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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Initial Comments

The Society of Actuaries in Ireland ("the Society") welcomes the opportunity to comment on the draft Code of Practice for Trustees prepared by the Pensions Authority ("Authority").

The Society supports the provision of a Code to assist trustees and their advisors in implementing the new governance requirements arising from the transposition of the IORP II Directive. The Society considers that the primary objective of the Directive and the Code should be to provide the best possible outcomes for pension scheme members and beneficiaries. In this context, the Society is concerned that the burden on small schemes (based on the minimum requirements proposed) is too great; the minimum should be pitched lower with a requirement that larger/more complex schemes will do more. This reflects the intention set out in the Directive for proportionality in the application of its provisions. If the requirements as drafted are applied to smaller / less complex schemes, many will cease to be viable and will wind-up; for DC schemes this may mean migration to a Master Trust but DB schemes have no such option. The Society accepts that the best outcome for members of small schemes where the governance falls short of reasonable expectations would be a transfer to an alternative arrangement such as a Master Trust or PRSA. However, members of small, well managed, well-funded DB schemes with strong employer support should be able to continue to enjoy DB

benefits and not be forced into a DC alternative because of disproportionately onerous regulation.

In addition, the Society points out that clarification is needed on many aspects of the draft Code, as is evidenced by the number of queries we have raised in our submission below. The Society would be happy to discuss these issues further with the Authority if this would be helpful.

The Society continues to have concerns around the suitability of the current Funding Standard, on which the proposed Code relies heavily for DB schemes, and we would urge the Minister to progress a review of the Funding Standard to make it fit for purpose.

There are a number of areas where further consideration and / or clarification is needed. We have commented on these as they arise in the various sections below but have also set out some of the primary themes in this section to avoid repetition in the remainder of the submission.

Proportionality: Increased engagement and standards of trusteeship are to be welcomed but we note that there are some aspects of the Authority's "minimum expectations" set out in the Code which may not get the balance right in terms of the overall best interests of members.

We are of the view that there is a place within the provision of pension benefits for a range of different schemes of varying sizes and types to provide the best outcomes for members. We believe that it is important to take into account the size, nature, scale and complexity of schemes in designing, implementing and supervising systems of governance. This is recognised in the Code, which advises that "Depending on the size, nature, scale and complexity of a scheme, trustees may consider it appropriate to implement additional measures above and beyond what is specified in the Code". However, we are concerned that, in some respects, the Code prescribes overly onerous minimum requirements that, taken in aggregate, seem likely to result in the winding-up of schemes that may have been viable if a more proportionate approach were taken. The primary consideration here should be what is in the overall best interests of members.

A cost/benefit analysis should be undertaken to determine the likely impact of the new requirements on a range of schemes - for example, whether it is in the best interest of the members for smaller schemes (in a range of circumstances) to wind-up and whether the additional costs, where passed on to members, will be offset by gains elsewhere. While it is reasonable to assume that some members would be better off as a result of this (for those members in poorly run pension schemes) the converse is also likely to be true (i.e. that there are schemes that will wind up where members would be better off in their small pre IORP II pension scheme). For example, for a small, well funded and well managed DB scheme, it is difficult to see how the members of such a scheme would benefit from the wind up as a result of costs of complying with IORP II. Similarly, for a small DC scheme, deferred members ending up in individual arrangements as a result of a wind up are unlikely to be better off than if they remained in the scheme. Pension provision in Ireland is voluntary and, given that elements of the proposed Code may be very onerous for some schemes, we believe that allowing trustees some flexibility to act in the best interests of members given the specific circumstances of each arrangement is important; we make some suggestions in this regard in the detailed comments below.

In the absence of DB Master Trusts, there is no alternative DB arrangement available for members of DB schemes where the additional compliance/governance burden could result in an otherwise viable scheme winding-up. We do not believe that replacing these schemes with DC provision is in the best interest of these members in all cases.

The Code sets out a minimum standard that must be applied for all schemes, and it indicates that trustees may consider it appropriate to implement additional measures in some circumstances, e.g. in the case of larger and more complex schemes. We would have preference for a greater range within the Code that outlines to trustees what is expected as a minimum and what would be expected of the larger and more complex schemes. There are at least 12 policies that trustees are expected to maintain annually, which seems excessive for a smaller and less complex scheme. On a related point, it would be useful to have some guidance on how the Authority envisages the Code being implemented for schemes of different sizes / complexity.

