

Consultation response

Draft monetary penalties policy and revised professional trustee description

August 2017

The Pensions
Regulator

Introduction

We set out in the response to our 21st century trusteeship and governance discussion paper (see www.tpr.gov.uk/consult), that we plan to make greater use of our powers, including our power to impose monetary penalties, where there have been scheme governance and administration failings.

We seek to be risk-based and proportionate in meeting our statutory objectives, while minimising burden on those we regulate (including trustees, managers, employers and advisers) where possible. Where there is non-compliance with legal requirements we have a number of enforcement options, including imposing monetary penalties.

To provide clarity for those we regulate, we consulted on a draft monetary penalties policy and revised description of a professional trustee between 23 March and 9 May 2017.

We received 27 responses from representative and professional bodies, trustees, pension providers and advisers. A full list of respondents is included in the Appendix. We are grateful to everyone who responded to our consultation. This document summarises feedback we received and changes we have made to the policy and description as a result.

Consultation proposal

We set out:

- ▶ our monetary penalties policy explaining how we will generally use our powers to impose monetary penalties under pensions legislation, including section 10 of the Pensions Act 1995 and regulation 28 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015
- ▶ our revised description of a professional trustee, which we will use generally across our activities

We invited views on:

- ▶ our general approach to calculating penalties
- ▶ our approach to calculating penalties for individuals and others
- ▶ our approach to calculating joint and several liability penalties
- ▶ our approach to different types of trustee and to others acting in a professional capacity
- ▶ our approach to scheme return penalties
- ▶ our proposed revised description of a professional trustee

Comments received and our response:

Part 1 – Draft monetary penalties policy

1. General approach to calculating penalties

We asked:

- ▶ Do you agree with the proposed approach to calculating the amount of a penalty?
- ▶ Will the proposed framework for calculating penalties result in penalties that are fair, reasonable and proportionate? If not, why not?
- ▶ Is the framework for calculating penalties clearly defined and in accordance with the penalty principles in the policy?
- ▶ 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?

Respondents generally agreed with the proposed approach to calculating a penalty and that penalties would be fair, reasonable and proportionate providing the policy is consistently applied. Some thought levying a higher fine where a professional trustee is on a board may discourage appointment of professional trustees, who can often be sought out to improve the governance of poorly managed schemes. Many supported self-reported breaches being treated more leniently and thought the policy would encourage this behaviour.

A respondent considered it unfair that higher penalties may be imposed on remunerated than on unremunerated non-professional trustees and another pointed out that taking membership numbers into account could lead to distortions where trustees of very small schemes could end up with only nominal penalties.

Most respondents agreed that the framework is clearly defined and the examples are helpful. Some questioned the examples presented and some asked for more comprehensive examples of penalties which may attract a penalty and the banding that would apply.

Our response:

We know from our research¹ and engagement with trustees that having a good quality professional trustee on the board can lead to higher standards of governance and we want to continue to encourage good standards across all pension schemes. The Professional Trustee Standards Working Group² was established by trustee bodies across the pension industry in May 2017 to lead the way in setting standards that professional trustees are expected to meet. We support their work to produce clear, succinct standards and accreditation for professional trustees that will help employers and trustees appoint high-quality professionals.

We recognise concerns that higher penalties may deter appointments and we will take into account a professional trustee's conduct when setting a penalty level. Where a trustee takes on a poorly-managed scheme, we expect them to proactively identify any breaches, report breaches to us quickly when required to do so, put in place action plans to remedy any breaches swiftly and effectively and put in place controls to prevent future breaches from occurring. We will take these behaviours into consideration when deciding whether to impose a discretionary monetary penalty and in calculating the amount of a penalty.

We retain remuneration of non-professional trustees as a factor we may consider when deciding whether to impose a discretionary monetary penalty and in calculating the amount of a penalty. For example, if we investigated a scheme and decided to issue a penalty for a breach and during that investigation established that the non-professional trustees received considerable remuneration for their role, we would seek to understand why they were receiving such high remuneration and the value they were expected to bring to the trustee board. We may decide to impose higher penalties in order to seek to change their behaviour and deter them from committing further breaches.

We have included failing to notify us as soon as reasonably practicable that a scheme has ceased to be a registrable scheme or has been wound up to the band 1 examples, as we consider this to be at the lower end of the spectrum in terms of the nature and impact of the breach. We have also included at band 2 the example of failing to comply with an improvement notice or third party notice directing a person to take steps to comply with their duties under Part 3 of the Pensions Act 2004.

