to these appointments. In our view, the code should be amended to clarify this issue, so that reporting accountants are clear whether or not their appointment as reporting accountant brings them into the 'statutory duty to report' regime which applies to, for example, scheme auditors and actuaries. It would also be helpful if the code also made it clear that the Trustees are captured by the whistleblowing requirements.

### Ear-marked schemes

13. We are aware that several master trusts are set up as ear-marked schemes. At paragraph 200(e) of the code there is an implicit acknowledgement that such schemes with 20 or more participating employers have no requirement to prepare audited accounts. The ICAEW considers the governance regime for any such master trusts that are 'ear-marked schemes' needs to be reviewed. Ear-marked schemes with 20 or more participating employers have no audit oversight which, given recent advances in governance standards, would no longer seem to be appropriate for those that are master trusts. Furthermore, we note that respondents to the FRC's consultation on the revision of PN15 raised concerns over the interpretation of the definition of ear-marked schemes, suggesting that even though they have been around for many years there is still a risk that schemes which were not intended to be covered by the audit exemption are taking advantage of it. We therefore believe the government needs to review the governance regime for master trusts that are ear-marked schemes to determine whether their audit exemption should be abolished (for instance, by amending the

audited accounts regulations (1996/1975) so that this exemption would only be available for ear-marked schemes that are not master trusts).

**Q4: Are these the right areas to cover in the first batch of guidance? If not, what additional areas of the authorisation criteria should we consider covering?**

14. This is an odd question as it is dealing with matters that will already have happened prior to the end of this consultation. However, we agree it was important to prioritise the guidance on ‘fit and proper’ and systems and processes. As we mention above, it is difficult to comment meaningfully on the code when certain areas of the underlying guidance are not yet available, and it was also unhelpful that the available draft guidance was not linked to from the consultation page for some time after it had been published, meaning some commentators were unaware that it had been issued.
15. Please note that, given the very short timeframe for the consultation, we have been unable to review the underlying guidance (published [here](#)), with the exception of the Systems and Processes guidance (see our comments on Systems and Processes below).
16. We note that the short, six week consultation period (which is half the recommended 12 week period, see <https://www.gov.uk/government/publications/consultation-principles-guidance>) and which spanned both Easter and the May Day bank holiday was too short to allow ICAEW to undertake a detailed consultation of nearly two hundred pages of the code and associated papers and draft guidance with our members affected by these changes. Therefore, we have not been able to provide detailed responses to all the questions. We are also concerned about the TPR’s ability to draw valid conclusions from the consultation exercise, given that respondents have had so little time to review so many pages of code and underlying guidance.

**Q5: What other methods should we consider to ensure that the information contained in the code is accessible to users?**

17. We agree that the primary means by which users will access this code is likely to be online and therefore it will be useful to include indexing and links to aid navigation between related sections. However, we note from paragraph 217 of the code that you may revise certain aspects of the code ‘at any time’, and that ‘any notification of a change will be made through an update to guidance or special announcement’. It is vital that TPR takes a proactive approach to notifying users of any such changes, rather than the guidance simply being updated (expecting users to continually check whether they are working from the latest version), particularly as people may have printed off the code and guidance and be unaware of updates. Version control will also be an issue, and we believe TPR should either retain online access to previous versions (making it clear on which dates they were applicable) and/or have a tool whereby users can input a date and access the requirements that were applicable on any such date (akin to the FCA handbook, where you can select to ‘[show a timeline](#)’ [available here: <https://www.handbook.fca.org.uk/handbook?timeline=true>] in order to access the handbook as at any particular date).