Clarity and consistency: There are aspects of the document that are very prescriptive (in relation to administration for example) and in many of these cases the level of prescription is excessive where setting out the principles to be adopted would be more beneficial.

For other sections, there is a lack of clarity around what is intended, particularly in relation to risk where terms such as “a true assessment of risk” or “evidence-based assessment” of risk are vague. These offer limited guidance for trustees regarding the principles that they should be adopting. We are concerned that this may lead to inconsistency in the approach taken by trustees and could potentially lead to some trustees or advisors taking a very minimal approach to the requirements.

Practicality / Authority: Some of what is being asked of trustees may not be in their control and we are concerned that in those circumstances they do not have the legal authority to do what is set out in the Code. For example, Trustees may not be able to compel an Employer to share financial information with them so that they can assess the employer covenant, or to change the operational terms agreed between a Registered Administrator and an insurer.

Timing / Costing for DC plans: The timelines for full compliance for DC schemes will, in some cases, not be practical given the need to consider consolidation / alternative options, particularly in light of the Authority’s previously stated concerns regarding Master Trusts and the proposed review of PRSAs. In cases where there is an expectation that DC plans are to be consolidated, there needs to be a recognition of the potential for significant wind-up costs.

Funding Standard: We have ongoing concerns around the suitability of the existing Funding Standard, which the Code seems to put at the centre of DB risk management. There are materially different approaches used to value benefits for pensioners and non-pensioners. In addition, there is a very material gap between the financial assumptions used to value liabilities for non-pensioner members and the equivalent assumptions that would be set based on market expectations. Furthermore, we have previously expressed concerns regarding the allowable assets under the Funding Standard Reserve, including the restrictions it places on the diversification and yield available to schemes, which can result in increased risk taken by schemes. It is important that the Authority prioritise a detailed review of the current structure of the Funding Standard, in particular given its increased role under the Code of Practice. This is needed to help ensure that liability risks are identified, assessed and managed appropriately.

We are also concerned that there is no allowance in this discontinuance measure for the effect of the maturing of the scheme over time. If there is to be a focus on sustainability, we think it would be appropriate for trustees of ongoing schemes to focus on long-term economic measures while also being mindful of a discontinuance measure. We believe this would support the Authority's goals of safeguarding member outcomes and having ongoing risk-based supervision.

Chapter 1 – Governance

There are parts of this Chapter that we suggest need clarification and/or amendment as follows:

1.2.1 There is a reference to "... a sufficient number of meetings...." but no guidance on what that is. We note that the Authority's information note "IORP II Considerations for Trustees" issued in October 2018 states that trustees "should meet at least four times per calendar year". We consider this to be excessive for a small scheme with a low level of activity. We suggest that 2-4 would be a reasonable minimum range depending on size, activity level and risks associated with the scheme.

1.2.1 The list of agenda items looks unbalanced. There is likely to be significant overlap on administrative matters and member queries and complaints so perhaps they could be combined under administration matters which by default should include member queries. It is not clear what is meant by "Issues of non-compliance" and it may be clearer to refer to this as "review of compliance with requirements", a large element of which would be related to administrative matters in any case.

On the other hand, "Risk" is a very broad term and further detail should be provided as to what is envisaged here. An investment update (including an assessment of the appropriateness of fund choices for DC plans at appropriate intervals), an actuarial update (for DB plans) and a report from the risk manager would seem clearer as agenda items to ensure that "Risk" was properly covered at each meeting. It would then be up to trustees to determine the level of detail they went into on the various items at each meeting.

1.2.1 For some smaller schemes, for example an AVC scheme under a separate trust linked to a larger DB scheme, a separate trustee meeting may not be required and it would be more efficiently dealt with as part of the main trustee meeting. Similarly there are cases where two or more schemes of an employer have a common investment strategy (or at least use the same managers) where the investment presentations are combined. Similar issue may arise in relation to administration systems, communication programmes etc. While these are not common, there can be circumstances where separate meetings are not necessary and some flexibility for trustees on this would seem sensible.

