

**Code of Practice 13: Governance and
administration of occupational defined
contribution trust-based pension schemes**

The NAPF's response

March 2013

Overview

The NAPF welcomes the Pensions Regulator's focus on quality in defined contribution (DC) pensions. With employers now beginning to automatically enroll their employees into workplace pension schemes, it is essential that we focus on the standards across DC schemes.

However, the draft Code of Practice is highly prescriptive. Parts of the Code are unclear, while the Code suffers from repetition, and near repetition in places. The Code goes into an excessive level of detail in places where trustees are often best placed to make decisions. The Code risks increasing costs for members and the NAPF fears that it may discourage employers from choosing a large trust-based scheme, exactly the type of scheme which the Pensions Regulator believes are best placed to provide good member outcomes.

The NAPF believes that there is a place for a slimmer, objective-based code which brings together trustees' obligations in one place. Much of the advice and best practice in the Code is helpful but would be more appropriately placed in a separate guidance document. This would support trustees to review their scheme without causing potentially damaging confusion around their obligations.

About the NAPF

The NAPF is the leading voice of workplace pensions in the UK, speaking for 1,300 pension schemes with some 16 million members and assets of around £900 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector.

Introduction

1. The Pensions Regulator (TPR) has been considering the issue of quality in defined contribution (DC) pension schemes for some time. In December 2011, TPR published six principles for good design and governance of workplace DC pensions. This was followed in February 2012 with *Delivering successful automatic enrolment*, an analysis of the DC market which broke down DC schemes into several distinct segments. In June 2012, this work was updated with *Enabling a good member outcome in DC pensions* which developed a set of 36 quality features which underpin the six principles. This Code of Practice will be the culmination of that work.
2. The NAPF welcomes TPR's focus on quality in DC schemes. This is a debate with which the NAPF is closely engaged and has led with such initiatives as the Pension Quality Mark and the Joint Industry Code of Conduct on Costs and Charges. TPR's draft Code has the potential to address a number of hugely important issues and to promote higher standards for members. The NAPF is also attracted to the idea of a single document which sets out all of the requirements on trustees, with guidance in a separate document.
3. But the Code is a large and highly prescriptive document. Over its 222 paragraphs, the demand that "trustees must" appears on 47 occasions while "trustees should" appears 153 times. This represents a considerable increase in the burden of regulation on both schemes and employers. The Code appears to conflate legislative requirements with TPR's recommended practice. It is not clear whether trustee obligations differ depending on whether the Code uses "trustees must" or "trustees should." In any case, few trustees will distinguish between the two and the Code therefore places a substantial new burden on schemes. The longer and more prescriptive the Code, the harder it will be for trustees to implement fully.
4. The Code is especially prescriptive on the role of trustees, a subject on which TPR has already issued a code of practice. The Code sets out areas where all trustees should have a basic understanding. The requirements in the Code could deter lay trustees or trustees with specialised knowledge from putting themselves forward for the role. TPR should instead look at the knowledge of trustee boards in the round, and trustees should have processes in place to take advice when there is insufficient expertise represented on the trustee board.
5. The NAPF broadly agrees with TPR that Master Trusts should have an extra layer of compliance to guarantee that they meet the Code's standards. However, the current requirements for independent assurance will be highly expensive, and these costs are likely to be passed onto members. TPR should consider how it can minimise the costs of independent assurance for Master Trusts, perhaps through industry-led accreditation or relaxing the frequency with which Master Trusts must gain assurance. Ultimately, raising barriers to market entry will address some of the concerns around the presence of the quality features in Master Trusts.
6. The Code adds to the overall level of regulation on trust-based DC schemes. At 57 pages, the draft Code is substantially longer than any other TPR code that applies to DC schemes. If TPR believes that there should be a specific code pertaining to DC schemes, then it should consider whether other codes overlap in subject matter, such as Trustee Knowledge and Understanding. These codes may be superseded by this code and DC schemes could be exempted from them. The NAPF would support an attempt to consolidate existing DC codes into a single document.
7. It is currently unclear how the Code will be enforced. TPR has a range of sanctions available to it, though the most serious can only be used in cases where there is a breach of law. Indeed, paragraph 3 of the Code states

