

Changes to our Trustee Register

Consultation response

The consultation was in respect of how the regulator proposes to change how it assesses some of the judgment-based conditions for acceptance onto the Trustee Register

This step was taken after four years of operating the Trustee Register. The regulator has reviewed how it assesses the judgment-based conditions and believed that a number of revisions and refinements were necessary. Following the consultation, how the regulator will assess these judgment-based conditions is detailed in Appendix A on page 9 of this publication. Also included in the consultation document was a draft application form.

The formal consultation commenced on 11 December 2009 and ran for the recommended minimum period of twelve weeks until 12 March 2009.

The regulator received thirty-five formal responses and the main comments from these responses appear in Appendix B on page 10 of this publication. Most responses were broadly supportive of the regulator's proposals. A list of formal respondents can be found in Appendix C on page 22 of this publication.

The Pensions
Regulator

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Executive summary

The Occupational Pension Schemes (Independent Trustee) Regulations 2005 require The Pensions Regulator ('the regulator ') to compile and maintain a register of trustees that satisfy certain conditions (the Trustee Register).

The primary purpose of the Trustee Register is to provide a pool of appropriate trustees from which the regulator may make appointments. The regulator does not view the Trustee Register as a marketing tool for trustees. As such, the regulator does not consider the commercial aspirations of firms or individuals when assessing whether the applicants meet, or continue to meet, the conditions for registration or making scheme appointments from the Trustee Register.

There are currently 51 trustees (individuals and corporate trustee firms) on the Trustee Register.

The Trustee Register was established in 2005 and after four years of operation, the regulator has proposed changes to the way it assesses some of the conditions for registration in its consultation document.

The regulator consulted on changes to how it currently assesses the following:

- 'Overall management responsibility' and 'significant influence' when considering who is a Key Person and an Officer.
- A non-individual applicant's 'sufficient relevant experience'.
- Whether the applicant has 'sound administrative and accounting procedures'.
- Whether the applicant has 'adequate indemnity insurance cover'.

Trusteeship, independent or otherwise, can and does operate outside the parameters of the Trustee Register. The regulator has proposed changes to how it assesses some of the conditions, aimed at ensuring that trustees on the Trustee Register have produced sufficient evidence of their suitability. The practices and competencies that need to be exhibited by trustees on the Trustee Register are those that the regulator would expect all trustees to recognise as being essential to delivering effective trusteeship.

The consultation finished on 12 March 2010. Most responses were supportive of the regulator's proposals. After consideration of the responses, the regulator has finalised how it will assess each of the matters detailed above.

Introduction

The regulator is required to compile and maintain a register of independent trustees who fulfill the legislative conditions¹.

There are a number of legislative conditions which an applicant must fulfill before admission onto the Trustee Register is granted. The applicant must also continue to meet these conditions to remain on the Trustee Register. The conditions fall into two categories:

- Fact-based² (ie the conditions are met or not); and
- Judgment-based (ie in the light of the regulator's assessment, whether the applicant meets – and continues to meet – the criteria).

The judgment-based conditions are:

- The regulator must be satisfied that the applicant has, and continues to have, 'sufficient relevant experience' of occupational pension schemes³;
- The regulator must be satisfied that the applicant is, and continues to be, a 'fit and proper' person to act as a trustee of an occupational pension scheme⁴;
- The regulator must be satisfied that the applicant operates, and continues to operate, 'sound administrative and accounting procedures'⁵; and
- The regulator must be satisfied that the applicant has, and continues to have, 'adequate indemnity insurance' cover .

All applicants must meet each of the fact-based and judgment-based conditions. In addition, where the applicant is a company, partnership or Limited Liability Partnership, some of its main individuals must also meet some of the fact-based and judgment-based conditions.

¹ See section 23(4) of the Act.

² See Appendix A of the consultation document.

³ See regulation 3(b)(i) of the Occupational Pension Schemes (Independent Trustee) Regulations 2005 (SI 2005/703) (the Regulations).

⁴ See regulation 3(b)(ii).

⁵ See regulation 3(b)(iii).

⁶ See regulation 3(b)(iv).

Consultation

The consultation was in respect of how the regulator proposes to change how it assesses some of the judgment-based conditions for acceptance onto the Trustee Register

This step was taken after four years of operating the Trustee Register. The regulator has reviewed how it assesses the judgment-based conditions and believed that a number of revisions and refinements were necessary. Following the consultation, how the regulator will assess these judgment-based conditions is detailed in Appendix A on page 9 of this publication. Also included in the consultation document was a draft application form.

The formal consultation commenced on 11 December 2009 and ran for the recommended minimum period of twelve weeks until 12 March 2009.

The regulator received thirty-five formal responses and the main comments from these responses appear in Appendix B on page 10 of this publication. Most responses were broadly supportive of the regulator's proposals. A list of formal respondents can be found in Appendix C on page 22 of this publication.

Next steps

Guidance

Following this Response to consultation, the regulator will also be releasing a new Trustee Register section on its website to include:

- guidance on how it will assess the judgment-based conditions;
- the new application form; and
- guidance for completion of the new application form.