1.3 The requirements for minutes to include "details of the discussions held" may be contrary to the advice provided by the legal profession on minutes and further guidance should be provided on what is meant by "clear, documented" evidence of the "underlying reasons" in relation to decisions made and all "reviews performed". We note that the Authority's information note "IORP II Considerations for Trustees" issued in October 2018 requires that minutes include "dissensions or negative votes documented in terms acceptable to the dissenting person or negative voter". We consider this to be

inappropriate. There also needs to be clarity on whether these minutes could be accessed by way of a FOI request once they had been reviewed by the Authority. It is important that the ability of trustees to have full and frank discussions on potentially complex and difficult topics is not compromised.

1.5 The asset value in isolation is of limited use and trustees would be better served by receiving a note of asset value, returns relative to benchmarks and asset allocations relative to targeted investment strategy in one document - say within 6-8 weeks of year end. Ideally this would include some information on the effect of market movements on the liabilities as well.

1.5 Mandating a note of scheme liabilities and solvency within 3 months of year-end may not be practical or the best use of resources and is likely to be of limited use for many trustee groups. It is more realistic and relevant to have regular actuarial updates as a recurring agenda item and allow trustees determine what is most relevant for them. There is already a requirement for an annual review of solvency, and funding proposal where applicable, within a statutory timescale, so mandating a timeline for this additional review seems unnecessary and instead it should be a matter of trustee judgement.

1.7 The requirement to advise the Pensions Authority four weeks in advance of appointing an outsourced KFH seems impractical. Also, the purpose of the requirement is not indicated. If the intention is that the Pensions Authority will vet KFHs, rather than this being simply a requirement to provide notification, then having a pre-approved list in a similar manner to the current Scheme Actuary or Registered Administrator regime would seem more efficient. This need not be a publicly available list but anyone being put forward as a KFH would need to confirm that they met the requirements in the same way the Scheme Actuary does now.

[We note that section 64AM(7) of the Pensions Act requires trustees to notify an outsourcing arrangement to the Authority “not later than 4 weeks from the making of that arrangement” (we interpret “from” as meaning “after”); and where the arrangement concerns the outsourcing of a key function, section 64AM(8) requires notification to the Authority “before the agreement in respect of the arrangement enters into force” (but not 4 weeks beforehand).]

1.7.1 Trustees may not have the power to make all SLAs with outsourced providers legally enforceable. We suggest this be amended to allow trustees some flexibility where necessary.

1.8 There are references to excessive risk-taking and avoidance of remuneration based solely on financial performance metrics. If this is related to performance-based investment management fees, it would be helpful to have clarity in that regard. Linked to this, it would be helpful if confirmation could be provided that this is limited to how trustees remunerate providers and KFHs, as to go beyond in relation to the staff of service providers, potentially including the KFHs, is impractical and outside trustee control.

1.9 Further guidance on what the trustees’ policy on member engagement should be would be helpful to enable trustees to assess how best to make sure they have sufficient member engagement and avoid inadvertent oversight or taking an excessively minimalist view.

1.9 Giving members unlimited access to all policies seems excessive. It could be costly and create a huge drain on resources if a significant number of members look to engage on the now large number of policies required, with no clear commensurate benefit.
A policyholder would not be able to request internal audit policies from an insurer and it seems reasonable that a pension scheme member would be placed in a similar position. A reasonable alternative would be that key extracts from the various policies would be included as part of the Trustees Annual Report. Guidance from the Authority on what they would see as the key items to be shared in the Trustees Annual Report would be helpful.

1.9 We believe, on environmental grounds, that the default should be that electronic communication should be allowed in the absence of the member objecting, rather than explicit consent being required.

1.9 Guidance on what should happen in circumstances where trustees do not have certainty about the addresses is important - for example, is it acceptable not to send statements in these cases to avoid data protection (/GDPR) issues?

Chapter 2 – Administration

2.3 Trustees are not likely to be qualified to review the employer's internal processes used to provide information and this appears to be something that should be within the remit of the internal audit function. Use could also be made of the employer's own audit of the relevant processes. In addition, where employers are not compelled to provide this access to trustees, it is not reasonable to mandate something outside the trustees' control.

2.4 Administration contract: As outlined previously, this is an area where trustees may not be able to enforce the prescriptive requirements set down as circumstances change, such as in the event of a change of insurer where the administrator / insurer interactions are covered in a separate agreement between the two parties.

