

LCP Radar – Pensions Authority Code of Practice

22 November 2021 - The Pensions Authority has issued its final Code of Practice for Trustees of Occupational Pension Schemes following a consultation process.

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The final version of the Code of Practice has now been published. This follows on from IORP II legislation introduced in April 2021 as well as a draft code, issued by the Authority in July. The final version of the Code sets out the Authority's expectations for the conduct and practice of trustees of occupational pension schemes. While the Pensions Authority say the Code is not intended to prescribe how to comply with every requirement under legislation, it does provide further explanation of the minimum that the Authority views as necessary to comply with specific new legislative requirements.

The Code comprises six headings: Governance, Administration, Internal Control, Investment, Defined Benefit Financial Management and Fit & Proper Requirements. There is also a new section on master trusts. In comparing July's draft code to the final November version, there are a few nuanced changes, but overall, the content and level of prescription are broadly similar.

1. Governance

The Authority has clarified that "outsourcing" refers to organisations that assist trustees (such as legal advisers), as well as those who undertake certain activities (such as administration). While there will be a requirement to notify the Authority of the appointment of Key Function Holders, the reference to notifying the Authority at least 4 weeks in advance of any appointment has been removed. The scope of the remuneration policy has been extended to include outsourced providers and anyone who carries out professional activities for the trustees. The Authority has provided more detail on the electronic disclosure of documents, by saying that trustees "*should be mindful of the requirements of the Electronic Commerce Act 2000*". This, in effect, means that members must provide their explicit consent to receiving communications electronically.

2. Administration

In relation to the agreement between the employer and trustees, the Authority has said "*Trustees must take reasonable steps to have a written agreement with the employer regarding the provision of data to administrators*".

The Authority has also clarified that a critical review is "*an in-depth review of the administrator's performance conducted against the obligations specified in their contract and in the SLA. The critical review forms the basis for a decision by the trustees as to whether to retain the current administrator or consider his/her replacement. A critical review does not automatically require that the trustees initiate a tender process. A tender process must be initiated, however, if the performance assessment gives rise to issues of concern, including issues related to value for money*".

3. Internal Controls

The trustee accounting procedures no longer have to include a detailed set of requirements for the auditor. In the context of the Risk Manager, the Authority has said that it expects *“the implementation of the risk management function to be objective, thorough, and comprehensive.”*

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Under the heading of Internal Audit, the Authority has clarified that the scope of the Internal Audit Function extends to scheme administration, but only where performed in-house. It has, however, beefed up the trustee role in the oversight of outsourced functions and responsibilities. The Authority also removed the reference to the Institute of Internal Auditors, signalling that a wider breadth of service providers can deliver this role to the trustees.

4. Investment

The Statement of Governance Process has been renamed the “Statement of Investment Governance”. There is also less of a focus on statements regarding quantitative and qualitative assessments and more of a focus on the governance aspects of the investment process. The Authority clarified that for DC schemes with lifestyle strategies, the trustees can define investment targets in terms of investment benchmarks appropriate to the objectives of the scheme as opposed to specific targets for each fund.

Of particular note, the Authority said *“The trustees must give consideration to conflicts of interest that may arise for their advisers when the latter are asked to advise on the appointment of investment managers. In such situations, the trustees must carefully weigh such potential conflicts of interest when appointing investment advisers and considering advice received.”*

5. DB Financial Management

The key changes are that trustees must conduct asset and liability assessments often enough to ensure that their understanding of funding issues is up to date and that they must have a good understanding of projected cash flows, as well as discounted liability values.

The Pensions Authority have also released their DB financial risk assessment tool. While Trustees can use other tools to measure and manage risk, Trustees must also use the risk measure provided by the Authority to measure and manage financial risks within DB Schemes.

6. Fit & Proper

The Authority stated that *“It is the trustees’ responsibility to ensure that the fit and proper requirements are properly applied.... Should the other party fail to take the necessary actions, the trustees must inform the Authority of their findings and the failure of the other party to act as requested.”* This provides a route for the individual to be removed, even if the trustees have no power over the appointment/removal.

The Authority has also helpfully confirmed that in ascertaining fit & proper for individuals, *“the trustees may rely on the veracity of the information provided by a person or corporate.”*

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The Authority have also released a list of courses which meet the trustee qualifications requirement referred to in the Code. At least one of the trustee board must have completed a course listed on the Authority’s website.

7. Master Trusts

The Authority have clarified the additional requirements expected of Master Trusts. The content of this chapter is based on the Authority’s previous response to the 2019 master trust consultation and the Authority’s findings from its engagements with master trusts in 2020 and 2021.

More details can be accessed at

https://www.pensionsauthority.ie/en/news_press/news_press_archive/code_of_practice_for_trustees.pdf

https://www.pensionsauthority.ie/en/trustees_registered_administrators/trustee_qualifications/

How can LCP help?

If you would like to find out more about how LCP can help trustees and sponsors of pension arrangements, or if you have any questions on this update, please contact [Roma Burke](mailto:roma.burke@lcpireland.com) at roma.burke@lcpireland.com or the LCP partner who normally advises you.

Note of Work

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