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Louise Spicer
Regulatory Policy
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW

9 May 2017

Dear Louise

**Draft monetary penalties policy and revised professional trustee description
Response to Discussion Paper**

The Association of Professional Pension Trustees is an organisation of over 160 individuals who act as professional independent trustees to UK occupational schemes, some as sole practitioners and some working in firms of such practitioners. Our members represent a large number of mainly larger pension funds with combined assets of several hundred billion pounds.

Our aims are to:

- encourage and promote the highest professional standards in those who practise as professional pension trustees
- promote the role of professional trustees

In preparing our response to this consultation, APPT ran a survey of its members in conjunction with PMI's Trustee Group. Twenty-two responses were received, and they form the basis of our submitted response.

Wherever possible, survey questions matched exactly those in the consultation document. However, on occasion, it was necessary for questions to be adapted to accommodate the survey format. We have made it clear when this has been the case.

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Yours sincerely

A handwritten signature in black ink, appearing to be 'Nita Tinn', written in a cursive style.

Nita Tinn
Association of Professional Pension Trustees

Part 1: Draft monetary penalties policy

Do you agree with the proposed approach to calculating the amount of a penalty?

We agree that the approach is appropriate.

Will the proposed framework for calculating penalties result in penalties that are fair, reasonable and proportionate? If not, why not?

We believe that trustees who report issues voluntarily should be shown a degree of leniency.

Is the framework for calculating penalties clearly defined and in accordance with the penalty principles in the policy?

We are satisfied that the framework is defined clearly.

Is it clear that the examples in section 8.2 of the draft policy are illustrative only and that the actual band for a particular breach will depend on the facts, taking into account the nature and impact (or potential impact) of that breach? On this basis, do you find them helpful?

The example used were helpful in illustrating the approach that would be taken by the Regulator in given situations.

Do you consider that the proposed approach to calculating penalties for individuals is fair, reasonable and proportionate? If not, please give reasons.

We are satisfied that the proposed approach would be fair, reasonable and proportionate.

Do you consider it fair, reasonable and proportionate to impose a higher penalty on an entity that is not an individual, and for that penalty to be significantly higher? Are there any circumstances where you consider that it would not be reasonable or proportionate to do so?

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We are satisfied that higher penalties are appropriate for corporate entities.

Do you consider the proposed approach to discretionary penalties which are imposed on a joint and several liability basis to be fair and reasonable?

We agree that the proposed approach is fair and reasonable.

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The remaining responses are based directly on our survey results.

Do you consider that a penalty of £500 for a nonprofessional individual trustee/manager is sufficiently high to encourage compliance and to achieve the deterrent effect?

Yes	16
No	6

Do you consider that a penalty of £500 is a reasonable and proportionate amount?

Yes	16
No	6

Additional comments included the following:

dependent on the circumstances of each case

I think it should be about twice this.

In the normal course of events but not to the individual who does not wish to comply

But only if it is used constructively, not to score points that action is being taken,

It is too low to have any effect

it has to be a meaningful sum say £1000

The enforcement of penalties should be subject to strict criteria

The scheme return is not difficult to complete and should largely be dealt with by proficient advisers. There is no excuse to late or non submission. £500 is a significant but not excessive amount which demonstrates the seriousness tPR places on the completion of the scheme return.

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Do you consider that a penalty of £1,000 for a nonprofessional trustee/manager who is not an individual is sufficiently high to encourage compliance and to achieve the deterrent effect?

Yes	15
No	7

Taking into account the range of entities who are trustees / managers, do you consider £1,000 to be a reasonable and proportionate amount?

Yes	14
No	8

Further comments included the following:

£500 for unlimited liability does not seem to me to equate to £1,000 for limited liability.

dependent on circumstances of each case

Again about twice this amount seems better insofar as it would make such an individual 'take stock'

Not if the trustee self declares. The fine should usually be waived if the scheme/trustees self declare (and especially where there is no impact to members) since it serves no purpose then other than point scoring by the regulator. The fine should be applied when negligence has occurred in some meaningful fashion.