that there is no penalty for failing to comply with the Code in itself. Furthermore, it is not clear how breaches of the Code will come to TPR's attention. While larger schemes are generally well placed to comply, and are likely to take on the burden of demonstrating compliance, unengaged schemes could simply ignore the Code. Since TPR's risk-related approach to enforcement may focus on larger schemes (since there are more members at risk), it may struggle to find cases of non-compliance amongst smaller schemes. This is concerning since TPR's own research published in January 2013, *Defined contribution trust-based pension scheme features*, indicates that smaller schemes are likely to have more difficulty demonstrating TPR's quality features. This segment of the DC market has over 400,000 members.

8. In many cases, the requirements set out in the Code do not represent current best practice. Indeed, TPR's research in January found that even of those schemes that are best placed to meet the quality features, schemes with over 1,000 members, only 49% could demonstrate 18 of the 21 quality features measured. There are many ways that schemes can meet TPR's quality features besides those set out in the Code.
9. TPR should seek to mitigate the level of burden on schemes by producing a slimmer and objective-based code. Currently, the Code risks pushing large employers towards contract-based provision where TPR's Code does not apply. While this may be appropriate for some employers, the NAPF is concerned that contract-based schemes may not have sufficient governance arrangements in place, particularly for deferred members. Over-regulation has been a contributory factor in the shift from DB to DC pensions, and TPR should be mindful of market impact of its well-intentioned actions. The Code, which rightly seeks to promote high standards in trust-based DC pensions, should not end up making trust-based pensions unattractive.
10. A slimmer code should set out high-level objectives with which schemes must demonstrate compliance. However, the code itself should not set out how schemes should meet those objectives. A larger, separate document of guidance would give advice with examples of good practice to help schemes meet the required standards. TPR's quality features would provide a good basis for these objectives.
11. The comparison between TPR's quality features and the FSA guidance is helpful. While there are areas of convergence, it is clear that the two regulators take very different approaches. While TPR has a focus on improving outcomes for members, the FSA has tended to concentrate on ensuring that scheme members have accurate information to make consumer decisions. In the NAPF's view, this latter approach does not account for the fact that in workplace pensions the member may be the consumer but is not the customer. Instead, the employer will generally choose a provider and service providers in a contract-based scheme.
12. TPR's focus on quality and good member outcomes is welcome, but these issues should be addressed across all types of workplace scheme. Thought should be given to the scope of powers available to TPR. The NAPF has long argued for a more joined up approach to regulating workplace DC schemes and the recent engagement between TPR and the FSA has been valuable. In the longer term, there is a strong case for giving TPR a greater role in regulating all workplace pensions.

