



### **Better workplace pensions: Putting savers' interests first**

ICAEW welcomes the opportunity to comment on the *Better workplace pensions: Putting savers' interests first* published by the Department for Work and Pensions (DWP) in October 2014, a copy of which is available from this [link](#).

This response of 14 November 2014 has been prepared on behalf of ICAEW by 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.

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## MAJOR POINTS

### Support for the initiative

1. We are supportive of the aims behind these proposals, and also the manner in which they have been developed as it is clear the DWP has taken account of industry comment and have been as practical as possible in the draft regulations. In particular, we welcome the stance now taken in relation to the Chair of trustees, who will now not have additional responsibilities beyond signing a statement on behalf of the board, and in relation to the 'level of assurance' on governance in the audited accounts.
2. This response is necessarily high level, given the consultation timeframe, but we also set out below some answers to certain questions where we have more detailed comments, and we would be happy to meet with you to discuss our comments below, and/or to provide any further assistance in developing and implementing these proposals.

### Pension schemes need joined up, holistic regulation and a period of stability

3. As we have previously observed, consistency in the regulation of the various types of pension schemes could best be achieved through having a single regulator for pensions. Even if there is to be no fundamental consolidation for the foreseeable future, we would urge the regulators to work even more closely together so that proposals are made at one time covering all affected areas and, ideally, so that all relevant information can be accessed from a single location (eg a shared website). The fact that the detailed FCA proposals on these issues are to be published separately is unhelpful and illustrative of the difficulties that can arise from the current regulatory framework, as it is currently uncertain how governance requirements will be applied to IGCs of contract-based schemes.
4. The need for a holistic approach is particularly important given the numerous permutations of pension schemes available – not just DC (contract or trust based) or DB schemes, but also hybrid schemes with distinct DC sections, hybrid schemes with less distinct DC sections, DB Schemes with open AVC arrangements, DB Schemes with closed AVC arrangements, earmarked Schemes, DB master trusts, DC master trusts and hybrid master trusts. While a changing market may lead to consolidation of scheme types in future, for the time being, changes in regulation need to be considered from the perspective of each and every permutation.
5. The industry is also currently reeling from the sheer number of new proposals and regulation, including the changes announced in the budget, and there now needs to be a period of stability to enable schemes and their members and advisers to draw breath and allow these changes to bed in. We would also reiterate our plea for consolidated regulations to be published, as it can be very confusing having to read amending regulations.

### Principles based regulation rather than prescription

6. We welcome the direction of travel in this Command Paper, but the DWP need to be careful when providing helpful examples that these do not effectively become requirements. An example of this is the provisions requiring an open and transparent process for the appointment of non-affiliated (ie independent) trustees in draft regulation 28 (page 104). We support the principle of requiring an open and transparent process, but the draft regulation goes on to also mention methods of advertising, engaging recruitment agencies etc, which seems to us to be overly prescriptive.

## Transitional period

7. The Command Paper would introduce numerous requirements on schemes, including the appointment of a chair, within a three month transitional period once the regulations come into force (expected to be April 2015). We are concerned that smaller schemes in particular, which often do not meet frequently, will find it very difficult to adhere to such a short transitional period and we would suggest a longer period of six months. Trustees, especially of smaller schemes, really will struggle to cope with all the new requirements and therefore any phasing in, transitional arrangements and guidance will be helpful.

## Assessment of charges and costs

8. The draft regulations (Regulation 25 on page 100) will require that trustees at least annually calculate the charges and, in so far as they are able to do so, the transaction costs. We are concerned that for investments in pooled investment vehicles, particularly fund of funds arrangements, information on the underlying investments can be extremely difficult (and costly) to obtain. If trustees are expected to follow the complete chain ie to drill down to the underlying investments, for instance in respect of comparative information on indirect charges, this would appear to be unduly burdensome. We consider that further thought should be given to the cost/benefit of such an absolute requirement in respect of charges in relation to underlying investments in pooled funds, and to requiring such an assessment of costs, and to whether the assessment of charges and of costs could instead be a 'best endeavours' obligation or otherwise restricted to the information that can reasonably be required from the pooled fund.