I don't consider the monetary penalty regime to be an effective governance tool. should 5 times that to make an impact

For non individuals that do not adhere to published guide lines £1,000 may not be sufficient to deter poor practices

provided discretion is exercised appropriately

Do you consider the proposed amounts of £1,000 (for an individual) and £2,000 (in any other case) for scheme return breaches by a professional trustee to be reasonable and proportionate amounts?

Yes	14
No	8

Further comments included the following:

Multiple of two times versus lay looks too low.

There should not be different amounts for corporate trustees. It will just encourage corporate trustees to change their business model and become an association of self employed professionals.

the fine should be up to the amounts shown dependent on circumstances of each case

That said the cost by a service provider for preparing and submitting a Scheme Return can be substantially higher than this. It's not uncommon for this fee to be upwards of £2,500 per return.

£500 and £1000 respectively may be more appropriate, with a larger amount for a professional trustee body which has 10 or more independent trustees

The main thing is to get a return in as quickly as possible after the deadline. For this purpose, a smaller initial penalty would be sufficient, plus £1000(£2000) if the return is not sent in within a short period after the initial penalty.

I don't think it is appropriate to distinguish between lay and professional trustees. Both categories have the same duties and need to comply with the requirements.

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But only if the breach has a possible meaningful effect on member outcomes and not if the breach is immaterial and self declared since this undermines the reputation of the regulator whose purpose is to help optimise member outcomes.

The scheme return is a data gathering instrument and has no relevance in terms of scheme or member security.

provided discretion is exercised appropriately

Do you consider that doubling the penalty amount for a consecutive breach by a trustee/manager in relation to that scheme is reasonable and proportionate?

Yes	18
No	4

Further comments included the following:

Too much

it should depend on circumstances of each case

If there is evidence of negligence in some fashion and the breach is material, this will often be a good idea.

I don't agree with the policy full stop.

provided discretion is exercised appropriately

Do you consider that a 10% discount where the scheme return is submitted before the Regulator decides to impose a penalty is a sufficient incentive for trustees/managers to submit the scheme return, albeit late?

Yes	9
No	13

Further comments included the following:

Much greater discount required

the fine should reflect the severity of the offence. the incentive should be applied for early submission before the deadline, not for submission "not as late as others"

This should be 50% - like a parking fine.

If this is the mechanism to get a quick response, a bigger discount would be necessary

If the failure to return is a genuine oversight/ administrative error a warning for a first offence is more appropriate than a fine.

Every incentive to encourage good behaviour by schemes must be encouraged. 10% is meaningless - in many cases, the fine should be waived if an honest mistake, promptly corrected, is made. That is a real incentive. Fines can never serve as a substitute for good constructive dialogue and ongoing guidance from the regulator to optimise outcomes.

It's ridiculous

A 50% discount would be more meaningful

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Financial penalties or reductions in such penalties are secondary considerations

This is too small to have much impact

What do you consider may amount to an exceptional case, where it would be reasonable and proportionate to impose a higher or lower penalty?

The following suggestions were offered:

1. *Will depend on the circumstances, but the Regulator should know it when it sees it.*
2. *Negligence, not investing contributions at all or inappropriately, 5G Futures Pension or similar*
3. *There must be deliberate breach of the rules not just inadvertent. Its not appropriate in the example to levy the highest level for breach of DC schemes requirement to process core transactions promptly and accurately*
4. *professional trustees often have limited influence, for example where they are not Chair of trustees, over the timing of the submission of Scheme Returns and Chair's statements.*
5. *"Higher - where a scheme has decent advisers and there is no reasonable justification for this not to have been submitted.*

Perhaps, if a scheme was transitioning between advisers that might amount to an exceptional case but it's still available if such a transition is project managed.

6. *"Consistent breaches should be subject to higher penalties.*
7. *For a first offence, only a little late, there should be some discretion for TPR to waive the penalty"*
8. *The submission of a Scheme Return is so embedded now that everyone knows they are required and have been for many years.*
9. *If trustees/managers are unaware of this rather basic obligation what else are they not aware of?"*
10. *"Consistent breaches should be subject to higher penalties.*
11. *For a first offence, only a little late, there should be some discretion for TPR to waive the penalty"*

Part 2: Revised description of a professional trustee

Does our revised description make it clear who is included in the description of a 'professional trustee'?