Trustees

13. As a Code for trust-based schemes, a large part of the Code relates to requirements on trustees. Paragraphs 28 to 68 of the Code place a range of obligations on trustees. In general, this part of the Code is highly prescriptive and takes an individualistic view of trusteeship.
14. Paragraphs 48 and 49, for example, of the Code set out the items that should be included on trustee board agendas to a remarkable level of detail. Paragraph 49 even suggests separate trustee board meetings on DC and DB issues where a scheme offers both benefits. While these may be good suggestions, they are not an essential requirement of a well-managed DC scheme. These issues should be decided by trustees themselves. Trustees may be able to learn from guidance and examples of good practice, however, and there is a case for including such advice in guidance.
15. Trustees have a fiduciary duty, set out in trust law, to manage their schemes in the best interests of members. This special legal status confers a responsibility on trustees for which they can be personally liable. When something goes wrong in a trust-based scheme, the member has a clear recourse for settling their grievance. This legal status means that there is a good alignment of interests between trustees and members.
16. Paragraphs 36 to 58 set out what trustees are expected to know and understand. This section of the Code develops and augments requirements that are currently set out in TPR's Code of Practice 7 on Trustee Knowledge and Understanding (TKU). However, rather than either referring back to TKU or replacing it, the Code repeats TKU and incorporates material which had only appeared in guidance.
17. The Code should view trustee boards as a whole, rather than focusing on individual trustees' knowledge and understanding. By requiring that all trustees have knowledge across a broad range of areas, there is a risk that lay trustees or trustees with specialist knowledge could be deterred from putting themselves forward for the role. Where specialist knowledge is not represented on the trust board, trustees should have a process for taking advice.
18. Professional trustees with good general knowledge on pensions have an important role to play on trustee boards. But lay trustees do too. Lay trustees are often well placed to know if a scheme's communications and investments are appropriate for its membership. Individuals with little experience of pensions can have different and valuable perspectives which help a trustee board reach decisions. With automatic enrolment bringing millions of new people into pension savings, lay trustees are more important than ever. TPR should be aware that its requirements could discourage people with little experience of pensions from becoming trustees.
19. In some cases, TPR's requirements on trustee knowledge and understanding are not necessary for good scheme trusteeship. For example, rather than requiring that trustees know all of the details of the scheme's design and history, it is most important in the NAPF's view that the trustees are satisfied that the scheme administrator understands these issues fully. Ultimately these are matters for trustees to decide themselves. This reinforces the point that a greater level of detail should be placed in guidance rather than the Code.
20. TPR should be very careful that the requirements it sets out in the Code are not counter-productive. Paragraph 48 sets out what steps trustees are required to take when reviewing investments and makes reference to

monitoring past performance. While performance monitoring should form part of trustees' review of investments, the Code suggests this is the most important aspect of investment monitoring. Reviewing investments on the basis of past performance is problematic since it could drive trustees to switch investments at the bottom of the market. TPR should carefully consider the wording of this requirement. It may, for example, be more appropriate that trustees monitor managers' activity against their objectives and the scheme's investment objectives.

21. The level of detail in this part of the Code could lead some trustees to assume that the list of requirements is exhaustive. Trustees should have the flexibility to decide what elements of their scheme present greatest risk to members, and there is no reason why those areas should be limited to those listed in the Code.

Master Trusts

22. Master Trusts are likely to be a popular automatic enrolment solution for employers so TPR is right to identify this segment as one with potential risk. Master Trusts must be able to deliver pensions at scale in a market that could become unstable over the next several years. The NAPF agrees with TPR that an extra layer of compliance is appropriate for Master Trusts.
23. Independent assurance, such as an Audit and Assurance Faculty (AAF) Technical Release 02/07, is a costly and burdensome form of additional compliance. These are costs that are likely to be passed onto scheme members. TPR should consider how it can minimise costs for schemes. For example, relaxing the frequency with which Master Trusts are expected to gain independent assurance would help to keep costs down.
24. It may also be possible for an industry-led accreditation system to demonstrate that a Master Trust complies with all or part of the Code. The NAPF's Pension Quality Mark (PQM) recognises quality DC schemes with good contributions, governance and communications. The recent PQM READY brand is designed to recognise quality Master Trusts who have good governance and communications. Employers who contribute sufficiently are then able to gain the classic PQM. PQM READY has standards, such as its rules on trustee independence, which go beyond the requirements of the Code. It may be possible for Master Trusts to use PQM READY as a form of independent assurance.
25. Ultimately, TPR should keep this element of the Code under review. If, as both TPR and the NAPF expect, there is consolidation in this segment of the market as automatic enrolment progresses, it may be possible to change the requirement for independent assessment. In a world where there are fewer, larger pension schemes, it may be possible for TPR to assess Master Trusts itself.

Enforcement

26. As with other codes of practice issued by TPR, this code is not enforceable in and of itself. Rather the Code is a document to which regulators, an ombudsman or the courts could refer when enforcing legislation. TPR may also use the Code as a risk indicator when assessing schemes.