2.5. The requirement for a full administration review each quarter is excessive as a minimum requirement, particularly if there are no material administration issues. Given that this is a minimum Code, an annual review with provision for more frequent reviews where appropriate depending on the level of activity would seem sensible. This would not preclude trustees from reviewing the administrator more frequently where there were concerns about quality of service even if there was limited activity.

2.5 The requirement for effectively having triennial reselection of the administrator seems excessive as a minimum requirement as there can be significant benefit to members in continuity of administration. However, a triennial value for money review can be very beneficial for members. This is an area where some flexibility is appropriate for trustees.

Chapter 3 – Internal control system

Further clarity on scope and proportionality in relation to the internal audit function would be very welcome. At present, there is a lack of clarity regarding its responsibilities and remit and our experience is that there are wide divergences in different parties' interpretations of this.

3.3.1. The risk management function does not seem to be set up as a second line function (as per CBI regulated entities), instead it reads more like a first line risk function which will make it easier to implement. Is this what is intended?

3.3.1 The Code states that the tasks of the risk management function KFH include "assisting the trustees in measuring and quantifying [identified risks]". Not all risks are suited to being assessed in a quantitative manner, for example legal risks. The Code seems to suggest here this is required, though later paragraphs refer to qualitative assessment of some risks. Could the word "assessing" be used instead of "quantifying"?

3.3.1 "The scope of the [risk management] policy should set out the areas of the scheme to be covered by risk management": What aspects of the scheme are not "areas of the scheme to be covered by risk management"?

3.3.1 "Risk management framework: The policy . . . must include a risk-scoring system with provision of risk ratings . . . ": A single risk rating system may not be appropriate. For example, a scheme might have a large exposure to equity risk but may have an appetite for this while having a well-controlled exposure to data protection risk but have no appetite for it - comparing these using the same rating system might not provide meaningful insights. It would be useful to specifically state that different rating systems may be used depending on the type of risk.

3.3.1 The risk management policy must "state the principles that underlie the scheme's risk management approach". It should also "provide a high-level overview of the risk management process and state its guiding principles". There seems to be duplication here – if not and if some distinction is intended, clarification is needed.

3.3.1 "The [risk management] policy must state the principles that underlie the scheme's risk management approach": Examples of risk principles would help clarify their meaning in this context; these are also mentioned under risk management process.

3.3.1 Risk appetite: The code states first that the "amount" of risk that is within appetite should be specified. However, the example provided does not set out amounts but rather a qualitative statement with a high/medium/low type approach to risk appetite. We suggest "indicate in general terms the type and level of risk(s)" instead of "specify the amount of risk".

3.3.1 The Own Risk Assessemnt (ORA) is first defined as assessing "risks that threaten achievement of the scheme's objectives". However, the Code goes on to state that the ORA must consider "the full range of risks". Not all risks will be material enough to threaten the achievement of objectives, so the scope of the ORA is different depending on which approach you take. We suggest that the trustees should approve the scope of the

risks to be assessed in the ORA based on those that threaten achievement of objectives, perhaps with some justification provided for those risks not included.

3.3.1 It seems appropriate that the internal audit function would carry out the "*qualitative assessment of the scheme's operational risks that includes assessment of the adequacy, accuracy, and robustness of the scheme's system for maintaining benefit records, the handling of members' communications, issues of general administration, security of the system of handling contributions, and other financial control systems*." The Code should clarify that the trustees may rely on the internal audit function to carry out the assessment and produce information for inclusion in the ORA.

3.3.1 Refers to "the potential impact of any decisions by the trustees that may have significantly altered risks", which implies decisions are being reviewed in retrospect; presumably these should be considered in advance.

3.3.1 The ORA must cover the risk that scheme benefits will not meet members' expectations (including the role communications might play in mitigating this risk). Guidance is needed in relation to how trustees of DC plans can assess this i.e. is the provision of an annual Statement of Reasonable Projection (SRP) sufficient or should there be some sensitivity analysis as part of this and should there be some form of assessment of the adequacy of the projected benefits as shown in the SRP?

3.3.1 Refers to "evidence-based view of the strength of the employer covenant": Assessing the strength of the Employer covenant is not a new responsibility but it is a challenging one. Guidance is needed on how the Trustees determine an "evidence-based view of the strength of the employer covenant" under Irish legislation. Guidance is also needed on circumstances where the principal employer is the Irish subsidiary of a multi-national company. In these cases, the local company accounts may not be available unless the company is prepared to share them. In addition, the availability / strength of a parent company "promise" may be difficult to evaluate.