And

Are there any other factors which you consider to be determinative of whether someone is a professional trustee that are not reflected in our description?

We asked:

Which of the following characteristics do you believe defines a person, whether or not incorporated, as a professional trustee? (select all that apply)

Holds himself/herself out as someone who has particular expertise in trusteeship	21
Is remunerated	17
Has no personal connection with the scheme	13
Has accepted (or is willing to accept) trusteeship appointments for more than one scheme	18
Is remunerated directly	10
Receives expenses or is otherwise indirectly remunerated	4
Other (describe below)	10

The ten suggestions for 'other' were:

- 1. Is in the business of professional trusteeship*
- 2. for pension trustees, a professional trustee must be appropriately qualified and be covered by CPD accreditation, eg APPT*
- 3. With remuneration this needs to be at a 'professional services' rate rather than, say, an 'honorarium'/notional amount for attending each trustee meeting*
- 4. The definition is difficult. Many 'lay' trustees are remunerated. A connection with the scheme is also not precise - for example a company may appoint employees or past employees to group schemes which they have not been members of - are these professional trustees?*
- 5. Has specific qualifications and undergoes continuous training*
- 6. If trusteeship is someone's "profession", then they are professional trustees (whether good or bad at their job). If they have another profession but serve on one or more trustee boards, they are "independent". An exception could be made if they are pension industry professionals and hold themselves out to be professional trustees via their technical knowledge and service as trustee on several schemes.*
- 7. Can demonstrate knowledge and expertise either via a profession CPD arrangement or membership of a recognised professional trustee body*
- 8. Perhaps clarify that any pensions professional / person with many years of pensions experience (eg actuary, lawyer, administrator, investment manager) would be considered "as an expert in trustee matters generally" and therefore a professional trustee even if their main business is that other area of pensions (or indeed some other area), which I think is correct. I was going to say that this should only be where there is not a personal connection to the Scheme - for example I once worked on a case where a professional trustee "by day" was a trustee for a scheme due to his prior link to the sponsoring employer (a school), but as such individuals have a greater knowledge there*

is a low risk they will "fall the wrong side" of the regulations and if they do (which would be disappointing) the implications could reasonably be more severe.

9. Has significant pensions experience and has a relevant qualification. The person should also have completed tPR's Toolkit

10. It's a bit of a case of you know one when you see one. Attempts to come up with a tight definition may be problematic

Are there any examples where you consider that a trustee who would be commonly understood to be acting as a professional trustee may not be captured by the description?

No	13
Yes (please describe below)	9

The nine suggestions were:

- 1. Equivalence to shadow directors/partners in limited companies or partnerships.*
- 2. Acting as a professional for the scheme of your previous employer having retired and charging fees as a trustee expert*
- 3. a trustee, sometimes the Chair of trustees, is remunerated and considers himself/herself to be a professional trustee but only has experience of being a lay trustee of 1 or more schemes of his/her previous employer*
- 4. Those with a portfolio of appointments but who receives notional remuneration.*
- 5. Consider the similarities with shadow directors/shadow partners, ie someone whom the trustees are normally considered to follow or be led by.*
- 6. See comments on previous question.*
- 7. someone may hold themselves out as a professional trustee but not have the relevant level of expertise.*
- 8. Refer to comment above.*

I think any pensions professional should be held to higher account than non-pensions individuals due to the greater level of knowledge. This is even if they have a connection to the scheme they are acting as trustee on. I would hope no such professionals would breach the law without good reason and appropriate communication to the Regulator as any professional trustee / pensions professional should.

- 9. Where that person has not worked in the pensions industry before becoming an independent trustee*

Conversely are there any examples where you consider that a trustee who would be commonly understood not to be acting as a professional trustee may be captured by the description?