27. It is not clear, however, how cases of non-compliance will come to the attention of TPR. Unlike a DB scheme, TPR would not be able to come into contact with a DC scheme through a valuation or clearance application. It may be possible to conduct a review of a selected sample, as TPR has recently begun with regard to its record keeping targets. However, TPR could not routinely enforce compliance through this method. The NAPF would welcome greater clarity from TPR on how it plans to monitor compliance and respond to cases of non-compliance.
28. The Code may help TPR to identify schemes where there is a greater risk to members. Large schemes which do not comply with the Code could be targeted by TPR. Furthermore, large schemes and large or well-known employers could face a reputational risk of failing to comply. However, as demonstrated in TPR research, the greatest risks for members do not lie in these large schemes. It is likely that smaller, unengaged schemes will face most difficulty in meeting the Code's requirements. It is not clear how TPR will promote compliance across those segments of the DC market where members face greatest risk.
29. There is a danger that due to the difficulties in enforcing such a large code, it could have minimal impact on those smaller, unengaged schemes which TPR currently identifies as higher risk. Instead, the Code may impact predominantly on larger schemes, which are generally well placed to deliver good member outcomes.
30. TPR should be mindful of the potential market impact of using a comply or explain regime to enforce a highly prescriptive code. As noted above, this could encourage larger employers to move towards contract-based schemes which are not regulated by the Code. However, a comply or explain regime may be appropriate for a slimmer, objective-based code.

An objective-based code

31. The Code is a valuable contribution to the debate on scheme quality and many of its requirements would be helpful for schemes. However, the Code goes far beyond helping schemes to comply with legislation and sets out what it considers to be best practice in a range of areas. There needs to be a clearer distinction between what is a necessary requirement for a good DC scheme and what TPR is merely citing as an example of good practice.
32. The length of the Code means that it is repetitive in places. This is especially concerning where there is near repetition; similar points are made but different terminology is used. This can make it difficult for trustees to know exactly what they need to do. For example, paragraphs 60 to 68 set out requirements for trustee knowledge and understanding. The Code refers to TPR's Code of Practice 7 on Trustee Knowledge and Understanding (TKU). However, the Code repeats part of TKU and develops parts that are relevant to DC schemes. The result is that it is unclear whether trustees should follow this Code or TKU, or try to meet the terms of both. The NAPF would prefer the Code to simply state that trustees must comply with TKU, and include information on what this means for trustees of DC schemes set out in a separate guidance document.
33. An objective-based code would be set around key subject areas, such as administration, governance, investments or communications. High level objectives would be set out in the Code, and TPR's quality features provide a good basis for these objectives. This approach has the advantage of guiding trustees to consider important areas without stifling their thinking or overwhelming them with reading materials.

34. All schemes can learn from advice and examples of best practice, but too much of that is currently in TPR's Code. These useful suggestions should be placed in the guidance, to which trustees can refer when considering how to comply with the Code. This will also be helpful for employers approaching their automatic enrolment staging date but who have no experience of providing pensions.
35. The Code adds to the overall volume of regulation on trust-based DC schemes. However, the NAPF would support a consolidation of codes into a single document. TPR should consider whether there are other codes which are superseded by this code. These codes may then either be withdrawn or trust-based DC schemes given an exemption from them.
36. More generally, it is important that there is a joined up regulatory approach to DC pensions. The NAPF appreciates TPR's work to engage with the FSA. The NAPF has also met with the FSA to discuss the DC regulatory landscape and is also planning meetings with the FSA's successors to develop this work. TPR's analysis of how its features relate to FSA rules is a valuable contribution to the debate about DC regulation. However, the analysis demonstrates the radically different approaches taken by the two regulators. For example, quality feature 3.2 requires those running schemes to act in the best interests of all beneficiaries. This applies to trust-based schemes since trustees have a fiduciary duty to uphold members' interests. However, contract-based schemes are only required to treat customers fairly, which is not equivalent to a fiduciary duty.
37. The NAPF would like to see a more rigorous approach to applying TPR's quality features to contract-based schemes. This could take the form of a separate TPR code. Alternatively, the FSA or its successors could incorporate the quality features explicitly into its own regulations.
38. In the long term, there is a strong case for reviewing the powers available to TPR. Most members are unlikely to appreciate the distinction between contract-based and trust-based schemes, so it is odd that there should be such different regulatory approaches between them. TPR's focus on member outcomes is welcome and well-suited to market where the employer, not the member, is the customer. It may be appropriate, therefore, for TPR to take on responsibilities for regulating all workplace pensions.