## Chairman's governance statement

9. The draft regulations will also require that trustees report in the governance statement on the charges, and on levels of transaction costs where they are able to access this information, and to report their assessment of value of such charges and transaction costs. Where trustees are unable to obtain information on transaction costs, this should be stated, with an explanation of how the trustees will try to obtain this information in future. However, as we mention above in relation to the assessment of charges and costs, we are concerned that for pooled investment vehicles, particularly fund of funds arrangements, information on the underlying investments can be extremely difficult (and costly) to obtain. If full disclosure is to be required, for instance in respect of comparative information on indirect charges, it would be necessary to follow the complete chain ie to drill down to the underlying investments, which would appear to be unduly burdensome. We consider that further thought should be given to the cost/benefit of requiring such information in relation to underlying investments in pooled funds, and to whether disclosures could instead be restricted to the information that can reasonably be required from the pooled fund.
10. The draft regulations 23 and 26 (pages 98 and 103) would require this statement to confirm how the governance arrangements requirements have been met 'during the scheme year'. We consider that a 'snapshot' or 'point in time' report could be more appropriate in relation to some or all of these requirements because such a 'point in time' test could achieve the policy objective without imposing the additional burden of requiring the statement to cover the whole period, for which trustees could have difficulty in obtaining the data required. See the recent AAF Assurance reporting on master trusts for an example of a point in time report<sup>1</sup>. We would be happy to have a further discussion with you if that would be helpful.
11. We also consider that the timing of the statement needs to be clarified – ie would it be given as at scheme year end, or as at the date of the statement ie 7 months later.

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<sup>1</sup> <http://www.icaew.com/~media/Files/Technical/technical-releases/audit/tech-07-14aff-assurance-reporting-on-master-trusts.pdf>

12. We note that the regulator's website already has a governance statement template, accessible from <http://www.thepensionsregulator.gov.uk/trustees/checking-you-run-a-quality-dc-scheme.aspx#s11193>, and it is therefore important to have consistency and clarity around how this will dovetail with the new requirements in these regulations.

### Guidance on Value for money

13. We are supportive of the increased recognition that low cost does not equate to value for money. We support the proposal that the Pensions Regulator will issue non-regulatory guidance on costs and charges, transparency and value for money to accompany the regulations, and we note it is important that the regulator works with industry in developing such guidance. We also note there is already guidance on the regulator's website, for example see <http://www.thepensionsregulator.gov.uk/trustees/value-for-money-in-your-dc-scheme.aspx> and <http://www.thepensionsregulator.gov.uk/trustees/costs-and-charges-in-your-dc-scheme.aspx>, and again it is important to have consistency and clarity around how these various pieces of guidance will fit together with any new requirements and guidance thereon.

### EU

14. Any changes which overlap with changes to be made by the EU should be made in a way which is consistent with prospective EU requirements. In particular, IORP II could impact on governance and it is therefore important that any possible further developments are given proper consideration to avoid any further changes to the proposed regulations.

## RESPONSES TO CERTAIN SPECIFIC QUESTIONS

**Q16: In addition to the questions already asked, is there anything else in the policies as set out in this paper on which you have any comments?**

**Do you have any comments on how the draft regulations reflect the policies explained in this paper?**

15. The draft regulations (Regulation 25 on page 100) will require that trustees at least annually calculate the charges and, in so far as they are able to do so, the transaction costs. As mentioned above, we are concerned that for investments in pooled investment vehicles, particularly fund of funds arrangements, information on the underlying investments can be extremely difficult (and costly) to obtain. If trustees are expected to follow the complete chain ie to drill down to the underlying investments, for instance in respect of comparative information on indirect charges, this would appear to be unduly burdensome. We consider that further thought should be given to the cost/benefit of such an absolute requirement in respect of charges in relation to underlying investments in pooled funds, and to requiring such an assessment of costs, and to whether the assessment of charges and of costs could instead be a 'best endeavours' obligation or otherwise restricted to the information that can reasonably be required from the pooled fund.
16. See also our major comments above regarding our concern that some areas of the draft regulations are overly prescriptive (para 6 above) and regarding the proposed three month transitional period (para 7).

**Q17: Is the scheme return the most proportionate way to obtain information on compliance with the governance standards and charges measures? Draft regulation 23 sets this out in more detail.**

**17.** Yes, we agree using the scheme return is the most proportionate way to obtain information on compliance with the governance standards and charges measures, and we note that auditors would also report any failings to the regulator.

**Q18: Is the proposed compliance approach to the Chair's Statement, as described in draft regulations [sic 24] and 26 appropriate and proportionate?**

As mentioned in our general comments above, the draft regulations 23 and 26 would require this statement to confirm how the governance arrangements requirements have been met 'during the scheme year'. We consider that a 'snapshot' or 'point in time' report could be more appropriate in relation to some or all of these requirements because such a 'point in time' test could achieve the policy objective without imposing the additional burden of requiring the statement to cover the whole period, for which trustees could have difficulty in obtaining the data required. See the recent AAF Assurance reporting on master trusts for an example of a point in time report<sup>2</sup>.

**18.** We also consider that the timing of the statement needs to be clarified – ie would it be given as at scheme year end, or as at the date of the statement ie 7 months later.

**19.** We would be happy to have a further discussion with you regarding the Chair's Statement if that would be helpful.

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<sup>2</sup> <http://www.icaew.com/~media/Files/Technical/technical-releases/audit/tech-07-14aff-assurance-reporting-on-master-trusts.pdf>