New and existing applicants

From the release of the above, the regulator will accept applications from new trustees to be added to the Trustee Register.

The regulator will also be contacting those trustees currently on the Trustee Register to invite them to re-submit their application in the new format by 31 July 2010. Alternatively, these trustees will be given the opportunity to step down from the Trustee Register.

All applications, including those trustees currently on the Trustee Register, will be assessed against the new criteria. Only those who meet the new criteria will be accepted on to the Trustee Register. Trustees who are currently on the Trustee Register, who have not already stepped down and who fail to meet the new criteria will be removed from it.

Sound administrative and accounting procedures

It has not yet been possible to finalise an Audit and Assurance Faculty (AAF) framework as proposed in the consultation document for testing whether this condition has been met. This is still in development with the Institute of Chartered Accountants in England and Wales (ICAEW). The regulator will be taking into account the number of responses received on the scope and content of any AAF to be adopted. In particular, the regulator is mindful of the number of responses regarding how long it would take trustees to adopt and comply with any new framework.

In the meantime, as signalled in the consultation document, the application form has been expanded to include questions that support the control objectives⁷ (modified to take into account the responses received during the consultation). For validation purposes, the regulator may use its own independent expert to assess an applicant's response and, if it is considered appropriate, to visit the applicant's office.

⁷ As detailed in Appendix D of the consultation document.

Response to consultation

As mentioned, most responses were broadly supportive of the regulator's proposals. We have considered all of the responses and, where appropriate, have taken on board comments and suggestions and have amended our proposals accordingly. This is all explained further below.

We asked six specific questions in the consultation document and we have sought to summarise the answers to these questions below, as well as picking up some common themes. Further specific detailed comments on the consultation questions are detailed in Appendix B on page 10.

Summary of responses to questions:

As most respondents addressed Questions 1 and 2 together, we have combined our comments to these questions together.

Question 1: Do you consider the regulator's proposed view of 'significant influence' over the management of the pension trustee work to be reasonable? If not, how would you assess 'significant influence' over the management of the pension trustee work?

Question 2: Do you consider the regulator's proposed view of who it considers to have 'overall management responsibility' to be reasonable? If not, how would you assess who has 'overall management responsibility'?

Responses were split between those who supported the regulator's proposed views and those who did not. On balance, for the reasons given in Appendix B on page 10, the regulator is of the opinion that it should adopt its proposed view as final.

However, the regulator has listened to a number of comments made and will, in the new guidance for completing the application form, clarify that:

- It does not intend that any Officer who does not have trustee experience will automatically fail the 'fit and proper' test (although the regulator will clarify that it expects such individuals to have an understanding of the nature of trusteeship). The application form will be amended to make this clearer.
- For Key Person(s), it has refined its thoughts on who will have 'overall management responsibility'. See Appendix B on page 10.
- Low-level administrative staff who deal with the payment of benefits will not be classified as Officers if the transaction is subject to sign-off at a higher level. Nor will the regulator treat third-party administrators as Officers if they have authority from the trustee carry out this function. However, where the applicant has delegated either authority to process or authorise transactions involving scheme assets to third-party administrators, who are involved in paying pensions, the regulator considers that the individual(s) responsible for monitoring compliance with the terms of the authorisation to be an Officer.

Question 3: Is it reasonable for the regulator to require that applicants (who are not individuals) are able to demonstrate three years' regular or continuous experience as a trustee? If not, how would you assess it for these applicants?

Again responses were split between those who supported the regulator's proposal and those who did not. Of the respondents who disagreed with this proposal many thought it was wrong for the regulator to exclude newly formed corporate trustees despite the experience of their Key Person(s). For the reasons provided in Appendix B the regulator remains of the opinion that it is reasonable to require that applicants (who are not individuals) be able to demonstrate three years' regular or continuous experience as a trustee.

Question 4: Do you agree that the proposed ICAEW AAF framework is appropriate to use for assessing whether the applicant has 'sound administrative and accounting procedures' in place? If not, why not?

Most respondents were in favour of the adoption and use of this framework. The regulator will continue to work with the ICAEW to develop a suitable AAF framework.

Question 5: Does the list of control objectives in Appendix D (of the consultation document) adequately address key areas which would demonstrate that an applicant has 'sound administrative and accounting procedures'? If not, what should be changed? If not, please explain why?

Responses to this question will be used to inform the regulator's development of the AAF framework with the ICAEW.

Question 6: Do you agree with the regulator's view as to what is adequate for the purposes of assessing the Indemnity Insurance cover (including the number of years for run-off cover)? If not, how would you assess adequate Indemnity Insurance cover?

In the light of the number of critical responses received on some aspects of this proposal, the regulator has decided not to proceed with the requirement that the applicant must submit a certificate of insurance confirming that the applicant has a minimum ten-year rolling period of run-off cover in place. The regulator will clarify that the policy must be solely in the applicant's name or the applicant must be named on a group policy (if there is one in place).