1
www.tpr.gov.uk/research

2
<http://bit.ly/2vwubGr>

We recognise that some respondents would prefer an exhaustive list of penalties and the band level they fall within. We do not intend to do this. We have the power to impose monetary penalties for a wide range of breaches of pensions legislation. We have set out in our penalty policy our approach to setting a penalty, examples of factors we may consider when assessing the nature and impact of a breach and examples of the aggravating and mitigating factors that we may take into account when calculating the penalty amount. We will also publish determination notices and s89 reports, along with our quarterly enforcement bulletin, in line with our commitment to transparency in our compliance and enforcement policy.

2. Penalties imposed on individuals and others

We asked:

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

Respondents generally agreed that our proposed approach for calculating penalties for individuals and others is fair, reasonable and proportionate. Some highlighted the need for proportionality when considering the type and nature of a non-individual and thought that a group of individuals should not be penalised simply for being incorporated. Some respondents suggested that the number of directors was a relevant factor when calculating the penalty for a trustee company. One respondent thought all professional trustees should be subject to the same penalty regime irrespective of whether they are incorporated or individuals. Examples were raised highlighting the complexity of this area and potential for trustees to game the system.

Some respondents commented that where a trustee takes on a poorly managed scheme, they should not automatically have onerous penalties imposed on them as this could discourage them from taking on such schemes at all, or at a far greater cost. It was pointed out that such trustees may not reasonably be aware of the breach and/or be able to act to prevent the breach occurring and this should be taken into account when calculating the amount of any penalty. Another respondent thought that penalties in respect of sole trusteeships should be higher than for professional trustees, given the concentration of risk in one individual.

Our response:

We understand that non-individuals encompass a broad range of entities and we also take into consideration the ten times higher statutory maximum penalty for breaches by non-individuals. There was significant divergence of opinion from respondents, with many in agreement that these entities should be subject to higher penalties while others said that these should not be penalised more than individuals. Under the penalty policy we have discretion to take into account a number of factors, including relating to the nature of the person concerned, when calculating an appropriate penalty amount. We will have regard to proportionality and the likelihood of achieving our underlying objective. We have not therefore made any changes to this part of the policy.

We have set out our approach where a trustee is appointed to help raise standards for a poorly governed scheme in our answer to question 1, along with the behaviour we expect from such trustees.

We do not intend to impose higher penalties on sole trusteeships. They are permitted by law and sole trustees owe the same duties as trustees of schemes with multiple trustees. However, we are a risk-based regulator and will consider concentration of risk when assessing the landscape and understanding risks in specific schemes. We may also undertake further interventions where we see greater levels of risk.

3. Joint and several liability penalties

We asked:

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

Most respondents agreed with our proposed approach to joint and several liability discretionary penalties. However, some considered that joint and several liability penalties mean that we are unable to differentiate between trustees in terms of levels of culpability and that requiring trustee boards to decide how penalties should be apportioned among themselves could lead to confusion and potential conflict. Respondents also thought this could result in schemes not appointing professional trustees due to the risk of higher monetary penalties being imposed on the board as a whole.

Our response:

While a few respondents were not in favour of joint and several liability for trustees, we are constrained by legal requirements, which provide for joint and several liability penalties in certain circumstances. This is therefore outside the remit of the penalties policy.

Trustee boards are able to apportion the penalty amongst themselves so we do not consider that it is unfair to impose a higher penalty on a trustee board where there is a professional trustee or other aggravating factors.

We have set out our approach and the behaviours we expect from professional trustees who take on poorly managed schemes in our response to question 1.

4. Our approach to different types of trustee and to others acting in a professional capacity

We asked:

Do you consider our proposed approach to penalties imposed on

(a) different types of trustees

(b) those acting in a professional capacity in relation to the scheme to be fair, reasonable and proportionate?

While around half of respondents agreed with our proposed approach, others expressed uncertainty about the effect of the policy, including the potential for higher penalties to deter trustees and employers from appointing professional trustees, especially to poorly governed schemes. Some asked for further clarity over who falls within our revised description of a professional trustee.