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Questions

DC regulatory approach and DC quality features

- 1. Since publishing the draft features in June 2012, we have made some drafting improvements to make the DC quality features clearer. What further changes could we make to improve the DC quality features?**

The redrafted quality features are generally sensible, and TPR has identified the key areas that affect member outcomes. There are still some areas of repetition, for example those features covered in the establishing governance and ongoing governance principles. TPR may want to take further action to clarify and consolidate the quality features.

There are also questions around whether quality features are best placed in the Code or in the guidance. For example, many of the features on administration are placed in the Code. An alternative approach would be to require that trustees are satisfied that administration reaches a set of high-level objectives but leave trustees to decide how best to achieve them. The requirements in the code go beyond the features and are highly prescriptive in places. On the other hand, it seems odd that putting in place a process to maximise retirement income is in the guidance only.

- 2. Do the DC code and DC regulatory guidance, together with the DC regulatory approach, sufficiently address risks to members within the different segments of the DC market, for example those relating to master trusts? Please comment on coverage by segment.**

As discussed above, the Code could have a damaging impact on large single employer trust-based schemes. This segment of the market is well placed to deliver good member outcomes. These engaged schemes will assume the burden of demonstrating compliance and may face penalties or reputational damage if they do not comply with elements of the Code. There is a danger that large employers will simply move away from this segment by establishing a contract-based scheme. This risk is reduced where specifics of good practice are placed in guidance rather than the Code.

TPR's research suggests that smaller trust-based schemes are less well placed to demonstrate its quality features and may struggle to comply with the Code. With questions remaining around how TPR will know about breaches of the Code or react to them, it is not clear if the Code will drive standards up in this segment. There is a risk that the Code will have minimal impact in this segment, one where research suggests there is a need for most improvement. Furthermore, unengaged trustees are less likely to read a large Code, whereas a slimmer Code may have greater impact on those schemes where trustee engagement is a concern.

The NAPF agrees with TPR that an extra layer of compliance is appropriate for Master Trusts. It is right that Master Trusts are able to demonstrate that they have strong governance in place. However, excessive costs are likely to be passed onto members. TPR should consider how it can minimise the burden of independent assurance on this segment. For example, by better integrating the Code with the Pension Quality Mark, these schemes may be able to demonstrate compliance with all or parts of the Code.

It is regrettable that contract-based schemes are not covered by TPR's Code. The FSA's Treating Customers Fairly (TCF) regime has a focus on ensuring that members are sufficiently informed to make consumer decisions. By contrast, TPR's Code rightly emphasises good member outcomes and scheme quality. The FSA's approach is not always well suited to a market where consumer decisions are made by employers rather than members and where there are low levels of engagement amongst members. Few members will appreciate the difference between these types of scheme, so it is unfortunate that there are such different regulatory approaches.

In general, TPR should place a strong emphasis on good governance. Rather than attempting to cover every possible source of risk to members, ensuring that good governance is in place will mean that trustees are better able to assess and respond to risk.

- 3. Do you agree that voluntary disclosure of consistency with the principles and features is a suitable approach for trustees to demonstrate the presence of DC quality features contained in the DC code and DC regulatory guidance? If not, why not? When responding to this question, it would be helpful if you could outline what you envisage trustees disclosing to demonstrate their accountabilities to members.**

It is likely that trustees will have to disclose large amounts of material to demonstrate compliance with the draft Code. However, voluntary disclosure would be appropriate for a slimmer, objective-based code. With such a large code, this enforcement approach is unlikely to reach those segments of the DC market which currently struggle to demonstrate the quality features. This is especially true where there is overlap with other codes which trustees and their advisers will need to consider in addition to the material in the draft code.

- 4. Do you agree that independent assurance will help provide another layer of rigour to help improve standards of governance and verify accountabilities of trustees of master trusts? If not, what other sources of assurance can trustees of master trusts use to demonstrate the presence of DC quality features and operational effectiveness of related control processes?**

The NAPF agrees that it is appropriate for Master Trusts to have an extra layer of compliance. However, the costs of independent assurance are likely to be passed onto members and may not be proportionate to TPR's aims.