To avoid the risk highlighted by a number of respondents that it might invalidate the applicant's indemnity insurance, the regulator will not require applicants to provide details of their claims history.

In addition, the regulator has considered and accepted the respondents' comments about the limited availability of reinstatement cover and introduced an alternative for applicants to satisfy this condition by the provision of annual aggregate insurance cover, which will represent a comparable level of cover.

For the reasons outlined in Appendix B all of the other proposals for assessing what is adequate for assessing the Indemnity Insurance cover will be adopted.

Appendix A: Final judgment-based decisions

Condition	Regulator's criteria
Sufficient relevant experience	<p>Both individuals and Key Persons should have had at least five years of regular or continuous experience as a trustee of occupational pension schemes up to the point of the application.</p> <p>Non-individual applicants should have had at least three years of regular or continuous experience as a trustee of occupational pension schemes up to the point of the application.</p> <p>Compliance will be checked on an annual basis.</p>
Fit and Proper	<p>The regulator will still seek to be satisfied that the applicant has the qualities of fitness and propriety to be a trustee.</p> <p>However, the questions in the revised application form will, in some areas, be broader, to better align our approach with the published guidance (on our website).</p> <p>The regulator also intends that all individual applicants, all Key Persons and all Officers will need to demonstrate they have a minimum level of understanding of the nature of trusteeship (eg by completing the regulator's Trustee toolkit) as part of the regulator's assessment of whether these individuals have met this test.</p> <p>Compliance will be checked on an annual basis (or whenever any changes are notified to the regulator by the applicant).</p>
Sound Administrative and Accounting Procedures	<p>The regulator still proposes the adoption of an AAF framework (developed by the ICAEW) requiring the applicant to obtain certification from an independent Reporting Accountant stating that certain controls have been met. When adopted the regulator will require an unqualified report submitted by the applicant, both upon application and on an annual basis, as evidence that this condition is satisfied.</p> <p>Pending adoption of the AAF framework, all applicants must answer questions in relation to this condition that will feature in the application form. For validation purposes, the regulator may use its own independent expert to assess an applicant's response and, if appropriate, to visit the applicant's office.</p> <p>Compliance will be checked on an annual basis.</p>
Adequate Indemnity Insurance cover	<p>The applicant will need to provide their insurance policy/certification of insurance confirming:</p> <ul style="list-style-type: none"> • Professional indemnity insurance cover of (in respect of all of its occupational pension trustee work): <ul style="list-style-type: none"> - at least £2 million for a single claim with at least two reinstatements (ie three claims as a minimum); - at least £6 million in aggregate annually. • That the policy is solely in the applicant's name or the applicant is named on a group policy (if there is one in place). • That the cover is provided by an independent third party insurer (ie not a captive insurer). <p>The applicant must have sufficient resources in its business to cover its policy excess.</p> <p>Compliance will be checked on an annual basis, or whenever there are any changes (which must be notified to the regulator by the applicant).</p>

Appendix B: Summary of detailed consultation responses

Respondents provided detailed comments to the questions asked, as summarised below:

Question	Response	The regulator's position
<p>1. Do you consider the regulator's proposed view of 'significant influence' over the management of the pension trustee work to be reasonable? If not, how would you assess 'significant influence' over the management of the pension trustee work?</p>	<p>It is not reasonable to impose upon an Officer the requirements of someone involved in trustee duties.</p>	<p>As set out in the consultation document, the regulations (and not the regulator) require each Officer to satisfy these conditions, see regulations 3(a) and (b)(ii). Officers do not have to satisfy the condition of sufficient relevant experience as set out in regulation 3(b)(i).</p>
	<p>If the regulator's 'fit and proper' test involves an assessment of an Officer's abilities as a trustee, then in some applications, Officers cannot meet this test as they have no trustee experience.</p>	<p>The regulator understands this concern and does not intend that any Officer who does not have trustee experience will automatically fail the fit and proper test. Although, in light of the definition of Officer in the regulations, the regulator will expect each Officer to have some understanding of the nature of trusteeship (eg by completing the regulator's Trustee toolkit). The regulator intends to amend some of the questions in the application form to make this clearer.</p>
	<p>Some or all of the three elements of the definition of Officer on page 9 of the consultation document are flawed, eg they confuse the applicant's trustee work and the applicant's own business and mean that individuals may be Officers even if they have no trustee experience.</p>	<p>These definitions appear in the regulations and so cannot be altered by the regulator. The regulator is providing guidance on how it will interpret these definitions.</p>
	<p>Examples of where 'significant influence' exists should include responsibility for the appointment of agents and advisers.</p>	<p>The regulator considers that this relates to the scheme specific decisions rather than a decision relating to the management of the applicant's pension trustee work and so does not propose to make this change.</p>
	<p>It should be made clear that individuals will have 'significant influence' when they have responsibility for one or more of the matters listed on page 9 of the consultation document 'by themselves or as part of a larger group'.</p>	<p>The regulator agrees with this proposal and will incorporate this point into its final guidance.</p>