No	12
Yes (please describe below)	10

The ten additional suggestions were:

- 1. A trustee, sometimes the Chair of trustees, who was the CEO or CEO of the employer may not hold himself/herself out to be a professional trustee but is remunerated.*
- 2. Those with a portfolio of appointments but who receive no remuneration other than reimbursement of documented reasonable expenses.*
- 3. Some trustees are appointed because they have some expertise in a particular area, eg tax, investment, and are remunerated, but would not normally be thought of, by themselves or others, as professional trustees. so the addition of 'general' (in the sense of broad) expertise described in the consultation document is important*
- 4. See previous comment*
- 5. Those who have openly waived their remuneration*
- 6. Where someone holds themselves out to be a professional trustee but this isn't their profession. In the mould of any professional (banker, asset manager, insurance underwriter etc) who may not have formal professional qualifications, a professional trustee should bring specific industry and scheme specific experience to the fore . Even those beginning to build their portfolios should have significant industry knowledge and experience before they can hold themselves out to be a professional trustee.*

7. *they could be an independent and remunerated but not have pension trusteeship as their main professional interest*
8. *My example above of the trustee acting in a personal capacity comes to mind. Here I do not feel they should be more exposed than any other individual but also that their increased knowledge should enable them to ensure such tasks are completed. Perhaps these are the cases where the scope for reducing or increasing the penalties might reasonably be applied to take account of relevant circumstances.*
9. *The description use words that are vague e.g. expert. How do you define an expert and in what?*
10. *It is unclear whether the terms are intended to apply to pension trustees or to trustees more generally.*

The intended treatment of those performing pro-bono work is unclear

Is it clear what 'in trustee matters generally' means?

Yes	13
No (please describe how it could be made clearer)	9

The nine suggestions for 'no' were:

- 1. Sadly, it needs more words to spell this particular point out*
- 2. there is considerable difference between a trustee and a pension scheme trustee.*
- 3. There is a need, here, to be able to demonstrate a wider knowledge of trusteeship although this should be done by way of the Trustee Toolkit/PMI Award in Trusteeship. Wider knowledge/general trusteeship can probably only come from having a portfolio of appointments rather than just one appointment for one scheme which might give a slightly narrow view of 'trustee matters generally'.*
- 4. It should be made clear that this implies some knowledge and/or experience across most or all of the main areas that pensions involve, i.e. actuarial, investment, funding, covenants, employer finance, risk analysis, governance issues, value for members, buy-out, compensation, trust deeds and rules and the legal framework.*

I think the description needs to be very specific and make it clear that it is aimed at individuals/firms who are directly remunerated for the provision of services as a trustee as opposed to simply receiving a gratuity/allowance/expense etc. for such activities.

Pro bono appointments become difficult to define but I think they have to be exclude from the definition.

5. *More specific detail with examples*
6. *This could be trusts outside the pensions arena*
7. *Trusteeship is a wide responsibility that requires a personality that is befitting of an honest and trustworthy role*
8. *Crating the description requires careful wording*
9. *It is not clear whether this refers to pension trustee matters or to trustee matters in a wider sense*

Is it clear what an 'expert' is?

Yes	13
No (please describe how it could be made clearer)	9

The nine suggestions for 'no' were:

- 1. A shadow fiduciary is a person in accordance with whose directions or instructions the trustees of a trust are accustomed to act. Under this definition, it is possible that a director/partner, or the whole board, of a holding company/partnership, and the holding company/partnership itself, could be treated as a shadow fiduciary of a trust.*
- 2. Again, 'expert' needs to be more tightly defined*

A professional trustee is not, in our view, someone who has no background in pensions but who worked for a sponsor and has no breath of experience other than for one or possibly two schemes where they were a Company Nominated Trustee.
- 3. there should be a qualification for professional trustees before they are allowed to charge for their services.*
- 4. an expert trustee may not be a good pension trustee. knowledge of pension trustee matters is needed in addition to knowledge of general trustee matters.*
- 5. Someone who is qualified in a particular discipline and has a significant amount of experience both in terms of years, depth and breadth of that experience.*

6. *In general terms, yes, but in a specific case, quite possibly not. Maybe better to refer to adequate knowledge and experience, and then seek to give guidance on what these terms imply.*
7. *Make reference to training knowledge and experience*
8. *Already covered in my prior answers but essentially somebody who has held senior positions in the pensions industry and has many years of unblemished pensions experience.*
9. *I don't think that word should be used*

Is it clear what 'holding out' means?