**Q6: Are there any parts of the code which require additional flexibility because they cover areas which are likely to experience significant change in your business?**

18. We have no comments, and will leave this question to those involved in running master trusts.

**Q7: Is the level of detail we have set out useful? Is further detail needed, and if so, in which areas?**



19. No. As we mention above, regarding the balance between including requirements in the code or the underlying guidance, there are some areas where we think too much detail is in the code (and indeed, this is acknowledged by TPR at page 8 of the consultation which states that “*there is significant detail in the code*”). Some of these more detailed code requirements should instead be included in underlying guidance, so that it can be more flexible and better able to keep pace with developments. For example, some of the systems and processes requirements will need to be kept under constant review to keep pace with developments in technology, cyber security threats etc.

## Part 2: Section-specific questions

### A. Identifying key roles

*a. Question: Does the code make our expectations clear?*

20. No comment.

*b. Question: Is it clear what evidence is required to meet our expectations?*

21. No comment.

*c. Question: Are there any particular barriers to meeting the expectations in the code?*

22. No comment

**Q8: Does the code provide sufficient clarity on how to identify who carries out the role of strategist and funder within a master trust? If not, what further detail would help?**

23. This part of the code seems comprehensive.

### B. Fitness and propriety

*a. Question: Does the code make our expectations clear?*

24. No comment.

*b. Question: Is it clear what evidence is required to meet our expectations?*

25. No comment.

*c. Question: Are there any particular barriers to meeting the expectations in the code?*

26. No comment.

**Q9: Is there sufficient clarity on the persons to be identified?**

27. Yes, this seems sufficiently clear.

**Q10: Does the code provide sufficient clarity on how competence for trustees and strategist will be assessed?**

28. We note the FCA has a ‘Senior Managers and Certification Regime (the **SM&CR**) which includes provisions on governance and best practice, and it would be useful if the code principles were aligned with this to ensure a level playing field.
29. We also note that the code does not refer to the joint ICAEW/TPR guidance on requirements for independent trustees to be included in TPR’s list of independent trustees (**TECH04/13AAF**), and it would be useful for such mention to be added.

## C. Systems and processes

### a. Question: Does the code make our expectations clear?

30. No. We have concerns that detail in Schedule 4 of the draft Occupational Pension Schemes (Master Trusts) Regulations 2018 (the Regulations) regarding systems and processes requirements does not map across word for word into the tables on the code on pages 22 to 29 setting out the systems and process requirements and “Matters more likely to satisfy TPR”. We suggest that the Regulations and code are brought into line. This may be achieved for example by reducing the detail in the Regulations and the more detailed provisions are included in the supporting Guidance (rather than the code) as they will need to be kept under constant review to keep pace with developments in technology, cyber security threats etc.
31. We have concerns that the language in the code on pages 22 to 29 setting out the systems and process requirements and “Matters more likely to satisfy TPR”, is a mixture of requirements of functionality of systems and controls requirements. We think it will be more helpful for the code and Guidance to focus on suitable controls around systems and processes which lend themselves more easily to testing and evidence gathering. Furthermore, the current separation of IT and Processes is artificial and unhelpful. IT facilitates processes and controls rather than being an objective in its own right.
32. We have concerns about the language in the code on pages 22 to 29 setting out the systems and process requirements and “Matters more likely to satisfy TPR”, as regards specifying the expected frequency of controls, for example “reconciliations” on page 24. This may set an unhelpful precedent. Trustees should give due consideration in the context of their own master trust and business practices as to the desired frequency of reconciliations.
33. We have concerns about the language in Paragraph 102 of the code, which refers to external, independent assessment. Having reviewed the Guidance on Systems and Processes it is still not clear as there are various inconsistent references in the Guidance to possible external independent assessments. TPR needs to provide clarity over what they expect here. Furthermore, the areas highlighted in the Guidance for external assurance are very specific and it is unlikely that all will be covered by existing control reports (AAF 01/06 and the Master Trust Assurance Framework), so the Guidance should be recommending that the trustees map existing sources of assurance to the Guidance and code and identify gaps and consider how best to fill them. A useful mapping resource is available here (and we include some illustrations in the Appendix below): <https://www.icaew.com/en/technical/audit-and-assurance/assurance/assurance-mapping>.
34. In paragraph 106 of the code, the reference to “external audit” should read “independent external assessment” to avoid confusion with the role of the statutory auditor appointed to the master trust (i.e. the financial statements audit). This paragraph also refers to the internal audit function, which we note is covered by IORP II and therefore the code needs to be aligned with the IORP requirements on internal audit.
35. It would be helpful to understand more fully how the code on pages 22 to 29 setting out the systems and process requirements and “Matters more likely to satisfy TPR” sits alongside other codes issued by the regulator (as referred to in paragraph 3 of the code) and how this guide will be extended to annual ongoing “Supervision” activities

