Response to the

Pensions Authority's

Draft Code of Practice for

Trustees of Occupational Pension Schemes and Trust RACs

from the

Irish Association of Pension Funds

iapf

representing pension savers

An tÚdarás Pinsean
The Pensions Authority

Submission form

Consultation on Code of Practice for trustees of occupational pension schemes and trust RACs

Please save a copy of this form, then add your comments under each chapter. There is also space at the end of the form for general feedback.

Please keep your responses as succinct as possible and address any comments you have in relation to the text as set out in each of the separate chapters.

Please email your submission by 5pm Thursday 16 September 2021 to: codeconsultation@pensionsauthority.ie

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Introduction

There are a number of general points we would like to make before considering the detail of the document.

It is disappointing that the draft Code sets out a minimum expectation for all schemes and states that trustees may consider additional measures for other schemes depending on the scale nature and size of the scheme. There is no indication of what those additional measures might be and, given the extensive measures outlined in the draft Code, it is difficult to envisage what additional measures could be implemented.

It is stated that the draft Code sets out what the Authority expects from schemes in order to meet their obligations under the European Union (Occupational Pension Schemes) Regulations 2021 which transposed the IORP II Directive into Irish law.

The intent of the Directive was clear that it was not appropriate to adopt a one-size-fits-all approach to IORPs and that the application of the provisions should take account of the size, nature, scale and complexity of the activities of IORPs. It is difficult to see how applying all of the requirements of the draft Code to a DC scheme with 2 members would have regard to the size, nature, scale and complexity of that arrangement.

As an example, the Directive also says that the "*the identification of a particular key function should not prevent an IORP from freely deciding how to organise that key function in* *practice. This should not lead to unduly burdensome requirements because account should be taken of the size, nature, scale and complexity of the activities of the IORP".*

We do not see that this is reflected in the draft Code. It would also be our view that a scheme could adopt alternative measures to those set out in the Code if they are satisfied that those measures meet their obligations under the Regulations. This should be reflected in the final Code.

It is clear that implementation of the draft Code will lead to additional costs for schemes which will ultimately be borne by employers or members. It is disappointing that there has been no cost/benefit analysis carried out that provides evidence that any particular requirement, or the totality of requirements, will improve overall governance or, more importantly, member outcomes.

Schemes have already seen significant increases in compliance costs in recent years as a result of new requirements such as ECB reporting, and further increases in the regulatory fees have also been flagged. These additional costs undermine efforts to increase and improve pension provision.

It was recently stated that consolidation of the number of DC schemes is fundamental to improving the Irish pension system and is a goal of the Authority. It was also stated that, for many schemes, it will not be practical or cost efficient to put in place the structures to comply with the IORP II, and the sponsoring employer and the trustees will be considering future provision through PRSAs or via a master trust.

However, the Report of the Interdepartmental Pensions Reform & Taxation Group, published in 2020, recommended many changes to PRSAs and the Pensions Authority stated last year that most Master Trusts would not meet its expected standards. Furthermore, the method by which schemes might transition to PRSAs or Master Trusts using Wind-Up or Bulk Transfer Regulations are costly and inefficient and need reform.

In that context, it is very difficult for employers to consider those alternatives. We are concerned that, given the current economic backdrop, employers will be as likely to wind up schemes as they are to either incur costs to comply with the requirements or consider alternatives that have been highlighted as needing reform.

In order to avoid this, the Authority needs to provide sufficient time to enable those considering transitioning to different arrangements. It should be made clear to those schemes considering transitioning that they will not be expected to achieve full compliance with the new requirements (or to have made final decisions on their future) until enabling changes have been made to facilitate the transition to PRSAs or Master Trusts. The logistical challenge for pension providers to transition schemes to alternative arrangements also needs to be considered.

The Authority needs to consider the impact of the Code on small DB schemes. There are indications that the additional compliance burden and associated costs are leading employers to wind-up DB schemes which were otherwise considered sustainable.

Given the limited deferred annuity market in Ireland, this typically results in benefits being transferred to a DC scheme or PRB, and investment risk passing to members. Again, it is doubtful this trend will contribute to improved member outcomes.

We suggest that the finalised Code should recognise that alternative measures may be appropriate for certain smaller DB schemes depending on their particular circumstances (e.g. frozen schemes which are largely derisked / self-sufficient).

