



BETTER WORKPLACE PENSIONS: FURTHER MEASURES FOR SAVERS

ICAEW welcomes the opportunity to comment on the consultation paper *Better workplace pensions: further measures for savers* published by the Department for Work & Pensions on March 2014, a copy of which is available from this [link](#).

This ICAEW response of 15 May 2014 reflects consultation with the Pensions Sub-Committee of 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

1. We agree with the government's objective of increasing consistency in the regulation of the various types of pension schemes and support the introduction of Independent Governance Committees for contract based schemes. However, as we have observed before, consistency could best be achieved through having a single regulator for pensions. 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. 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).
2. 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.
3. The timetable both for responses to the consultation and for implementation appears too short for all the issues to be considered adequately in this context and we urge government to introduce changes only when the potential implications for all types of scheme have been fully assessed. We understand that, in addition to considering responses to this consultation document, DWP intends to engage with industry to discuss the proposals. We support this approach and would be happy to discuss further the detailed implications of the changes and various alternative approaches that might be possible. Our comments at this stage are necessarily high level in nature, but a number of the proposals will have practical implications for our members (as auditors or advisors) which would require further consideration and discussion. For instance, if the Chair of trustees is to have additional responsibilities a number of detailed concerns arise and the proposal for auditors to provide a 'level of assurance' on governance in audited accounts needs to be translated from a broad concept to something that would be clear and workable in practical terms.
4. While it is important that obligations or expectations of trustees and others are clear, there is a risk that the proposed approach is over prescriptive in some areas, in particular where detailed requirements are to be imposed through legislation. DWP has noted this (in Part I, para 16), but we would reiterate the concern here as past experience, particularly in the pensions field, demonstrates how inconvenient and costly over-prescriptive regulation can be. The proposed requirement for a specified minimum number of trustees is one example where we believe a less prescriptive approach would be appropriate.
5. 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.

RESPONSES TO SPECIFIC QUESTIONS

Administration

1. We would welcome views on the potential benefits of accreditation of administrators, and what role government and regulators could play in supporting this.
6. We support initiatives which allow third party providers to demonstrate the quality of services they provide and accreditation has an important role to play. ICAEW has worked with the pensions sector, including the Pensions Regulator, in developing assurance reporting frameworks for pensions service providers, including pension scheme custodians, investment managers, pensions administrators, independent trustees and master trusts. These

frameworks come under the generic term 'AAF Assurance Reports'. By obtaining and issuing such reports, service providers can demonstrate to their customers that they have a robust internal controls framework which is validated by the inclusion of an independent Reporting Accountant's report. They are prepared to common standards for each service provider, based on a minimum set of control objectives which are tailored to each service type. There are other accreditation badges obtainable, such as those offered by NAPF and PASA which can successfully coexist alongside an AAF assurance programme which together demonstrate both quality features and quality internal controls within organisations responsible for providing services to pension schemes. In supporting these sorts of initiatives, government and regulators need to avoid any unnecessary proliferation of different standards and assurance mechanisms and ensure that accreditation is both robust but cost effective at the same time.

7. Accreditation (or, indeed, assurance) schemes are useful, but only up to a point; they are not a substitute for the skill and judgment to be exercised by trustees in selecting and retaining administrators. In particular, they focus on general capacities or control procedures and do not (and could not) guarantee that an administrator will provide a good quality service (either generally or for a particular scheme). A trustee will, therefore, still need to exercise due diligence in appointing a provider and will need to monitor performance on an ongoing basis. This can be challenging given the volume of information involved and the day to day control that the administrator has over it. In practice, a trustee may learn of failings only when they become tangible (for instance, due to member complaints).
8. Failings of this kind are also typically kept private and this is one (among several) reasons why it is difficult for a trustee to compare providers on the basis of actual performance. Some information may be available, for instance, from consultants with experience of various providers, survey results, references or through tender processes, but each of these sources has its own limitations and obtaining information this way may involve incurring costs.

2. We would also welcome suggestions of other approaches to helping trustees and Independent Governance Committees (IGCs) ensure that their scheme is being administered to a good standard.