3.3.2 How much reliance can trustees place on the internal control system of the providers, particularly where they are financial institutions themselves? The Code does not appear to distinguish between the scheme performing these tasks in-house and outsourcing to a service provider who will themselves have controls, which would still need to be reviewed. It may be clearer to state that it is the trustees' responsibility that controls are put in place.

3.3.2 What is meant by the concept of a corrective control, should this be referred to as a remediation action?

3.3.3 Clarification as to why a deterioration in a DB scheme's funding should lead to a review of internal controls would be helpful.

3.3.3 Clarification as to whether a change of investment manager would be expected to prompt a full review of all controls or only the changes relevant to that control would be helpful.

3.3.3 The Code states that the internal audit policy must "set out reporting requirements for the internal auditor [sic] function and the timeframes for response by the trustees". Setting out principles for timelines following audit actions is likely to result in trustees being tied up in knots. The policy should state that the internal audit KFH should include

recommendations for timelines alongside the findings and then the trustees will consider those timelines. If there needs to be principles, they should be sufficiently high level; for example, timelines should reflect the nature and scale of the risk identified, findings which identify risk exposures outside of appetite should be prioritised etc.

3.4 Clarification as to whether the reporting referred to here is to the trustees or to some other party would be helpful.

Chapter 4 – Investment for schemes

4.3 Expanded guidance on how the risk tolerances for DC plans are to be established is needed.

4.3 “Investment strategy must include the maximum acceptable level of investment risk.” Further guidance on how the maximum acceptable level of risk should be assessed or addressed by trustees would be helpful. If this is based on historic measures of volatility, these will be dependent on the timeframes considered and this approach is inconsistent with a forward looking / stress test approach. With many sponsors not legally obliged to fund a scheme, the maximum risk might be nil. If the sponsor says they cannot accept a certain level of risk, what happens next? This could be a difficult process, and the sponsor might not engage.

4.4 This seems to imply trustees should consider fiduciary management as the default approach here. Clarification as to whether this is what the Authority is advocating is needed. In any event, it should be made clear that the requirements set out in the rest of this section should apply to all investment managers, including fiduciary managers.

4.4 The strict process proposed for the appointment of investment managers could result in the process becoming formulaic. For example, over time trustees across the industry could use a standard set of criteria. Where providers become aware of this, this could become the focus rather than the wider consideration of providing the best outcomes. A less formulaic score sheet may work better and allow for the circumstances at the time of each process.

4.4 “For each mandate, the trustees must consider the most suitable investment managers available”: Where the scheme already has a passive manager and is investing in a new asset class/fund passively, the requirement to assess the market may be excessive. There is a need for proportionality in this to avoid unnecessary costs that do not provide a benefit to members.

4.5 Investment contracts: Where a scheme is investing directly in a multi-client pooled fund, some of the requirements outlined will not be relevant / meaningful. These requirements appear to refer to segregated mandates. For a direct investment into a multi-client pooled fund, the scheme will open an account and then invest the intended amount. There is no separate contract signed between the manager and the scheme, only what is contained in the application form. Further guidance on what, if any, supplementary agreements should be put in place where the investment is in a multi-client pooled fund run by an insurance company is needed.

4.5 Investment contracts: Again, there are certain elements of this that trustees may not be able to compel a provider to put in a contract, such as those relating to the Custodian or sub-contracting.

4.5 Fiduciary managers are not referenced in this section, though we would expect them to be.

4.6 Overseeing investment performance: This section applies to investment managers only but similar guidance as to what the requirements are for the oversight of performance by a fiduciary manager is needed.

4.6 It is not clear what the difference is between a review and a critical review and further clarification would be helpful. The requirement for trustees to conduct critical reviews of the investment manager's performance too frequently will lead to increased costs and for the majority of mandates that are passive it is wholly unnecessary.

4.7 Appointment of depositary: Disclosure of any conflict of interest on the part of the depositary to members seems excessive. Application of a conflict of interest policy, with trustee understanding of any conflict and choosing to accept or reject a provider on this basis, would seem sufficient. If disclosure was required, further guidance on what this would entail would be helpful, for example would a note in the Trustee Annual Report suffice?