The NAPF recently launched a new brand of Pension Quality Mark aimed at Master Trusts; PQM READY. PQM READY is designed to recognise Master Trusts with very high quality governance and communications. Many of the PQM READY standards go beyond that which is required by the Code, for example it requires a greater level of trustee independence. Employers will be able to use PQM READY to choose a good provider for automatic enrolment, and the initiative is already driving up standards in the segment. There is a strong case for allowing Master Trusts to use PQM READY to demonstrate compliance with parts of the Code.

In the long term, TPR appears to envisage a market with fewer, larger multi-employer schemes. There may be a time when the number of Master Trusts is low enough that TPR can assess compliance itself. TPR may also

want to consider whether there is any action either it or the Department for Work and Pensions can take to raise barriers to new entrants to this part of the market.

5. Should requirements outlined for disclosure and independent assurance outlined above be incorporated in pensions legislation? Please give reasons.

Since Master Trusts operate in an increasingly competitive market, many will feel compelled to demonstrate compliance with the Code as part of their business plan. For that reason, it would seem highly disproportionate to place the requirement for independent assurance in pensions legislation.

With regard to single-employer schemes, TPR should be careful that it can apply any onerous disclosure requirements evenly across the market. It is not clear that it would be possible to hold to account any smaller schemes that do not demonstrate compliance. Again, therefore, it would seem highly disproportionate to place disclosure requirements into legislation.

More broadly, this should be seen within the context of wider Government policy. The Government has been considering how it can reduce the regulatory burden on employers as part of its Red Tape Challenge. Incorporating these requirements into legislation would increase burdens on both employers and pension schemes.

DC code

6. Does the DC code sufficiently address the standards of trustee practice necessary to evidence compliance with pensions legislation? If not, why not?

Good quality trust-based schemes require good trustees who effectively uphold scheme members' interests. For that reason, TPR is right to focus on trustee knowledge and understanding. However, those standards are already set out in the Trustee Knowledge and Understanding (TKU) Code. If TPR would like to develop the standards in TKU, it should either update or replace that code rather than putting them in a new code.

The requirements set out in the Code are too prescriptive and risk discouraging lay trustees or trustees with specialist knowledge. This situation could be remedied by orientating the Code around a set of high-level objectives on trustee knowledge and understanding, for example by making greater use of TPR's TKU framework.

7. Does the level of guidance included in the DC code in relation to internal controls and trustee knowledge and understanding provide sufficient detail to enable trustees to comply with pension legislation and undertake their role effectively?

As discussed above, the Code provides too much prescriptive detail. The material contained in the Code would be helpful however as guidance. It should, therefore, be placed in the separate guidance document to help trustees understand how they might comply.

Although much of what is in the Code is labelled as "practical guidance" it is unclear why this format, which is a departure from the format of the other codes, has been adopted or the extent to which such practical guidance consists of suggestions and the extent to which it is part of the Code. The confusion created is compounded by the fact that there is also a separate document that is labelled as guidance, covering different subject matter and organised slightly differently.

8. Are there any other legal requirements which you think should be brought within the scope of the code?

No.

9. Are there any other key actions that you believe trustees must take in order to meet the legal requirements set out in the code?

The confusion around which of the Code's requirements are legally binding and which are merely TPR recommendations makes this question difficult to answer.

Section 1: Introduction

This section sets out the status of the code, who it applies to and why we have issued it.

10. Do you agree that the regulator should issue a code of practice in order to clarify the standards it expects in occupational DC trust-based pension schemes? If not, what other vehicle could we use to provide further education and enablement tools to trustees, and why?

The NAPF welcomes TPR's focus on scheme quality and there is a strong case for a code. The Code will be especially welcome where it consolidates requirements on trustees into a single document. However, as outlined above, the Code could have a more positive impact if it were focused around a set of high-level objectives and where it avoids duplication with other codes.