9. The standard of the services to be provided by an administrator will be set by the contract between the trustee and administrator. This is a competitive market and it cannot be supposed that there is a standard definition of what constitutes a 'good standard' or what the liability of the provider might be in the case of failure. A contractual commitment to perform to a particular standard may involve the assumption of risk or increase resource requirements and may, therefore influence pricing. Normal commercial considerations will typically apply during contract negotiations, including the relative market power of the participants.
10. It would be helpful for many trustees if there were to be an industry consensus (or regulatory guidance) identifying what are the key elements of administration services against which performance should be measured or monitored by trustees and how performance would be measured (for instance, in terms of timeliness and accuracy of reports). If there could be more transparency regarding actual performance by the industry against these measures (for instance, in terms of percentage of reports delivered on time), trustees might then be in a better position to assess relative performance by any given provider in carrying out due diligence. While it might be difficult to require providers to disclose their performance figures publicly on an individual basis, it might be possible for statistics to be gathered and disclosed for the participating industry as a whole.

Mastertrusts

3. Should mastertrusts have to meet the same independence standards as providers of contract-based schemes?

In general terms we believe that independence standards should be consistent. However, consideration needs to be given to the different legal structures including the legal relationship and influence a relevant 'provider' may be expected to have, and to risks of being over-

prescriptive (in particular in relation to trustees who owe fiduciary duties and are expected to have appropriate levels of skill and experience, or, in the case of those on the Pension Regulator's register, have been assessed as being fit an proper.

4. We would welcome views on the proposed definition of 'independent' at Annex B.

11. The proposed definition appears to be based on that used for independent directors of listed companies under the UK Corporate Governance Code. While this may be a reasonable basis, the situations are not completely analogous and compliance with the code is a matter for the board (rather than being a statutory prohibition). If these independence proposals were to be implemented as prohibitions, we think that further definition would be required, in particular, for terms such as 'material' or 'significant' (with the risk that the legislation/regulation becomes ever more complex and legalistic).

5. Should the independence requirements be applied in different ways to different models of mastertrust. In particular, how should the independence requirements be applied to mastertrusts that use an independent trustee firm to act as their corporate trustee?

12. It will be necessary for account to be taken of the different models of mastertrusts in applying any independence requirements. The trustee of a scheme may itself be a company, but the independence requirements will, presumably be directed towards the directors of that company. One or more of the directors may be in corporate form and we take this to be the '**independent trustee firm**' referred to in the question.
13. We do not see any particular logic in mandating a particular number of trustees, whether seven or otherwise. In particular, we do not consider that a provision of this kind should be enshrined in legislation (see Major Points above). If the key concern is that independent directors should constitute a majority, this could equally be met by having one or three trustees in total (the sole trustee or majority being independent). If the aim is to have a diversity of views or skills or the like, then this is not achieved merely through numbers. The potential practical impact of these proposals on other types of scheme (such as hybrid schemes, with member nominated trustees) should also be considered. The issue is relevant in the context of an independent trustee firm as noted further below.
14. We think that there is an important place for independent trustee firms in promoting high quality schemes, in particular regarding good quality governance. They can be expected to have collective expertise that can be shared between directors and staff and, in effect, economies of scale. We request DWP to work with Department for Business Innovation and Skills to ensure that independent trustee firms continue to be permitted under the general prohibition on corporate directors proposed in the transparency and trust initiatives.¹
15. Careful consideration should, therefore, be given as to how the independence requirements would apply to independent trustee firms. The provisions in Annex B do not appear designed for this and would need to be adapted for the purpose. We think that some provisions would be required regarding the independence of the corporate entity itself (and, possibly, any substantial shareholders in it, or its directors), for instance, that it is not paid by the 'provider' except for the trustee services. However, there would also need to be controls regarding individuals provided by the corporate entity to represent it (whether or not they are directors of the entity), presumably along the lines of the controls on trustees who are individuals. The perils of an over-prescriptive approach arise also in this context .
16. The way in which independent trustee firms may be organised also needs to be taken into account in relation to any minimum that might be set for the number of trustees for a scheme. A scheme may currently appoint a single independent trustee firm and this may be completely

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf

appropriate. The independent trustee firm itself, however would, in practice, need to be represented at trustee meetings by at least one individual. In principle, the entity could provide the number required to meet any minimum requirement (eg seven), although it would obviously be more costly for it to do so. In the case of independent trustee firms listed on the Pension Regulator's register of trustees, at least, we believe that the trustee should be left to determine how many representatives should be provided for any given scheme.