Yes	13
No (please describe how it could be made clearer)	9

The nine suggestions for 'no' were:

- 1. anyone can "hold themselves out" to be an expert even if they have little knowledge. evidence of their knowledge is required, eg qualifications and APPT membership.*
- 2. So that the definition is clear to anyone outside the trusteeship field.*
- 3. It is probably clear what it means, but it is more difficult to see how it would be identified in any particular case. It depends on the appointment process, and on what documentation/correspondence was relied on, and how this was interpreted.*
- 4. Explain with different words*
- 5. No I don't know what it means*
- 6. could be clearer about carrying insurance having a professional qualification etc*
- 7. I need to refer back to the consultation document*
- 8. Comes back to my earlier point about shortening the description.*
It is difficult to capture this in a survey of this nature.
- 9. "Represents themselves as" or "holding up"*

Under the draft penalty policy the Regulator is likely to impose a higher penalty on a professional trustee than on other types of trustee. Are there any examples where you consider that a trustee should be considered to be a 'professional trustee' which are not captured by the description?

No	15
Yes (please describe below)	7

The seven suggestions for 'yes' were as follows:

- 1. See earlier comments about the equivalence of shadow directors/partners.*
- 2. As already stated*
- 3. Where an executive director is appointed to the trustee board by the sponsoring employer*
- 4. See earlier comment above about similarities with shadow directors/shadow partners.*
- 5. I think the definition needs to be narrow but absolutely clear and not too general*
- 6. My concern is that the descriptions capture those that should be excluded*
- 7. See previous comments*

Do you believe that it should be mandatory to have a professional trustee on the board?

Yes	8
No	14

Further comments included the following:

Having only one in some cases may be insufficient, just as having one (and only one) in every case may be overkill.

it would be wrong to impose a trustee on the board of well run schemes. the Regulator should use its powers to appoint and remove trustees in appropriate circumstances - extended if necessary by legislation.

But, then being a professional trustee I would say that wouldn't I?! If this was introduced then it would have to be an 'accredited' professional trustee or one that at the least meets the minimum APPT standards.

Not mandatory, but to be recommended as best practice

highly desirable, but a trustee board could function properly without a remunerated professional, so this would involve excessive regulatory intervention

There are schemes with excellent trustee board that do not need a professional trustee. It should be made clear, though, that having a professional trustee should be the default option for schemes that do not have any trustees with pensions specific experience and/or expertise.

It is not proportionate or appropriate to have a professional trustee on all boards. Given the potential risk to the PPF there may be a case for having a professional trustee on the Boards of all schemes over a certain asset size.

But I do think tPR should be encouraging employers to consider appointing a professional trustee. I also believe that all professional trustees, including individuals

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working for corporate bodies, should be registered members of the APPT where they should register their CPD and where disciplinary matters can be dealt with - much like every actuary is a member of the IFoA. That said I would not want expert individuals to wiggle out of being viewed as a professional trustee just because they have not joined the APPT if they are effectively fulfilling the role of a professional trustee.

If your answer to the previous question was 'yes,' should the professional trustee chair the trustee board?

Yes	4
No	4
They may or they may not	14

Further comments included the following:

This is not essential but is probably best from a governance perspective.

The thought of removing a trustee as a Chair and appointing a professional trustee in their place could be problematic

Or rather - not necessarily.

Ability to Chair a meeting well - and utilise the experience and knowledge of those around the table whilst not allowing one or two to dominate/crowding others out - is a particular skill. A skill that is not necessarily found in a professional trustee. "

Chairing is a skill in itself. The Professional Trustee should only act as Chair if there are no other suitable options.

There are circumstances where a board is comfortable with a long standing chair supported by a professional trustee. Where a board wishes to continue this practise then the chair should be deemed " professional" for the purposes of the penalty regime

Chairing is a skill in itself. The Professional Trustee should only act as Chair if there are no other suitable options.

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