Views on the proposed approach to calculating penalty amounts for professional trustees varied from those in favour of explicitly higher penalties, to those who thought we could adopt a proportionate approach without setting an explicit penalty for professional trustees. A number of respondents thought that any trustee who is charging for their trustee services should be held to higher standards than lay trustees. One respondent thought that higher penalties for professional trustees should be linked to specific, clearly defined actions rather than overall activity or delivery of services. Another respondent thought that the section on 'Professional trustees and others acting in a professional capacity' was confusing and should be deleted as these areas are already mentioned in the penalties policy as aggravating factors.

Our response:

We recognise concerns that higher penalties may deter the appointment of professional trustees and have set out our approach and the behaviours we expect from professional trustees who take on poorly managed schemes in our response to question 1. We also set out clarifications to our revised description of 'professional trustee' in Part 2 of our response.

Under the penalty policy we have discretion to take into account the fact that a person is a professional trustee when calculating the amount of a penalty. We think it is appropriate for us to retain discretion over the penalty amount we impose on professional trustees (so we can adopt a proportionate approach), rather than setting explicit penalties. As professional trustees are subject to higher standards of care, we will usually impose higher penalties on them than on non-professional trustees where there is a breach of pensions legislation. We have therefore retained the reference to us being likely to exceed the band range (up to the statutory maximum) if there are other aggravating factors. As we hold professional trustees to a higher standard across all scheme activities, we may apply higher penalties wherever a breach occurs.

We have removed the section on 'Professional trustees and others acting in a professional capacity' and included wording to the same effect in the list of example factors we may take into account when calculating the amount of the penalty (see section 9.4 of the penalties policy).

5. Scheme return penalties

We asked:

- ▶ Do you consider that a penalty of £500 for a non-professional individual trustee/manager is sufficiently high to encourage compliance and to achieve the deterrent effect?
- ▶ Do you consider it to be a reasonable and proportionate amount?
- ▶ Do you consider that a penalty of £1,000 for a non-professional trustee/manager who is not an individual is sufficiently high to encourage compliance and to achieve the deterrent effect?
- ▶ Taking into account the range of entities who are trustees/managers, do you consider it to be a reasonable and proportionate amount?
- ▶ 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?

[continued...](#)

- ▶ 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?
- ▶ Do you consider that a 10% discount where the scheme return is submitted before we decide to impose a penalty is a sufficient incentive for trustees/managers to submit the scheme return, albeit late?
- ▶ What do you consider may amount to an exceptional case, where it would be reasonable and proportionate to impose a higher or lower penalty?

Respondents generally agreed that penalty levels of £500 for individual and £1000 for other (eg corporate) non-professional trustees or managers are sufficiently high to encourage compliance and to achieve the deterrent effect while being reasonable and proportionate. A very small minority suggested higher levels would be more suitable for individuals and some concern was expressed that penalties for not submitting a scheme return could lead to a box-ticking compliance culture.

Some suggested that penalties should only be imposed where there is serial or consecutive non compliance. Many respondents agreed that penalty levels of £1000 for individual and £2000 for other (eg corporate) professional trustees or managers are sufficiently high to encourage compliance and to achieve the deterrent effect while being reasonable and proportionate. Many considered that the potential for damage to their reputation from receiving a penalty would further incentivise professional trustees to comply with the requirement to complete the scheme return.

Some respondents disagreed with the distinction in penalty amounts between individual trustees and other entities because they thought this could result in disproportionate penalties being levied on the trustee board as a whole depending on legal structure rather than culpability or the impact of non-submission of the scheme return on members.

Most respondents also agreed that doubling the penalty amount for a consecutive breach is reasonable and proportionate. However, few thought a 10% discount would be sufficient to act as an incentive to submit the scheme return. Some proposed a discount of 50%, and gave the analogy of discounts for swift payment of parking fines, to incentivise prompt action to submit the return. Others indicated a 20-33% discount would be effective, while another suggested escalating penalties could have a similar effect.

In terms of exceptional cases, respondents proposed a number of situations where higher or lower penalties should be imposed. Higher penalties were suggested for areas including:

- ▶ repeated non-compliance
- ▶ willful or reckless neglect of duties, including where professional advisers made trustees aware of their duties
- ▶ manipulation of information
- ▶ covering up a breach

Lower penalties were suggested for situations such as:

- ▶ where there was evidence of a fully completed scheme return but a genuine oversight in actually submitting the return by the deadline
- ▶ first offences
- ▶ personal issues, for example illness, bereavement or absence on a long holiday
- ▶ where a breach was due to a third party in circumstances where the trustees had appropriate oversight and safeguards in place
- ▶ recognising the attitude and behaviour of trustees/managers, eg penalties should be reduced where reasonable efforts have been made to comply, breaches are identified proactively, reported promptly and efforts have been made to rectify the position as a priority.