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Question	Response	The regulator's position
<p>Continued...</p> <p>1. Do you consider the regulator's proposed view of 'significant influence' over the management of the pension trustee work to be reasonable? If not, how would you assess 'significant influence' over the management of the pension trustee work?</p>	<p>The phrase 'management of pension trustee work' within the definition of 'significant influence' is too general. The regulator should make it clear that the influence envisaged applies directly to the applicant's trustee work and not the management of its wider business.</p>	<p>This phrase appears in the regulations and the regulator cannot alter it. The regulator believes that its guidance on what constitutes significant influence over the management of the pension trustee work undertaken by an applicant does analyse 'significant influence' in the correct context.</p>
	<p>The first and fourth bullets on page 9 of the consultation document relating to the regulator's view of what constitutes significant influence should not be a test of whether someone is an Officer. This is because they relate to the operation of the corporate trustee business and not, as they should, on influence in relation to particular schemes.</p>	<p>The regulations indicate that significant influence should relate to the management of all the pension trustee work undertaken by an applicant and not individual schemes. The regulator believes that the first and fourth bullet points referred to fall within that category and so does not propose to remove them. However, the first bullet will be amended to clarify this point when it appears in our guidance for completing the application form.</p>
	<p>There may be circumstances in which an individual does not have formal 'responsibility' for one or more of the matters listed on page 9 of the consultation document, but whose views are nevertheless influential.</p>	<p>The definition of Officer already incorporates the concept of influence. The proposals in the consultation document were designed to move away from this more fluid concept and to introduce more solid guidance. On balance, the regulator believes that its proposals are likely to catch the vast majority of the individuals who have significant influence and so does not propose to revert to the more fluid definition.</p>
	<p>The requirement on page 9 of the consultation document for an individual to have 'responsibility for one or more' of the six areas should be changed to two or more. The regulator should give guidance on what is meant by 'responsibility' in this context.</p>	<p>The regulator believes that one area alone is sufficient to demonstrate the evidence of 'significant influence'. Therefore, the regulator does not believe that any further clarity is needed on 'responsibility' in this context.</p>
	<p>What information is required from companies that own corporate trustee businesses? Could they or their key individuals be Officers?</p>	<p>These companies (or their key individuals or shareholders) may satisfy the definition of Officer (see the first three bullet points on page 9 of the consultation document, for example if they are a shadow director). If that is the case, then they will need to provide the information requested in the application form and meet the relevant legislative conditions.</p>

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Question	Response	The regulator's position
<p>Continued...</p> <p>1. Do you consider the regulator's proposed view of 'significant influence' over the management of the pension trustee work to be reasonable? If not, how would you assess 'significant influence' over the management of the pension trustee work?</p>	<p>Definition of Officer should not include low-level administrative staff whose signature is required to authorise payment of benefits where the transaction is subject to sign off at a higher level.</p>	<p>Adopting a pragmatic approach, the regulator would only expect those individuals, whose signature acts as the ultimate sign off for the authorisation of a transaction, involving the assets of any scheme for which the applicant acts as trustee, to be Officers.</p>
	<p>If paying pensions is a 'transaction involving the assets of any scheme for which the applicant acts as a trustee' then external administrators are often involved with these. Does the regulator intend that they will be Officers?</p>	<p>The regulator does not believe that the regulations were intended to bring external administrators within the definition of Officer. However, where the applicant has delegated authority to process or authorise transactions involving scheme assets to an external administrator, the regulator would consider the individual(s) who are responsible, within the applicant, for monitoring compliance with the terms of the authorisation, to be an Officer. In addition, the regulator would expect an applicant to have undertaken the necessary due diligence to ensure that any such delegation was appropriate and that the administrator in question was competent and trustworthy.</p>
	<p>The definition of Officer means that many people within an applicant may be Officers and have to fill in the application form. This seems unnecessary and impractical.</p>	<p>The regulations require that all individuals who meet the definition of Officer must satisfy the conditions contained in regulations 3(a) and (b)(ii). The regulator, therefore, has no discretion. In any event, in the regulator's view it is entirely appropriate that each such individual should meet these requirements.</p>
	<p>Applicants should be able to choose which individuals to include as Officer in their application on the understanding that any individuals not included would not appear on the register.</p>	<p>This is contrary to the operation of the regulations, which envisage all individuals who satisfy the definition of Officer, as having to satisfy the relevant legislative conditions. The regulations require that if any of these individuals do not satisfy these conditions, the application will be refused (or a trustee already on the register will be removed) - see page 8 of the consultation document.</p>