Trust-based governance

6. We would welcome views on the proposed quality standards for trust-based governance which are summarised at Annex B.

17. As noted in 'Major Points' we think that it would be useful to discuss the detailed proposals, in particular:

- The proposals regarding 'assurance' in the proposed reports for minimum governance standards require further consideration. In principle, we can see merit in the proposals in broad terms. However, it is an area where absolute clarity is required and the proposals are currently insufficiently precise – Annex B provides that the Chair must produce a report on how the quality standards are met, which will be included in the annual audited report and accounts, Part 1, para 28, refers to the auditor 'providing a degree of assurance over the fairness of the description made by the chair' and Part 1 para 7 refers to the trustees providing a 'clear, independently audited annual statement that they have met the governance requirements'. We do not believe that the governance standards will be 'audited' and this sort of terminology should be avoided. If an auditor is required to make any statement or any statement by the trustees is to be included in a document which the auditor is required to sign, it will be important to understand exactly what the auditor's role is intended to signify and to be clear on the scope of the auditor's involvement in practical terms. There are various analogous models which we would be happy to consider further with DWP.
- While a report may be signed-off by the Chair of trustees, the Chair should do so on behalf of the trustees as a whole; as noted further below we do not think that the Chair should have a legal status and potential liability distinct from other trustees.
- Further definition is required regarding the report on core scheme financial transactions having been processed promptly and accurately. Trustees will, in practice, have limited ability to verify these matters and will necessarily be reliant on their service providers.
- It may be appropriate to have additional quality standards, for instance on clear and transparent reporting of transactions to members (which would be a control over the timeliness and completeness of transactions since the member can check against other relevant information such as pay and switches or other member requests to the scheme).
- Member representation is an area where it may not be appropriate to seek consistency between various schemes. It is difficult to see what purpose member representation would serve in the case of, say, a master trust, or how it could be implemented in an economic way and we have serious reservations about the proposals in this respect. By contrast, the rationale for member representation for single member DB schemes is reasonably clear and the practicalities in implementing less problematic (albeit, still a potential burden). Also, it appears that the proposals for IGC members to have a voice are less onerous than those proposed for trust based schemes.

7. Are the requirements listed at paragraph 8 the right quality standards to be set in regulations for trust-based schemes?

18. We are not clear which requirements are being referred to (the reference to paragraph 8 appears to be an error). We have commented on the quality standards in Annex B in our answer to question 6.

8. Should trust-based schemes be required to have a chair of trustees?

19. Part I paragraph 28 states that the Chair is a 'named individual ...who is accountable for demonstrating how the standards have been met'. This suggests that the Chair has additional legal responsibilities and, potentially, liability, over and above the other trustees. We do not consider this to be appropriate in the trust based context. It may be difficult (or costly) to fill such a role and, in any case, this should be a collective responsibility of trustees. If the Chair is to be 'accountable', further detail will be required. If the proposals are intended to apply a new legal status to a Chair, then the implications for trust deeds and other laws and regulations will need to be considered fully. Similar concerns may arise to some extent in respect of the Chair of an IGC.

9. Will the new reporting requirements help drive compliance with the standards and regulation of these?

20. Yes, but please see our suggestion regarding reporting to members in our answer to question 6.

Transparency

10. We would welcome views on how these transparency requirements could be made to work effectively in unbundled trust-based arrangements (including mastertrusts).

21. It is important that expectations of trustees are realistic having regard to information readily available to them and market practice. While a bundled service may provide economies of scale and good quality, this is not always the case and trustees should not be deterred from taking an unbundled approach because of unduly burdensome reporting or other regulatory requirements. The initiatives proposed could be expected to increase transparency and so make it easier for trustees to access information and perform their obligations. The more standardised practices become, the easier it will be for trustees.

22. We note, however, that full transparency on a standardised basis is difficult to achieve. In particular, obtaining comparative information on indirect charges, such as in pooled funds or funds of funds can be particularly challenging, but it is necessary to follow the complete chain if full disclosure is to be achieved.

23. We also believe that transaction costs should be adequately defined and disclosed (although we agree that true costs are distinguishable from fees and should not be subject to fee caps).

11. We would welcome views on whether the transparency requirements we propose for DC schemes should, in the future, be extended to DB schemes, to enable sponsoring employers to further scrutinise the costs of such schemes.

24. We do not see that additional regulatory burdens should be imposed on employers of DB schemes in this context.