Our response:

We view submission of the scheme return on or before the return date specified in the scheme return notice as an essential administrative requirement. We use scheme returns to gather key information on schemes to inform our risk-based scheme regulation. Failure to submit the scheme return therefore prevents us from carrying out our regulatory activities effectively.

We intend for penalties for scheme return breaches to be easy to communicate and simple for us to apply so we no longer have different penalty amounts for individuals and 'any other case' (eg corporate trustees). The scheme return penalty is for the failure to submit the scheme return, not for any underlying failings. In addition to imposing a penalty for a failure to submit the scheme return, we may also consider taking other regulatory action, including investigation and exercising other powers. Such action may also result in further penalties.

We would typically consider a scheme return breach to be a band level 1 breach. However, where there are a large number of members, we have made it clear that we have discretion to determine whether it is a band level 2 or 3 breach. We have also added a further example of when we may consider a higher band level appropriate, where a trustee has intentionally failed to submit the scheme return. Section 9.2 of the penalty policy sets out a fuller list of factors we may consider relevant when assessing what band level a breach falls into.

We have also added some wording to Appendix 2 of the policy to make it clear that we have discretion to move away from the usual penalty amounts where we consider that the outcome would not be reasonable and proportionate.

In relation to discounting penalties where the scheme return is submitted before we decide to impose a penalty, we agree that a 10% discount may be too low to incentivise the behaviour we expect, namely swift completion of the scheme return, and have increased the discount to 25%. We will review this policy after a period of operation to understand if the discount is having the desired effect.

We engage with trustees over a period of time to remind them that they need to comply with their duty to submit the scheme return, and let them know well ahead of time what new information they may need to provide if there have been changes from the previous return. We also provide support and guidance on our website and through our customer support team. Before we issue a penalty, trustees will have had a number of opportunities to comply so we would not expect a genuine oversight to result in a penalty.

Where a trustee has taken all reasonable steps to submit the scheme return by the return date then we will not impose a penalty on that trustee. Section 6 of the policy sets out examples of the factors we will take into account when considering whether a trustee has taken all reasonable steps.

We also have considered the examples of exceptional cases presented by respondents where higher and lower penalties are suggested. The policy now includes examples of circumstances which we do not consider to be exceptional so that it is clear when we will not impose a penalty which differs from the usual penalty amounts.

We expect trustees to have adequate knowledge and understanding to fulfil their trustee duties and to have adequate internal controls in place, so ignorance of the requirement to submit a scheme return is not a factor we will consider. We do not consider that a first offence warrants a lower penalty, although we consider that consecutive penalties warrant a doubling of the penalty amount.

The areas respondents indicated should receive higher penalties are already areas that come under the relevant factors set out under the general penalty policy, including considering the track record of the person in breach and the conduct of that person once issues are identified. We also consider that the behavioural elements set out that should result in a lower penalty, like proactively identifying and reporting breaches, are already mitigating factors under the policy.

Comments received and our response: Part 2 – Revised description of a professional trustee

We asked:

- ▶ Does our revised description make it clear who is included in the description of a 'professional trustee'?
- ▶ 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?
- ▶ 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?
- ▶ 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?
- ▶ Under the draft penalty policy we are 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?
- ▶ Is it clear what 'in trustee matters generally' means? If not, how could it be made clearer?
- ▶ Is it clear what an 'expert' is? If not, how could it be made clearer?
- ▶ Is it clear what 'holding out' means? If not, how could it be made clearer?

While two-thirds of respondents found the revised description clear, some areas of ambiguity were raised by others. Some asked for clarity over when the assessment of whether a trustee is a professional trustee is undertaken, how often and by whom. Some respondents wondered if asking trustees to categorise themselves on the scheme return as a professional trustee would also be helpful or if trustees should self-declare whether they are a professional trustee when they are first appointed to a scheme.