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Question	Response	The regulator's position
<p>Continued...</p> <p>1. Do you consider the regulator's proposed view of 'significant influence' over the management of the pension trustee work to be reasonable? If not, how would you assess 'significant influence' over the management of the pension trustee work?</p>	<p>If any Officer does not meet the 'fit and proper' test then can the applicant still be accepted onto the register? If not, is there an appeal process?</p>	<p>The regulations require that each Officer must satisfy the relevant conditions, including the 'fit and proper' test. If any do not, then the applicant will be refused registration (or removed if already on the register). In order to do this, the regulator has to go through a regulatory process with the applicant having the opportunity to make representations. There is also the ability for an applicant to appeal any decision made by the regulator to refuse registration or remove from the register.</p>
	<p>The regulator should consider exemptions from the conditions imposed by the regulations for those applicants that are already subject to other regulatory regimes (eg Solicitors Regulation Authority).</p>	<p>Given the content of the regulations, the regulator considers that this would be an abdication of its statutory duties. In particular, whilst it appreciates that there may be some overlap with other regulatory regimes, there are important areas of assessment which would not be captured through reliance on other regimes and so the regulator will not be adopting this approach.</p>
	<p>Applicants should only identify their potential Officer and Key Person(s).</p>	<p>Applicants need to identify who they consider to be Officer(s) and Key Person(s) with reference to the legislative definitions and the regulator's guidance.</p>
<p>2. Do you consider the regulator's proposed view of who it considers to have 'overall management responsibility' to be reasonable? If not, how would you assess who has 'overall management responsibility'?</p>	<p>Key Person(s) should be the person(s) who has 'overall responsibility' for the trusteeship of one or more schemes rather than all the pension trustee work.</p>	<p>The definition of Key Person is contained in the regulations and refers to the overall management responsibility for all the pension trustee work conducted by an applicant. The regulator believes that to interpret this in the way suggested (ie with reference to the management of particular schemes) would be contrary to the legislative intent.</p>

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Question	Response	The regulator's position
<p>Continued...</p> <p>2. Do you consider the regulator's proposed view of who it considers to have 'overall management responsibility' to be reasonable? If not, how would you assess who has 'overall management responsibility'?</p>	<p>In the case of a corporate trustee applicant, it may be that the board of directors as a whole could be said to have 'overall management responsibility'. However, this may bring into the frame operational staff who do not practice as a trustee and who would therefore not meet the five-year trustee experience test for Key Person(s).</p>	<p>In order to assist potential applicants, the regulator considers that the use of the word 'overall' in the regulations indicates that, in the case of an applicant organisation that is hierarchical, the Key Person is likely to be the individual who has ultimate responsibility or accountability, ie the Managing Director or Chief Executive. In organisations where the management responsibility for all the applicant's pension trustee work is truly collective in the sense of there being no one individual who sits at the top of the organisation, then there will be more than one Key Person. Please see the comments in the box below.</p>
	<p>Might a key individual of a parent or holding company of a corporate applicant have "overall management responsibility"?</p>	<p>The regulator believes that the regulations do allow for this possibility. If there are individuals (in a parent or holding company) who can be said to fall within the definition, then they will be a Key Person(s) – albeit the regulator considers it is unlikely that this would be the case.</p>
	<p>The concept of 'overall management responsibility' is vague and should be defined further.</p>	<p>The regulator is of the view that the term used in the regulations is sufficiently clear and therefore does not consider that further expansion is necessary.</p>
	<p>To whom should a Key Person be responsible or accountable? For example: a parent company, shareholders, scheme members?</p>	<p>The regulator does not wish to overcomplicate its analysis of this definition, however to assist, the regulator considers that any individual(s) who has responsibility or accountability to the entities or individuals listed (as examples in the left-hand box) in relation to the applicant's pension trustee work will be a Key Person.</p>
	<p>The regulator should not add the words 'or accountable' to the existing definition.</p>	<p>The regulator is not seeking to add to the definition, merely to give guidance on how it intends to interpret the definition. The regulator believes that these words should be of some assistance to potential applicants seeking to interpret 'overall management responsibility' and so intends to keep reference to them in any guidance it issues.</p>

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Question	Response	The regulator's position
<p>Continued...</p> <p>2. Do you consider the regulator's proposed view of who it considers to have 'overall management responsibility' to be reasonable? If not, how would you assess who has 'overall management responsibility'?</p>	<p>There should be more emphasis on accountability rather than responsibility. The regulator should change the definition to either 'accountability' or 'responsibility and accountability'.</p>	<p>The definition of Key Person appears in the regulations and so the regulator cannot change the definition. It is not clear why this change of emphasis is believed to be necessary. By interpreting the definition as requiring responsibility or accountability, the regulator believes that it should catch a wider pool of individuals.</p>
	<p>The fact that an individual might provide temporary cover in the absence of a Key Person should not automatically mean that that person is a Key Person - the question is whether that person can properly be said to have 'overall management responsibility' in the circumstances. For example, if the Key Person is on annual leave but remains contactable and fully able to deal with issues that arise and has not delegated its functions, then he/she will probably retain 'overall management responsibility'. However, this may not be the case during a period of prolonged and unplanned absence (eg for health reasons).</p>	<p>The regulator agrees with the comment about a Key Person whilst they remain contactable and will make this distinction in the guidance issued for completion of the application form.</p>
	<p>It is unclear whether an individual can apply for registration separately from an application from his/her corporate organisation.</p>	<p>If such an individual did submit an application, he/she would have to meet all the legislative conditions in his/her individual capacity. If registration was achieved, then he/she would only be eligible for appointments as an individual (ie he/she would not be eligible for appointments on behalf of his/her organisation).</p>