We also note that the Code of practice will not apply to schemes covered by Section 52 of the Pensions Act. While those unfunded public sector schemes are not subject to the IORP II requirements we would assume that the members of those schemes would also benefit from better governance and that a similar draft Code will be prepared for them.

Chapter 1 – Governance

1.1 While it is clear that a scheme must (and should) have an effective system of governance that provides for its sound and prudent management, it also appears that schemes could meet this requirement by implementing different measures to those outlined in the draft Code. How the Authority will deal with schemes that decide on an alternative approach should be clarified in the final Code.

1.2 There are many references throughout the document to schemes having written procedures and documented evidence of certain matters. We believe there are over 60 in total. We would question whether all of these are really necessary and will contribute to effective governance / management of schemes. Trustees should have some flexibility to determine what is needed for their scheme. We consider that empowering trustees in this way is more likely to result in trustees taking ownership of governance than an obligation to maintain a long, prescribed list of procedures and written evidence of matters. Indeed, such extensive requirements for all schemes is likely to lead to greater use of standard documentation and wording, something which the Authority has said it does not want to see.

It is also unclear how long schemes should be keeping this documentation for and this should be specified.

1.2.1 It is unclear what the trustees should do if the employer has the power to appoint a secretary to the board of trustees? (will this be sufficient or are trustees expected to appoint their own secretary). The same question applies where the employer has the power to appoint a chairperson. Indeed, the Member Nominated Trustee Regulations set out a procedure for the appointment of a chairperson. In certain circumstances these require the employer to nominate the chairperson. It is generally unclear how those regulations interact with many of the responsibilities the draft Code places on trustees.

The requirement for trustees managing more than one scheme to hold scheme specific meetings may not always be practical. There will be some general matters that are relevant to all schemes e.g. regulatory or investment updates that can be dealt with collectively. We suggest that this should be permissible and the trustees could then deal separately with matters relevant to particular schemes.

The requirement that no one trustee should have unfettered powers of decision making should, presumably, only apply where there is more than one trustee. It would not be possible where there is a sole corporate trustee.

1.3 Legal advice would generally suggest that it is reasonable to record discussions of factors considered by trustees and decisions - but that the specific reasons for a decision do not need to be recorded.

1.5 We would question whether the timeliness of information set out in the table is appropriate. We would expect a well governed scheme to have access to much of this information on a more frequent basis.

1.7 We note the requirement to notify the Authority of the proposed appointment of any outsourced KFH at least four weeks before the appointment is due to take place. It would be helpful to know what happens after notification and in what manner it should be notified.

1.7.2 Procurement policies in large organisations may be governed by other legislation such as the European Directive on Procurement which would apply to larger procurement processes e.g. administrator or actuary appointments, preventing those organisations from adhering to this section.

1.9 We would suggest that access by members to policy documents referred to in the draft Code may only be denied where there is a legally ***or commercially*** justifiable rationale.

We do not agree that member consent is required to receive disclosure documents by electronic means. The Electronic Commerce Act contains enabling provisions allowing for information which is required to be provided in writing to be delivered electronically (with consent). As the Regulations specifically allow for the delivery of Pension Benefit Statements by electronic means, we do not believe trustees must also comply with the provisions of the Electronic Commerce Act to allow this. Delivering information by electronic means is likely to be more effective and cost efficient and we would also suggest that the Disclosure Regulations should be updated to reflect this and not require documents to be delivered in writing.

Chapter 2 – Administration

2.3 We are not convinced of the practicality of the trustees reviewing the processes the employer uses to provide information to the administrator. This is largely outside of the trustees' control, and it is difficult to see what effective action they can take.

2.5 In many schemes there may be very little administrative activity in a quarter and a requirement to review performance quarterly would seem unnecessary.

The requirement for trustees to conduct a review of the administrator's performance and assessment every three years would suggest that there should be a tender process put in place to achieve this. The process of tendering (and indeed transitioning between service providers) requires significant time and resources from both trustees and service providers. We believe this would be unnecessarily burdensome and costly and should only be triggered if the initial performance assessment gives rise to any issues of concern to the trustees. Other means of achieving comparison, such as general market benchmarking should be explored. A value for money assessment can be quite subjective. If the employer is meeting costs and the trustees are happy with the service, we do not see why there should be a review. If members are meeting the costs from contributions and AUM, while the cost from one service provider to another can vary, so too can the range and quality of service. Lower costs may not necessarily mean a better outcome for members. Will the Authority be providing any guidance to Trustees on how to undertake a Value for Money assessment?