performed by the Regulator, before deciding how we can most helpfully update the Master Trust Assurance Framework. There are a number of important areas covered by the existing Master Trust Assurance Framework which are not referred to in the code, covering for example investment matters, which are not dealt with in code. As we mention at Q3 above, it would be helpful to provide specific cross references in the code to other codes where appropriate.

36. At paragraph 119 the code refers to identifying and chasing missing contributions, reclaiming contributions from employer assets, and having a process for rectifying 'missing contributions'. This raises issues of accountability and practicality as it is unclear what this means or how this would happen. There is also no reference to payment schedules. The code should include specific cross references to TPR's late payments code, and should include some practical suggestions on how trustees can fulfil their legal duty to collect debts due to the trust.
37. Paragraph 123 of the code, under Risk Register, we would suggest that the risk register is updated as soon as new significant risks are identified (rather than waiting for the next periodic review). There is also no mention of the need to document controls in the risk register which mitigate the risks. We suggest this should be mentioned and trustees consider what assurance they have that the controls are in place and operating, for example, review of control reports/work by Internal Audit and so on.
38. As we mention at Q3 above, there is no mention of the finance function in the Systems and Processes section of the code. Financial discipline is fundamental to a DC pension scheme and the finance function links all the key areas of operation. It needs to be a prerequisite for authorisation and therefore should be included in the code. Similarly, there is no mention of investments. Again this is a fundamental area and needs to be included, even if it is cross referenced to other codes. There are complexities around DC investments in master trusts such as platforms, white labelling and multiple unitisation layers. Also security of investments needs to be considered.

***b. Question: Is it clear what evidence is required to meet our expectations?***

39. We are generally supportive of the comments in the code and Guidance regarding the role of assurance reports using AAF 01/06 (ICAEW Technical Release AAF 01/06) and the master trust assurance framework (ICAEW Technical Release TECH 12/16AAF). However, we have concerns about the statement on page 4 of the Guidance "*Where evidence of independent external assessment is submitted, it should be less than six months old at the date of application*". For example, third party administrators typically issue AAF 01/06 reports on an annual basis and master trust trustees may use those reports as part of a package of evidence to demonstrate compliance with systems and processing requirements. Nevertheless, the most recent AAF 01/06 report in conjunction with a bridging letter from the third party administrator confirming to the master trust trustees that there have been no significant weakening of controls since publication would in our view be useful evidence for the Pensions Regulator to consider as part of the trustee's application for authorisation of the master trust.

***c. Question: Are there any particular barriers to meeting the expectations in the code?***

40. Yes. See our comments at questions (a) and (b) above, and also our concern expressed at Q1 above that the process mapping required by the code could involve a lot of work and time frames are tight in terms of the authorisation timetable.



## D. Continuity strategy

### *a. Question: Does the code make our expectations clear?*

41. No comment.

### *b. Question: Is it clear what evidence is required to meet our expectations?*

42. No comment.

### *c. Question: Are there any particular barriers to meeting the expectations in the code?*

43. No comment.

### **Q11: Are there other ways that the code could allow the legislative requirement in relation to the statement of charges to be met?**

44. No comment.

## E. Scheme funder

### *a. Question: Does the code make our expectations clear?*

45. The code requirements seem clear and comprehensive, except see our comment at Q3 (paragraph 10) above regarding the requirement to maintain a reserve, and we believe it would be helpful if paragraph 203 and 210 included cross references to paragraphs 222 and 248. Also, at paragraph 177 of the code we believe reference should be added to the need to provide audited accounts, which could be by way of adding a cross reference to paragraphs 186 et seq. See also our comments at Q2 (paragraph 7) above regarding paragraph 189 of the code.