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Question	Response	The regulator's position
<p>3. Is it reasonable for the regulator to require that applicants (who are not individuals) are able to demonstrate three years' regular or continuous experience as a trustee? If not, how would you assess it for these applicants?</p>	<p>Corporate applicants should be able to demonstrate that this condition is met with reference to their Key Person (or Officer) and are not subject to the three-year test themselves. The legislative conditions do not require a separate test as this would result, for example, in newly formed corporate trustees being excluded no matter how great the experience of their Key Person (which may be anti-competitive).</p>	<p>The regulator believes that the regulations do require a separate assessment of the experience of a non-individual applicant, as well as its Key Person(s) (the regulator does not consider it appropriate that an Officer should be subject to the test given that this is clearly not the intention of the regulations). This is because if a non-individual can satisfy the conditions contained in regulation 3(b)(i) and (ii) through its Officer and Key Person, this must also be the case in relation to the condition in regulation 3(a) (which is referred to in the same context as part of the condition in regulation 3(c)). However, this exposes the risk that a non-individual applicant could meet the relevant conditions through its Key Person and Officer, even if the applicant itself had not met the condition in regulation 3(a). In addition, if the intention had been to substitute the condition in regulation 3(c) for that in regulation 3(a) and the relevant parts of regulation (b) in the case of non-individual applicants, then the wording could have made this clear.</p> <p>The regulator does not believe that this approach is anti-competitive in circumstances in which application to the register is voluntary. Admission does not guarantee appointments and in no way operates as a pre-condition to setting up a trustee business or restricting the sort of business that can be obtained. Accordingly, the regulator does not believe that a change of approach is appropriate.</p>
	<p>If a newly formed corporate trustee wished to specialise in appointments made by the regulator from its register, how would it obtain the necessary experience so as to be eligible?</p>	<p>Given that admission to the register does not guarantee appointments, the regulator would not encourage businesses to set up with this one aim.</p> <p>A corporate trustee could meet the three-year test by undertaking trustee work that did not involve appointments from the regulator.</p>

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Question	Response	The regulator's position
<p>Continued...</p> <p>3. Is it reasonable for the regulator to require that applicants (who are not individuals) are able to demonstrate three years' regular or continuous experience as a trustee? If not, how would you assess it for these applicants?</p>	<p>The length of experience required by the regulator should be the same for individual and non-individual applicants.</p>	<p>The regulator continues to believe that the length of experience required for non-individual applicants should be less than is required for individuals, given that non-individual applicants must have a Key Person(s) with at least five years experience together with the experience of other employees who are undertaking trustee work.</p>
	<p>The length of experience required by the regulator should be two years, not three.</p>	<p>The regulator believes that three years is a more appropriate figure.</p>
	<p>The experience must be relevant, sufficient (which should be a qualitative test) and should be across a broad range of schemes. Continuity and length should not be the only indicators.</p>	<p>As the types of scheme to which the regulator appoints (and might appoint) trustees is very varied, the regulator remains of the view that the way in which it proposes to assess this condition is appropriate. The regulator intends to continue to look closely at the nature of an applicant's experience as part of the appointment process when it matches potential appointees to schemes.</p>
	<p>It is not clear whether experience can be aggregated or transferred between firms.</p>	<p>In the case of non-individual applicants, the applicant has to meet the three-year requirement and cannot rely upon experience in a previous incarnation (unless it can be shown that it is the same legal entity). In the case of individual applicants or Key Person(s), experience gained in different organisations at different times can be combined/aggregated.</p>
	<p>A non-individual applicant should not be expected to verify an individual's experience or confirm that they have previously operated as a Key Person.</p>	<p>The regulator is not seeking any such verification or confirmation. Please see the suggested declaration sections of the draft application form for the sign off required from the applicant and the Key Person(s).</p>
	<p>No 'new entrants' can become Key Person as this requires five years experience as a trustee. This will be detrimental to the industry as time moves on.</p>	<p>The only way to be treated as a Key Person is if an individual falls within the definition set out in the regulations - he/she cannot 'choose' to become one. The existence of the trustee register does not prevent individuals gaining experience as trustees and therefore being able to build up the necessary experience in order to meet the five-year test.</p>

