



DRAFT STANDARDS FOR PROFESSIONAL TRUSTEES OF OCCUPATIONAL PENSION SCHEMES

Issued 7 March 2018

ICAEW welcomes the opportunity to comment on the Draft standards for professional trustees of occupational pension schemes published by The Professional Trustee Standards Working Group (PTSWG) on 13 December 2017, a copy of which is available from this [link](#).

This ICAEW response of 7 March 2018 reflects consultation with the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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MAJOR POINTS

1. In principle, we support the idea of improving standards among professional trustees. However, the consultation papers do not make clear why the PTSWG has been set up and what its remit is. It needs to be made clearer whether any formal backing will be given to PTSWG's guidance/standards/accreditation, for example, by the Pensions Regulator (tPR), as it is difficult to comment meaningfully without knowing whether a 'breach' of the standards could lead to meaningful sanction (e.g. blacklisting, lack of livelihood). It is currently difficult to see who would monitor/enforce compliance or on what basis they would exercise any sanction. This initiative should also be better linked up with other tPR requirements and initiatives (such as tPR's register of independent trustees and 21st Century Trustee program). We note there are various trustee accreditations already in existence, for example PMI trustee exams, TPR trustee toolkit and this initiative would benefit from clear and transparent integration with these existing sources of accreditation and with TPR's 21st Century trustee initiative.
2. We note that PTSWG is considering accreditation options, and we understand that one option could be to introduce a requirement for all professional trustees to become members of PTSWG, with PTSWG developing requirements on quality control, training and discipline, and charging annual fees to members. However, we consider that acting as a pension fund trustee should not become a self-contained standalone profession. Our members and those of other professional bodies, such as solicitors, are required to have the necessary skills and experience to undertake their work and there are robust sanctions if they fail in this regard. Our members specialise in a wide variety of practice areas and we are not aware of any reasoning (or evidence) to suggest that pension fund trusteeship should be excluded from our members' activities. Therefore, both in relation to the 'standards' (once issued), and also in relation to any system of accreditation that may subsequently follow, it should be clear that professionals such as chartered accountants and solicitors can continue to act as professional trustees without any additional requirements, as they are already subject to the professional standards (for instance those of ICAEW and the SRA). In particular, the ICAEW's Code of Ethics (www.icaew.com/ethics) applies to all of our members (including students), affiliates, employees of member firms and, where applicable, member firms, in all of their professional and business activities, whether remunerated or voluntary, and includes provisions on conflicts of interest. We further note that dual regulation (eg, our members being required to be authorised by an additional body such as PTSWG) adds to costs and can lead to difficulties where parameters between the regimes are not clear.
3. The current draft of the guidance is a good starting point, but we think it needs a more coherent framework and structure, and more context needs to be provided. It is also difficult to see how trustees would demonstrate adherence to some of the standards, although we note that **TECH04/13AAF** (the joint ICAEW/tPR guidance on requirements for independent trustees to be included in tPR's list of independent trustees) could possibly be used to demonstrate standards of systems and controls (we note that the draft standards do not mention this AAF report).
4. We also note that many of the standards apply to all trustees, not just professional trustees, as the standards in large part replicate what are legal or regulatory obligations. It would be helpful if it could be made clear when this is the case (and use the same terminology, or make clear that the legal/regulatory requirements prevail). We also have the following comments on the standards themselves:

- 4.1 Regarding the proposed requirement for 25 hours of CPD (paragraph 6 of the standards), we note that CPD is not enough in itself and any such minimum hours requirement risks attracting a tick-box response.
 - 4.2 Regarding the proposed requirement to act in the best interests of the members and beneficiaries (paragraph 9 of the standards), the terminology needs to be consistent with legal requirements as trustees are actually required to act for the proper purpose of the trust (and have various other legal duties).
 - 4.3 Regarding the proposed requirement to ensure robust controls (paragraph 13 of the standards) – ‘ensure’ is too strong/onerous. Also, this would appear to be a suitable place to mention the use of relevant assurance engagements (see para 3 above).
5. We would like to better understand the reasoning behind certain ideas in the draft standard, as follows:
- 5.1 why the standards would not apply to a professional trustee who exclusively dealt with SSASs (reference page 3);
 - 5.2 to whom and in what fashion it is proposed that ‘disclosures’ should be made (referenced on page 4 of the draft standard (and see also our comments at paragraph 2 above); and
 - 5.3 the ‘long term view’ will be appropriate in most circumstances but not all eg, schemes in wind up (reference page 5).
6. The case study examples on trustees’ fiduciary duties and conflicts of interest provided in the Appendix seem a little simplistic with neat solutions and would be more appropriate for the trustee toolkit rather than formal guidance for professional trustees. Also, the examples in the Appendix would work better if the potential conflicts were more explicit, in particular the “Zuzanna” example. In relation to conflicts, the major concern is the inherent conflict about being paid by the employer, and therefore it would be helpful to bring this out clearly as that is something that may not be avoidable. We note there is also always a risk of case studies only addressing a particular set of circumstances.
7. Our response is limited to the above general points rather than detailed responses to the specific questions raised in the consultation.