4.7 Requirement to assess depositary versus market seems excessive as a minimum requirement. Perhaps a trustee review of the depository every 3-5 years followed by a review of the market place if deemed necessary would be appropriate and practicable. This seems like an area where analysis/recommendations would fall under the remit of the internal audit function, with the trustees retaining responsibility for selection/appointment of the depositary.

Chapter 5 – Defined benefit scheme funding

Ultimately the "end-game" for Irish pension schemes is either:

- holding a low risk portfolio of assets that can be transferred to an insurance company to "buy-out" the scheme's future liabilities, or
- running a "self-sufficient" pension scheme that runs off over time.

Both of these "end game" options require clarity for trustees to help them define what an appropriate low-risk portfolio of assets is that will allow them "solve the problem" to reach their end-game target. It is not clear to us how this section of the Code considers these obligations.

We would also like to see more tailored guidance / principles outlined for the three categories of DB schemes previously outlined by the Authority:

Category 1 – Those that are likely to pay benefits as promised;
Category 2 – Those that are unlikely to pay benefits unless there is a change;
Category 3 – Those that are unlikely to pay benefits no matter what.

More generally, we think that it would be helpful to flesh out this section of the code with some more detail to guide trustees of DB schemes so that they can satisfy the Authority's reasonable expectations. We appreciate that the Authority had set a deadline of mid-July to issue this consultation which limited the level of detail which could be included. We recommend that a more detailed consultation be carried out with industry stakeholders to develop this section. The Society would of course be very willing to participate in such a consultation.

5.4 / 5.5 There is a requirement to form a comprehensive view of the scheme's ability to absorb financial risk. For this purpose, a quantitative assessment of the likelihood of developing funding shortfalls (relative to the funding standard and funding objectives) is required. It would be very helpful to have more information on what the Authority regard as an appropriate quantitative assessment, particularly in relation to a sponsor's willingness to contribute. Similarly, it would be good to have guidance on what constituted "a proper understanding" of issues related to funding (5.1).

5.1 The wording is a little unhelpful if interpreted literally. No threshold is indicated in relation to terms like 'additional support . . . over contributions already planned' and so, for example, there will be a high probability that at least €1 of extra contributions is required - but that metric would not inform members or trustees well in relation to the quantum of risks facing the scheme. A more helpful possible approach, if permitted under the guidelines, would be to look at the analysis in a different way and e.g., to assess under a VAR95 scenario (a) the quantum of additional contribution required in relation to the past service benefits and the per annum requirement implied over a fixed term of say 5 years and 10 years (flat €) and (b) the quantum of additional contributions required in relation to future accrual and including here the ratio to the existing ongoing contribution schedule assessed on the same basis.

5.2 Is 'review the solvency of the scheme' intended to be at a point in time or also including a projection? A projection is much more meaningful and allows trustees to 'look around the corner' as the scheme matures. Also, while we welcome the encouragement to examine the projected cashflows as well as discounted totals, it does not seem to offer any carrot for trustees (i.e. even if projected cashflows look adequate, this does not seem to be of any benefit in terms of Funding Standard (Present Value) requirements).

5.1 & 5.3 It is not entirely clear what is intended here by the reference to sustainability. Further guidance around how the trustees should be assessing the adequacy of the contributions is also needed.

5.2 The 'continuation of current investment conditions' under the fourth bullet is too non-specific. Specifically, 'current conditions' could be taken to include market expectations, for example, of interest or inflation changes baked into the yield curve (in which case the metric appears to repeat the first bullet which required assessment of the best estimate of future conditions) or could alternatively be interpreted to mean based on current interest and inflation rates (but such an approach would not be market consistent with bond pricing on the asset side and so would appear to be problematic).

5.3 In terms of what is meant by "whether there are any threats to the current contribution rate", clarification is needed as to whether this a threat to the ongoing appropriateness of the recommended rate rather than to the ability of the sponsoring employer to pay the recommended rate, or is it both? An assessment of the ongoing appropriateness of the contribution rate requires a valuation and will fall easily within the triennial process. If the frequency exceeds triennial there will be additional valuation-equivalent work required.

Guidance as to what steps trustees should take to deal with or mitigate threats to the contribution rate would be useful.