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Question	Response	The regulator's position
Continued... 3. Is it reasonable for the regulator to require that applicants (who are not individuals) are able to demonstrate three years' regular or continuous experience as a trustee? If not, how would you assess it for these applicants?	The regulator's interpretation means that individuals such as lawyers or actuaries with a high level of experience in the pensions industry but with no experience as a trustee are excluded. Conversely, individuals who have been trustees but with very limited experience (eg one small DC scheme) will be included.	The regulator considers that its assessment of this condition should be based on trustee experience given that one of the main purposes of the register is to create a pool from which the regulator can appoint trustees to schemes. No individual is prevented from building up his/her trustee experience by virtue of the way in which the regulator intends to assess applications to the register.
4. Do you agree that the proposed ICAEW AAF framework is appropriate to use for assessing whether the applicant has 'sound administrative and accounting procedures' in place? If not, why not?	There is a disproportionate cost for smaller trustee businesses associated with compliance with the AAF framework.	For the reasons outlined in our consultation document the regulator does not accept that there will be a disproportionate impact on small trustee businesses. The cost of compliance will be determinative and relative to the size of the applicant.
	Adopting the AAF framework is unnecessarily complex. It is unclear what is wrong with the present means of assessing whether this condition has been met.	As set out in the consultation document, the regulator considers there is a need to introduce some form of external validation. The regulator believes that an AAF framework is an appropriate mechanism to obtain this validation. The regulator does not believe the framework is overly complex, and we will be working with the ICAEW to develop as user-friendly a framework as is possible.
	Utilising the AAF 01/106 is the not the most appropriate framework as it mainly relates to process-based businesses and is not appropriate for businesses providing trustee based services.	The regulator is exploring with the ICAEW which AAF framework would be the most appropriate to use in this context. Even if the framework changes the proposed control objectives are those that are likely to be adopted.
	The AAF framework is not a truly objective assessment. There will inevitably be some degree of subjectivity when it comes to performance measurement.	Any subjectivity on the part of the Reporting Accountant should be kept to a minimum by the ICAEW's guidance on the type of control procedures that need to be in place to demonstrate compliance.
	The regulator should publish an anonymous table of audit ratings for each of the trustees on its Trustee Register.	The regulator does not see the benefit in this type of publication.

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Question	Response	The regulator's position
<p>Continued...</p> <p>4. Do you agree that the proposed ICAEW AAF framework is appropriate to use for assessing whether the applicant has 'sound administrative and accounting procedures' in place? If not, why not?</p>	<p>The AAF will cover ground already covered by the pension scheme's audit.</p>	<p>The AAF framework will be in respect of how the applicant operates its own business to demonstrate it meets this condition. The pension scheme audit will not provide this information.</p>
	<p>The AAF should only relate to regulator appointments.</p>	<p>Given the legislative conditions, the AAF framework will be in respect of how the applicant operates its own business to demonstrate it meets this condition and is not just related to regulator appointments.</p>
<p>5. Does the list of control objectives in Appendix D (of the consultation document) adequately address key areas which would demonstrate that an applicant has 'sound administrative and accounting procedures'? If not, what should be changed? If not, please explain why?</p>	<p>A number of comments were made on the drafting of the control objectives including that they should cover:</p> <ul style="list-style-type: none"> • disaster recovery/business continuity procedures; • appropriate record retention; • how scheme assets are held; • the need for specialist devoted resource for particular areas (eg compliance management, document management and investment strategy); and • when and how trustees can rely upon third parties and advisers to undertake certain services. 	<p>These comments will all be considered as part of the revision and development of the AAF framework with the ICAEW.</p>
	<p>Different requirements should be acknowledged as applying when the applicant is a sole trustee or where the scheme is ongoing or winding up.</p>	<p>The AAF framework will be in respect of how the applicant operates its own business to demonstrate it meets this condition, irrespective of the type and nature of the trustee appointments held.</p>
<p>6. Do you agree with the regulator's view as to what is adequate for the purposes of assessing the Indemnity Insurance cover (including the number of years for run-off cover)? If not, how would you assess adequate Indemnity Insurance cover?</p>	<p>A high number of respondents commented that ten year run-off is not readily available. It is usually offered on a scheme specific basis and for not as long as the proposed period.</p>	<p>In the light of the strong industry feedback on this point, the regulator has dropped this requirement.</p>
	<p>Respondents comment that the requirement should be that the policy is solely in the applicant's name or (not and) the applicant is a named on a group policy (if there is one in place).</p>	<p>The regulator agrees with these comments and will incorporate this point into its final guidance to accompany the application form.</p>

continued over...

Question	Response	The regulator's position
<p>Continued...</p> <p>6. Do you agree with the regulator's view as to what is adequate for the purposes of assessing the Indemnity Insurance cover (including the number of years for run-off cover)? If not, how would you assess adequate Indemnity Insurance cover?</p>	<p>Providing the following documents to the regulator may invalidate insurance cover:</p> <ul style="list-style-type: none"> • claims history details; or • a certificate of insurance. 	<p>The regulator still expects to receive the certificate but to avoid the risk of invalidation, the regulator will not require that applicants provide details of their claims history.</p>
	<p>Requiring £2m of insurance cover is excessive for small schemes and too little for large schemes.</p> <p>Some also suggested that the requirement should be for one claim of £2m and aggregate cover of no less than £5m.</p>	<p>As most respondents agreed with the level proposed, the regulator will be adopting its proposals (in respect of the risks arising from the applicants' occupational pension trustee work). The level of insurance cover in place will be a factor when identifying potential candidates for future scheme appointments.</p> <p>The regulator has considered and accepted those respondents' comments about the limited availability of reinstatement cover and introduced an alternative for applicants to satisfy this condition by the provision of annual aggregate insurance cover, which will represent a comparable level of cover (at least £6 million in aggregate annually).</p>
	<p>Captive insurance should be permitted.</p>	<p>The regulator remains of the view that it is prudent for insurance not to be provided by a captive insurer. Captive insurance companies are established with the specific objective of financing risks that come from their own parent group or groups. The company is, therefore, insuring itself and there is no external validation.</p>
	<p>The requirements should extend to cover fidelity insurance.</p>	<p>The regulator is of the opinion that, given the legislation, it could not insist upon this type of insurance being in place to meet this condition.</p>
	<p>Insurance cover is often scheme specific and the regulator's assessment should relate to the risk presented by the scheme. Further, exoneration clauses should be considered as they impact on the likelihood of cover being required, thus impacting on the adequacy of any indemnity insurance required.</p>	<p>The regulator does not consider that these are relevant factors when it comes to the assessment of the adequacy of indemnity insurance for the reasons outlined in the consultation document.</p>