Chapter 3 – Internal control system

3.3.1 It states that trustees must ensure that their ORA covers the risk to members that scheme benefits will not meet the members' expectations. How will this work in a DC arrangement? We would suggest at least changing the wording to "members' reasonable expectations".

It also states for DB schemes that the ORA must consider the trustees' evidence-based view of the strength of the employer covenant. What type of evidence is envisaged here and how do trustees obtain evidence if an employer is not obliged to give them information they might require?

We do not believe that the scope of the ORA or Internal Audit function is sufficiently clear. If it is intended, for example, that each scheme should have an internal auditor to audit its administrator, that will lead to complexity and significant costs.

Chapter 4 – Investment for schemes

4.3 It is stated that the investment strategy must include the maximum acceptable level of investment risk. This will presumably refer to historic measures of volatility as there is no way of quantifying the worst scenario that could transpire, for example, to bank, Government or Corporate bond defaults. As such, measures relating to historic volatility may give false reassurance.

We believe there should be more consideration given to use of benchmarks and performance relative to peers rather than a focus on rates of return.

We suggest that the requirement that the investment strategy must be written in plain English as far as possible should apply to all policies and procedures.

4.4 While this section mentions delegating the implementation of the investment objective to a fiduciary manager, it is unclear in the remainder of the Chapter which duties relate to a fiduciary manager and to an investment manager.

4.5 Many of these requirements are appropriate for a segregated mandate but would not apply where a scheme is investing in a pooled fund where that type of contract does not exist.

4.6 Performance benchmarks are usually over rolling 3 or 5 year periods. Focus on a shorter period could lead to more frequent changing of managers which could negatively impact costs and longer-term performance and will not benefit member outcomes. Investment performance is best assessed methodically and periodically rather than reacting to short-term circumstances. Historically, overreacting to short-term conditions is a way of harming member outcomes.

The requirement for trustees to conduct a critical review of the investment manager's performance (and, presumably, that of a fiduciary manager) every three years would suggest that there should be a tender process put in place to achieve this. We believe this would be unnecessarily burdensome and costly and should only be triggered if an initial performance assessment gives rise to any issues of concern to the trustees. Other means of achieving comparison, such as general market benchmarking should be explored,

Chapter 5 – Defined benefit scheme funding

5.4 It is disappointing that details of the Pensions Authority risk measure have not been made available and we would ask that sufficient time is given to consult on this.

5.5. Actuaries already do a lot of calculations and sensitivity work as part of the triennial valuation and also when reviewing funding proposals. We are not clear that further valuations will add value, whereas they will certainly add cost.

It is not practical for many schemes to have regular meaningful discussions with the sponsoring employer which assess the ability and willingness of the employer to support the scheme with supplemental contributions should they be needed. The nature of these discussions will very much depend on where the balance of power lies between employers and trustees on both contributions to and termination of the scheme.

Indeed, this suggestion may be harmful to member outcomes. In many cases, sponsoring employers will support supplemental contributions when required. However, in the same cases, if the trustees force the hand of the employer and seek confirmation in advance that such contributions would be forthcoming if required, this is likely to lead to a cautious response from the sponsoring employer which may force the trustees to adopt a more negative position than is needed.

Chapter 6 – Fit and proper requirements

It appears that the trustees must monitor whether they are fit and proper, but it is generally employers who appoint and remove trustees. It is difficult to see how trustees, as required, can take actions to rectify a situation where a trustee no longer meets the fit and proper requirement when they are unlikely to have any legal powers to do so. This should be recognised in the final Code.

We assume it is acceptable to rely on information provided by trustees on their fitness and probity (e.g. by completing questionnaires) and that separate due diligence / vetting of information provided is not required. This might be clarified in the final Code.

We note the Authority's view that a named individual must be appointed as a Key Function Holder. We also note that the Regulations refer to a person being appointedc to a KFH role. However, the Directive refers to outsourcing to persons or entities and also to single persons or organisational units carrying out KFH activities. We believe it would be more efficient if a firm can be appointed as a KFH and this this is what is envisaged in the Directive. We believe the Authority and the Department of Social Protection should examine this issue.

As a general point, we are concerned that all of the requirements are likely to accelerate the decline in the involvement of lay trustees in pension schemes. We strongly believe that this will be detrimental. The diversity of experience and background of lay trustees and their familiarity with the employer and members of a scheme can only be beneficial to the running of that scheme.

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