11. Do you agree that we have targeted the DC code at the right schemes?

The Code will fail to have impact where its impact is most needed. It is too long, its organisation is confusing and it is too repetitive of requirements in other codes (especially TKU). These problems mean that it will not appeal to unengaged trustees who could most benefit from its contents.

Large schemes, which TPR's research indicates are best placed to deliver good member outcomes, will have the greatest burden of compliance. It risks discouraging employers and trustees from using these high quality schemes.

It is not clear what will happen if a small scheme simply ignores the Code or how TPR would know if a small scheme ignored the Code. The Code, as written, is unlikely to have an impact in this segment. This is where TPR's research indicates there is the greatest need for an effective code.

Ultimately, the Code will not have an impact in contract-based schemes. While, there are well managed contract-based schemes, these schemes may lack the alignment of interests which is inherent in trust-based schemes. According to TPR's 2013 DC Trust report, there are 2.6 million scheme members in contract-based schemes who will not be affected by the Code's requirements.

Section 2: Know your scheme

This section sets out general requirements on trustees, such as reviewing and updating skills and knowledge, and the need for trustees to understand their own scheme.

12. Do you agree that we have correctly identified the key components we should take into account when assessing fitness and propriety? If not, why not?

TPR should look at the trust board as a whole when considering its requirements on trustee knowledge and understanding. Key areas of knowledge and understanding should be represented on the trust board and in its executive, though all trustees should have sufficient training and knowledge to understand decisions being taken in general terms. Where knowledge and understanding is not represented sufficiently on the board, trustees should have a process to take advice.

The focus on individual trustee knowledge and understanding risks discouraging lay trustees or trustees with specialised knowledge.

Section 3: Risk management

This section sets out the importance of risk management and the key stages of the risk management process in establishing an effective internal controls framework specific to DC issues.

13. Do you agree that we have set out clearly what actions are expected of trustees in relation to risk management and internal controls?

As outlined above, the Code is highly prescriptive. Risks will vary between schemes and trustees should be encouraged to identify the risks relevant to their own scheme. This requires good governance but it is neither possible nor desirable for TPR to attempt to provide an exhaustive list of potential risks, or to require trustees to analyse each of them in detail.

14. Certain activities or events may call into question the ability of a DC scheme to deliver a good member outcome. Should we develop a DC notifiable events regime that could require and enable certain events to be reported to us, for example a change in administrator as a result of poor quality service? If yes, what should the list of events include?

There may be benefits of such a regime, though it will need to be explored more fully. When considering such a proposal, the NAPF would want a better understanding of the requirements that could be placed on schemes. It is also important to get a good understanding of how TPR could reasonably be expected to react to a report.

Section 4: Investment

This section sets out our expectations in relation to investment governance and related activities, including the default strategy and other investment options offered to members.

15. Does the DC code include sufficient practical guidance on the design and governance of default strategies?

The design of default investments is especially important to securing good member outcomes. The NAPF is also aware that many trustees are currently facing difficult decisions over whether they should opt for more complicated but expensive default investment designs.

TPR's guidance does not appear to add a lot of detail to material that already exists. Often trustees need confidence to challenge fund managers and there is a need for transparency so that trustees can make judgements around value for money. This is an area where further guidance for trustees would be welcome, provided it is distinct from the Code. The inclusion of practical guidance in the same document as the Code will lead many trustees to assume that they are requirements rather than merely advice.

However, TPR should be very careful that advice is appropriate. For example, it would not be appropriate for trustees to review investment design on the basis of past performance as the Code currently appears to suggest.

Section 5: Governance of conflicts of interest and advisers/ service providers

This section sets out our expectations about standards of governance including the management of conflicts of interest and relations with advisers and service providers.

16. Do you agree that the practical guidance adequately addresses the risks of the different types of conflicts of interest which may occur within different segments of the DC market?

This element of the guidance is generally appropriate. As a matter of interest, PQM READY has gone further than TPR's Code by requiring that trustees are able to make, break or vary any arrangement with service providers.

Section 6: Administration

This section sets out our expectations about standards of administration including record-keeping, data protection, maintaining contributions, processing core financial scheme transactions and administration systems.