Other general themes raised in the responses

These themes relate to comments made by respondents:

Impact and size

A number of comments were made that the proposed framework (due to cost) will have a greater impact on the smaller trustee applicants. This in turn will narrow down the range of expertise on the Trustee Register and impoverish the regulator's choice. Respondents to the consultation suggested that the regulator should consider different means of assessment dependent on the size of the applicant. The regulator has rejected this course of action as, for the reasons outlined in our consultation document, the regulator does not accept that there will be a disproportionate impact on small trustee businesses in the adoption of its proposals.

Will the regulator share the results of its 'fit and proper' checks with any applicants?

The regulator expects to discuss any adverse results with any applicant.

Part-time workers and the 'regular or continuous' requirement

Whether or not an individual works full or part-time will have no bearing on whether this test is met.

AAF: timings

The regulator has taken on board the comments that three months is too short a timescale for an applicant to demonstrate compliance with the AAF framework. The regulator notes that most respondents were of the opinion that at least six months to implement was reasonable.

Application form

Comments were made that the new Trustee Register Form was too comprehensive and not easy to complete. The regulator has taken on board some of these comments and has simplified the application form. This is now also available for completion as a Word document. The regulator will retain most of the questions in the application form as it considers that the answers to these are necessary to establish whether the conditions are met.

Impact assessment

Comments were made that the costings used in the consultation document were an underestimate. For the reasons outlined in our consultation document, the regulator believes these figures were appropriate to use.

Demonstrating independence

Comments were made that there is insufficient focus in the consultation document on the requirement of trustees to demonstrate independence. This issue will be of most relevance (and can be more properly assessed) when the regulator considers who to appoint to a particular scheme. The regulator already considers this issue in its appointment process and will continue to do so.

Appointment process

Although not relevant to the consultation, the comments made in relation to the regulator's trustee appointment process will be considered as part of any future review of it.

Appendix C: List of respondents to the consultation

ACMCA – **Allan Martin**
Alexander Forbes Trustee Services Ltd
Aon Trust Corporation Ltd
Association of Consulting Actuaries – **Charles Young**
Association of Pensions Lawyers – **James Clifford**
Atkin Trustees Ltd – **Richard Bryant**
Michael Beerling, Barbara Williamson & Derek Berry
BESTrustees plc
Brewin Dolphin Trustees Ltd – **Sandra Souter**
Bridge Trustees Limited – **Giles Orton**
Buck Consultants – **Kevin LeGrand**
Capital Cranfield Pensions Trustees Ltd – **J E Rogers**
Dalraida Trustees Ltd – **Brian Spence**
Eversheds – **Rebecca Cooke**
Fountain Trustees Limited – **Kate Payne**
HR Trustees – **Graham Withers**
Donna Hardcastle
Independent Pension Trustee Group
Independent Trustee Services Ltd – **Richard Boniface**
Institute of Chartered Accountants of Scotland – **Paul Provan**
Institute of Chartered Accountants of England and Wales – **Liz Cole**
Law Debenture Pensions Trust Corporation plc -
Law Society of Scotland
Michael Maunsell
Pensions Management Institute
Pi Consulting Trustee Services
Pitmans Trustees Ltd – **David Archer**
PS Independent Trustees – **Wayne Phelan**
Society of Pensions Consultants – **John Mortimer**
Smith & Williamson Trustee Corporation Limited – **Julia Ridger**
Temple Trustees Ltd – **Sarah Jeffrey-Gray**
The Association of Corporate Trustees – **Esther White**
The Pensions Advisory Service – **Richard Forest**
The Trustee Corporation Ltd – **Philip Sutton**
Trustee Solutions Ltd – **Susan Andrews**

How to contact us

Napier House
Trafalgar Place
Brighton
BN1 4DW

T 0870 606 3636

F 0870 241 1144

E customersupport@thepensionsregulator.gov.uk

www.thepensionsregulator.gov.uk

www.trusteetoolkit.com

Changes to our Trustee Register

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