### *b. Question: Is it clear what evidence is required to meet our expectations?*

46. No comment.

### *c. Question: Are there any particular barriers to meeting the expectations in the code?*

47. No comment.

### **Q12: Does the code provide clarity on how an exemption in respect of a scheme funder carrying out non-master trust related activities will be considered? If not, what more would help?**

48. No comment.

## F. Financial sustainability

### *a. Question: Does the code make our expectations clear?*

49. As mentioned above, the detailed description of haircuts at pages 60-61 should be moved to guidance to enable TPR more flexibility to keep them up to date.

### *b. Question: Is it clear what evidence is required to meet our expectations?*

50. No comment.

### *c. Question: Are there any particular barriers to meeting the expectations in the code?*

51. No comment.

**Q13: Should use of the basic method be restricted to particular types of master trusts, and if so, why?**

52. No. We do not see why the use of the basic method should be restricted to certain types of scheme.

**Q14: Should we set out in code or guidance the factors we may consider in revising the amount used in the calculation of the basic method?**

53. This should be set out in Guidance as it will no doubt need to change from time to time.

**G. Business plan**

***a. Question: Does the code make our expectations clear?***

54. Yes, although as mentioned above there is no mention of investment strategy (which needs to be added, at least via cross references to other codes) and to allow TPR more flexibility to keep them up to date, the list of business plan requirements in paragraph 314 should be moved to guidance.

***b. Question: Is it clear what evidence is required to meet our expectations?***

55. No comment.

***c. Question: Are there any particular barriers to meeting the expectations in the code?***

56. No comment.

**H. Supervision**

***a. Question: Does the code make our expectations clear?***

57. No comment.

***b. Question: Is it clear what evidence is required to meet our expectations?***

58. No comment.

***c. Question: Are there any particular barriers to meeting the expectations in the code?***

59. No comment.

**I. Application**

***a. Question: Does the code make our expectations clear?***

60. No comment.

***b. Question: Is it clear what evidence is required to meet our expectations?***

61. No comment.

***c. Question: Are there any particular barriers to meeting the expectations in the code?***

62. Yes. See our comments above regarding the very tight timescale for applications. For example, the processes mapping required by the code could involve a lot of work and time frames are tight in terms of the authorisation timetable.

### **Part 3: Consultation: Decision-making procedure**

***Q15: Does the proposed procedure provide sufficient and clear information, and if not, how could it be improved?***

63. Yes, although we do not see the logic in having differing authorisation approaches for existing and new master trusts. For example, existing master trusts that have a proven track record may present less risk than a new venture and so we believe that applications from new applicants should be decided by the Determinations Panel (like those for existing master trusts), rather than by an individual TPR staff member.

***Q16: Are there any areas not covered by the procedure (taking into account any guidance on the application process) which you think should be included?***

64. No comment.

## APPENDIX – ASSURANCE MAPPING ILLUSTRATION



	1st Line		2nd Line				3rd Line	4th Line	
	Control Framework	Management Review	Control Self Assessment	Risk and Compliance review	Group Legal	Board Review	Internal Audit	External Auditors	Other Third Party
Financial Reporting									
Financial Controls									
Legal									
IT									
Treasury									
Tax, Pension and Insurance									
Human Resources									
Fraud									
Health & Safety									
KEY									
	High Assurance	Medium Assurance	Low Assurance	No assurance - but should be assurance in this area					

An assurance map shows:

- Key elements over which assurance is required. This will change depending on the type and size of organisation.
- [The 'four lines of defence'](#). The details of who provides what can vary for each organisation.
- Any gaps where no assurance is provided.