17. Does the DC code include sufficient practical guidance on the standards of administration that we expect?

The code does provide practical guidance, though there appears to be a conflation between the Code and the guidance. This situation should be clarified by placing the practical guidance in a separate guidance document.

TPR should also closely consider the relationship between the proposed code and existing guidance. There is also ready much guidance available on administration, for example TPR's material on record keeping. If TPR feels that this guidance needs to be developed, then it should revise or replace existing codes and guidance. It is not appropriate to repeat and embellish prior guidance in this code and also expect trustees to read through the prior guidance.

DC guidance

18. We have set out practical guidance for trustees on assessing the value for money of their scheme. Do you have any comments on this guidance?

Value for money is very important and many schemes will find this guidance helpful. In order for trustees to assess value, they must have a way of measuring it. The NAPF strongly supports transparency in charging, and the recent Joint Industry Code of Conduct on Charges is part of this approach.

19. We have set out practical guidance for trustees on deciding how to disclose costs and charges to members. Do you agree with the approach that we have suggested?

TPR's guidance on disclosing costs and charges to members is sensible. The approach taken by TPR reflects that which is already used by Pension Quality Mark. There may be a need for special emphasis on active member discounts. Often members are unaware that they could pay higher charges if they leave the scheme and, if applicable, it should be clearly indicated on member communications.

As outlined above, the NAPF also led the development of the Joint Industry Code of Conduct on Charges which promotes transparent disclosure of charges to employers. The NAPF welcomes TPR's supportive response to the Code of Conduct on Charges and would like to explore how it can be more closely integrated into TPR's

regulatory approach. For example, adoption of the Code of Conduct on Charges may provide a simple way for schemes to demonstrate that they comply with this quality feature.

20. We have set out practical guidance for trustees on helping members to optimise their retirement outcomes. Do you agree with the approach that we have suggested?

This is hugely important, and can substantially increase members' retirement income. For example, there is evidence that use of the open market option when purchasing an annuity can increase retirement income up 20% to 30%.

TPR's approach should recognise that while disclosure of information is important, so too is the level of support available to members. Where members are often unengaged and have limited understanding of the annuities market, it is often not sufficient for schemes merely to provide information for members. Schemes should be encouraged to actively support members to maximise their retirement income.

21. We have set out practical guidance for trustees on communicating with members. Do you agree with the approach that we have suggested?

In general, the NAPF believes that the most important function of communications is to increase awareness of pension savings and support individuals who are making decisions. Scheme members should be able to plan for their retirement, and that requires a basic knowledge of pension saving and decumulation. Awareness of desired and expected retirement income will enable members to make better informed decisions about contributions and investments.

In order to have impact, communications must be clear and engaging. This is the principle that underlines the Pension Quality Mark communications standard. It is welcome that TPR's guidance has a clear focus on communications which will hold members' attention.

Impact assessment statement

22. Do you agree that the DC regulatory approach document, DC code and DC regulatory guidance do not place additional regulatory burden on trustees? If you do not agree, please explain and quantify additional costs.

The Code and accompanying documents will place a substantial additional regulatory burden on trustees. The Code contains hundreds of requirements for trustees, and there will be a burden of demonstrating that schemes comply with these requirements. Master trusts will face substantial annual costs by gaining independent assurance.

The Code is not merely a statement of existing law and regulation. There will, therefore, be an additional burden for schemes in demonstrating that they meet these new requirements. The confusing organisation of the new requirements will make implementation especially complicated for trustees.

- 23. In the Impact assessment statement, we have outlined indicative costs for the voluntary ‘comply or explain’ regime and independent master trust assurance framework. Do you agree with our initial assessment of these likely costs?**

It is difficult to assess costs, and clearly costs may vary widely between different schemes. However, anecdotal evidence suggests that these estimates may be towards the lower end of expectations. Independent assurance for some Master Trusts may be more expensive than TPR’s higher estimate of £92,600.

- 24. We consider that the DC regulatory approach document, the DC code and DC regulatory guidance help trustees in complying with their obligations to not discriminate against people with protected characteristics under the Equality Act 2010. Do you have any further comments on this area?**

No.