Further clarity was also sought on the circumstances in which a trustee may start as a non-professional trustee but then become a professional trustee. One respondent also questioned whether it was possible to be a 'professional trustee' for the purposes of one arrangement but an 'independent trustee' for the purposes of another and whether there could be any circumstances where a trustee could be an 'independent trustee' rather than a 'professional trustee' on a number of unconnected pension arrangements.

Respondents gave a number of examples where they considered that trustees should fall outside or within the description of a professional trustee and therefore needed to be considered when formulating a description of a professional trustee. Some thought we should make reference in our description of a professional trustee to appointments on unrelated schemes or appointment on the basis of specific expertise.

A few respondents thought the description should continue to reference remuneration or level of remuneration. Suggestions were also made that a trustee should be treated as a professional trustee if they are remunerated higher than the average trustee remuneration for the role they hold and that higher penalties should be applied to trustees who are chairs.

One person thought it was unclear whether the terms 'trustee' and 'scheme' referred only to pension schemes and pension trustees.

Respondents also sought clarity over our proposal for determining whether a trustee is a professional trustee. Some thought that former company executives can be appointed as independent trustees and in the eyes of those making the appointment, can be seen as equivalent to a professional trustee. These respondents considered that these people should be treated as professional trustees, even if they do not act on any unconnected schemes.

Some asked for us to go further when describing the circumstances in which we are less likely to consider a remunerated trustee to be a professional trustee and specifically exclude member-nominated trustees (MNTs). Others thought that people can hold other positions, such as non-executive directorships, and that trustees with 'portfolio non-executive director careers' were presenting themselves as governance experts and should be considered professional trustees.

Respondents broadly thought that it was clear what 'in trustee matters generally' means, however a number asked for more detailed guidance and clarification. Some highlighted that the description would exclude those appointed as a trustee for specific expertise, for example an expert in corporate restructuring, investment or employer covenant assessment. These respondents thought that any pensions professional or expert, such as an actuary, legal adviser or investment consultant, who is appointed as a trustee on the basis of that expertise should be considered a professional trustee, even if their main business is that other area of pensions. Other respondents disagreed and supported excluding those appointed for specific expertise from the description of a professional trustee.

Some felt it may not be clear what we mean by 'expert' and thought the phrase could be widely interpreted. Suggestions to clarify the meaning of 'expert' included specifying years of experience, depth and breadth of experience, knowledge, professional memberships or qualifications and the behaviour a professional trustee has to exhibit. Greater clarity was also sought in relation to the circumstances in which a trustee would not be considered to be an 'expert'. It was suggested that MNTs, long serving trustees and chairs should not be treated as experts and should fall outside the professional trustee description.

Respondents had some difficulty with the terminology 'holding themselves out,' except for those from the legal profession who found this a familiar, though legalistic, phrase. A number of respondents suggested 'represent or promoting themselves' as a clearer, plain English alternative. It was also queried whether the scope of the holding out requirement was limited to holding out for the purposes of the trustee's relevant appointment and carrying out that particular role, or to holding out to the market more generally.

Our response:

We have published the 'Professional trustee description policy' (see www.tpr.gov.uk/strategy) setting out our revised description of a professional trustee, associated policy and examples to illustrate when we may consider someone to be (or not to be) a professional trustee.

We have re-drafted the description to resolve some areas of doubt raised by respondents and to ensure that the description clearly reflects our policy intent. In particular:

- ▶ The test is now solely whether a trustee is acting as a trustee of the scheme in the course of the business of being a trustee. We have clarified that an individual representing or promoting themselves to the trustees or sponsors of one or more unrelated schemes as having expertise in trustee matters generally will normally be considered to be acting in the course of the business of being a trustee.
- ▶ In relation to expertise, the emphasis is now on whether an individual represents or promotes themselves as having 'expertise' in trustee matters generally, rather than being, or representing themselves as 'an expert'. We no longer refer to someone being an 'expert' because we do not intend to capture experienced lay trustees and we consider that the meaning of the term may be unclear. We consider 'expertise' will be easier to understand than being an 'expert'. It is also a broader description, helping to capture those who may not promote or represent themselves as being an 'expert' but instead those who promote or represent themselves as having 'expertise' in trustee matters generally. We have set out examples to demonstrate expertise in practice.
- ▶ We have replaced the reference to 'we are less likely to consider' with a reference to 'would/would not normally consider', using stronger language to increase certainty over who we consider to be a professional trustee.
- ▶ We have changed some references to 'pension scheme' rather than 'scheme' but have not changed the description to refer to acting as a trustee in the course of the business of being a 'pension' scheme trustee. We consider that all trustee appointments, whether or not in relation to a pension scheme are relevant. All trustees owe the same fiduciary duties. If a trustee has a number of remunerated (non-pensions) trustee appointments and is then appointed to a pension scheme, we expect them to use the experience they have gained as a result of being a trustee when acting as a pension scheme trustee.
- ▶ We have inserted the words 'or a director of' in part a) of the description. Our policy intent is for part a) to include directors or former directors, in addition to employees and former employees.