5.4 Linked to 5.2 and 5.3 – is an "appropriate" interval to be considered within the remit of the risk management policy/KFH/ORA and how does this reflect the size/maturity/complexity/funding position of the scheme?

5.4 The wording 'will develop funding shortfalls' implies that assessment includes a projection over the future and is not just a point in time calculation. An indication of a meaningful term over which this projection will be carried out would be helpful e.g., 10 / 20 / 30 years?

5.5 Support from sponsoring employer: This seems reasonable although, as noted elsewhere, it is not clear to what extent such discussions with the sponsoring employer can be factored into funding decisions – for example, contrast with the covenant rating system in the UK, which gives a solid framework for such assessments to feed into the overall funding and risk management framework of a scheme. Current Irish legislation makes this type of solid framework practically impossible. Some trustees will find getting regular engagement on this topic from the employer challenging due to the commercially sensitive nature of the information involved. Some sort of guidance or principles on this should be provided by the Authority.

Chapter 6 – Fit and proper requirements

6.2 The trustee qualifications will need a long lead-in time, given the time lag before a trustee can commence a course and the duration of a course. Early guidance on the types of courses that would be acceptable would be welcome. Clarification on whether there is a proposal to grandfather individuals with extensive trustee experience (as happened with the QFA) would be appreciated.

6.2 It is difficult to see how the trustee fit and proper requirements will work in practice, given the power to appoint trustees typically rests with the employer or with the members (if member-nominated trustees, which is a very defined process). This is an area that the trustees may not have the power to enforce. It would be helpful if the Authority could provide guidance on how this may be resolved.

6.3 If the intention is that the documentation of the review should be shared with the Authority, this should be stated clearly. Similarly for 6.4 when discussing "proper" in respect of corporate trustees.

6.3 and 6.8 (also Appendix 2 – see below) – "The person . . . has been or is being . . . investigated, disciplined, or suspended by a regulatory or professional body, a court or tribunal, or any similar body": it is questionable whether it is fair and just to exclude someone who "is being" investigated, given that the investigation might lead to a determination that the person has not been at fault. Likewise regarding the requirement to disclose that someone "has been" investigated even if there was no adverse determination.

6.4 Establishing compliance with the "proper" requirement for directors of corporate trustees appears to be something that might be better suited to the Authority rather than individual lay trustees.

6.6 The frequency requirement of trustee training should be stated and the level of training that is acceptable to meet this requirement, to assist trustees in identifying areas where they may be deficient at present.

Section 6 Part B, We agree with the Authority's position that a KFH must be a named individual. However, the Act provides that a key function – rather than KFH – may be outsourced to a service provider, and in such cases it is likely that the KFH will be a named individual selected by the service provider. Can clarification be provided on the responsibility of the trustees in relation to assessing "fit and proper" where the named individual is appointed through/by the service provider?

6.7 We have already flagged up with the Authority the fact that the list of qualifications does not cover professional qualifications, and we recommend that this be amended. In addition, we think that in the case of professionals who gain their qualifications while completing on-the-job training, the experience requirement should be two years (rather than two years post-qualification) in relevant employment.

Appendix 2
In the sample questionnaire for evaluation of "Proper" for a Trustee/KFH there is a potentially anomalous situation:

Most of the questions relate to upheld matters, except for the 'investigated' part of Q13 and we suggest that further consideration should be given as to whether this part of the question is reasonable. For example, a member of a professional body who was the subject of a complaint, which after an investigation was found to be spurious, would be required to declare this, and do so indefinitely, under the current wording. (See also comments above on 6.3 and 6.8).

Additional comments

There are a couple of comments in the Introduction where further context would be helpful:

- *"This code is not intended to prescribe how to comply with every requirement under legislation. Instead, its purpose is to provide further explanation, where necessary, of how to comply with specific requirements."*

Does this mean the code is prescriptive/mandatory for the specific requirements where further explanation is provided? What is the Authority's attitude/response going to be to schemes that adopt different approaches to achieve compliance?

- *"Depending on the size, nature, scale, and complexity of a scheme, trustees may consider it appropriate to implement additional measures above and beyond what is specified in this code."*

What if very large/complex schemes decide to do just the minimum – what will be the Authority's reaction to this? Will it mean more oversight from the Authority? We believe that proportionality within the guidance to reflect size, complexity and nature of the schemes would better assist in achieving the Authority's goals.