In the policy we have included commentary on remuneration, acting pro bono, trustees with long tenure on a specific scheme and when we will consider someone to become a professional trustee when they have previously been a non professional trustee. We do not refer to the average trustee remuneration as this is not data we hold.

Some respondents suggested using the scheme return to record who are professional trustees. The scheme return already requires trustees to indicate whether they are a 'professional trustee'. We will update the scheme return help text and guidance to reflect the revised description. Where trustees meet the description we expect them to identify themselves as professional trustees. This classification is not determinative and we may also form the opinion that a trustee is a professional trustee on the facts of the case, whether or not that trustee is categorised as a professional trustee on the scheme return.

We also expect employers and trustees will consider the description to understand whether the person they are appointing as a trustee falls within our description of a 'professional trustee' and whether they should therefore have higher expectations of them.

We considered 'independence' of trustees and we do not think independence is determinative of professional trustee status. We understand there is still some confusion in this area so we include commentary on independence within the final policy to clarify our position.

Respondents raised some circumstances where they thought we should consider someone to be a professional trustee, particularly:

- ▶ those who take on trustee appointments on the basis of specific expertise like investment consulting experience, rather than having expertise in trustee matters generally
- ▶ former executives appointed as a trustee or chair
- ▶ those with 'portfolio careers' who have appointments on boards on the basis of governance or chairing expertise, rather than expertise in trustee matters generally, but may only have one trustee position

Trustees who are appointed as remunerated trustees to multiple schemes on the basis of specific expertise are in the business of being a trustee and so will be considered professional trustees under our description.

Where those with specific expertise, those with portfolio careers and former executives are appointed as a remunerated trustee and have never held any other trustee appointments (and do not represent or promote themselves to one or more unrelated schemes as having expertise in trustee matters generally), we will not normally consider them to be professional trustees. However we may take into account their remuneration and expertise when deciding whether to impose a discretionary monetary penalty and the amount of a penalty. So were the trustee in question an investment specialist and the trustees had failed to maintain a statement of investment principles, we may impose a higher penalty on the investment specialist trustee, taking into account their expertise in the area of the breach and their remuneration for the trustee role.

We have been engaging with the Professional Trustee Standards Working Group. We are mindful that the description specifies those the standards developed by the group will apply to and who we expect higher standards from. We consider that widening the description to include anyone with specialist expertise appointed as a remunerated trustee to a single scheme would not be appropriate. It would in effect mean that such people are expected to have expertise in trustee matters generally. We also consider that appointments on multiple schemes and the associated opportunity to share knowledge, good practice and benchmark governance to be an important quality a professional trustee brings to a board.

We also added illustrative examples to the description to show when we do and do not consider someone to be a professional trustee, to clarify areas respondents had queried and to set out how we expect those who take on poorly performing schemes to behave.

Appendix: List of respondents to the consultation

Allen & Overy

Anthony Lyddon

Aon

Association of Pension Lawyers

Association of Professional Pension Trustees

BESTrustees

Capital Cranfield

Dalriada

Edward Kingsley

Eversheds

Independent Trustee Services

Jeremy de Halpert

Law Debenture

Law Society of Scotland

Micheal Bales

Muse Advisory

Now:Pensions

Pensions Rapport

Pi Consulting

Pensions Management Institute

PSIT independent trustees

RPMI

SAUL trustee company

Society of Pension Professionals

The Association of Corporate Trustees

Timothy Kirkhope

Tony Timms

How to contact us

Napier House
Trafalgar Place
Brighton
BN1 4DW

www.tpr.gov.uk

www.trusteetoolkit.com

Free online learning for trustees

www.pensionseducationportal.com

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