Second Floor (206) ▪ 40 Gracechurch Street ▪ London EC3V 0BT
020 3102 6761 ▪ www.aca.org.uk

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cdcpolicy@tpr.gov.uk

Nick Gannon
The Pensions Regulator
Telecom House
125-135 Preston Road
Brighton
BN1 6AF

Dear Mr Gannon

Extending the CDC code of practice

I am writing on behalf of the Association of Consulting Actuaries in response to your consultation on extending the collective defined contribution (CDC) code of practice.

We welcome the draft code of practice and are generally supportive of the content, and the objective of having the final code in force on the same day as the unconnected employer legislation comes into force, in July.

Our comments on your questions are set out in the Appendix. We would highlight the following key points:

- We agree with the code's statement that it is "highly likely" that promotional activities will take place between the scheme and (prospective) employers to induce them to into joining or remaining in the scheme. We cannot envisage circumstances in which a multi-employer scheme could operate without promotion and/or marketing. We suggest that the code should require that any scheme which intends to make use of the legislative carve out from the requirements for promotion and marketing (on the grounds that no promotion or marketing will be carried out) must make this clear in its application for authorisation and explain how it can operate without any promotion or marketing to employers. (Q3)
- The draft code appears to be significantly more restrictive than the legislation and would effectively mean it is not possible to amend the investment strategy relating to existing benefits. We suggest that the code should mirror the legislation more closely. (Q6)
- We do not think the "competence of persons who promote or market the scheme" should focus on experience in a 'regulated environment'. It should be possible for CDC schemes to be set up and promoted/marketed by those with suitable experience derived from advising employers on occupational pension schemes. (Q13)
- Under 'scheme rules' reference is made to guidance and/or standards issued by the Financial Reporting Council on setting accrual rates. FRC's revised TAS 310 was only published, in draft for consultation, just prior to your deadline for submission of responses, so it is not possible to comment on whether further information would be helpful from the Regulator on this important area. (Q23)

- We have several detailed but important comments on the draft requirements on promotion and marketing. (Q24-Q26)

We hope that you find the contents of this letter of assistance. We would be happy to discuss them further if that is helpful.

Yours sincerely

Peter Williams
Chair, ACA Pensions Schemes Committee
On behalf of the Association of Consulting Actuaries Limited
peter.williams@aon.com

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Specific consultation questions

General questions

1: Do you agree with our approach to replacing the existing CDC code with a code that covers both single-employer and multi-employer schemes?

Yes, we agree with this approach. We also advocate for this approach to be taken when the CDC Code needs to be further expanded to facilitate the introduction of Retirement CDC schemes in due course.

We note that the footnotes do not appear to have been completely updated to reflect the relevant legislation for both single-employer and multi-employer schemes. We have not carried out a complete check but see our comments on footnotes 141 and 180 (see questions 23 and 28 below).

2: Do you foresee any issues with this approach?

Provided it is made clear where the provisions of the code differ for 'single employer' and 'multi-employer' CDC schemes the proposed approach should work well. This generally seems to be the case.

(One area in which the drafting could be improved is the section on "Sound scheme design: viability certificates", which refers to the live running tests under the "2022 regulations" and the "2025 regulations" rather than the live running test applicable to 'single employer' and 'multi-employer' CDC schemes. The sub-heading referencing "both types of scheme" could also refer to "all CDC schemes".)

3: Do you consider that any important areas of the authorisation criteria require additional explanation or guidance?

On 'promotion or marketing', the code states that it is "highly likely" that promotional activities will take place between the scheme and (prospective) employers to induce them to into joining or remaining in the scheme. We agree – we cannot envisage circumstances in which a multi-employer scheme could operate without promotion and/or marketing. We concur with your comment that "it is also imperative that employers seeking to join the scheme fully understand the risks and benefits of the scheme" and it is not clear how this could be achieved if the scheme is not promoting or marketing how it operates.

However, the underlying legislation includes a 'carve-out' from the requirement to have adequate systems and processes relating to promotion and marketing if no person is carrying out promotion or marketing of the scheme (Section 9(3A) of Pension Schemes Act 2021, as amended by the multi-employer CDC regulations). We suggest that the code should address this – requiring that any scheme which intends to make use of this carve out should make this clear in its application for authorisation and explain how it can operate without any promotion or marketing to employers.

Although it is clear what requirements a chief financial officer would need to satisfy, it is not clear whether a multi-employer scheme could be authorised without having a named chief financial officer. Our reading is that this is not a requirement of the legislation – and the 'scheme proprietor' (which is a requirement for a multi-employer scheme) would carry out a similar role.

4: Are there any sections or paragraphs of the code that should be relocated to make them easier to use?

There appears to be some duplication in the section entitled "Continuity strategy: Continuity option 1 (discharge liabilities and wind-up)". In particular text under the subheadings "Periodic income" and "Investments" seems to be repeated under the subheading "Income during wind-up".

We noted that the consolidation document (and the questions below) consider 'fitness and propriety' before 'scheme proprietor' whilst the draft code comments on these issues in the reverse order. Similarly 'sound scheme design' and 'promotion and marketing' are not in the same order in the consultation document (and questions below) and the draft code.

Introduction, applying for authorisation, authorisation criteria and sectionalisation

5: Is the explanation and level of detail we have set out in this section sufficient?

Yes, other than our comments on sectionalisation in the response to the question immediately below.

6: Is it clear what constitutes a section and when you must divide a scheme into multiple sections?

The draft code goes further than the legislative requirements in stating that where a change to the investment strategy necessitates sectionalisation (under Regulation 27 of the 2025 Regulations) then that change should only apply to future service benefits. This is referred to in the section entitled "What is a CDC scheme?" rather than the section on "Authorisation criteria: Sectionalisation".

This appears to be significantly more restrictive than the legislation and would effectively mean it is not possible to amend the investment strategy relating to existing benefits. We suggest that the code should mirror the legislation more closely.

The paragraph under "Authorisation criteria: Sectionalisation", commencing "If a multi-employer CDC scheme is required to divide into sections…." should be clarified. We can see two scenarios in which a scheme divides into two sections, which should be outlined in the code –

- Firstly a scenario in which both sections continue to remain open to future accrual and therefore both will require authorisation. In this scenario we would anticipate the Pensions Regulator being involved in advance of sectionalisation and ideally providing the necessary authorisations in advance of sectionalisation;

- Secondly a scenario in which only the new section will remain open to future accrual and the old section will be closed to future accrual. In this scenario, TPR will need to be satisfied that the new section satisfies the requirements for authorisation, and so we would again anticipate the Pensions Regulator being involved in advance of sectionalisation. It is possible that the withdrawal of authorisation for the closed section is appropriate, leading to a triggering event for that section and one of the continuity options being implemented.

As drafted, we think the wording suggests the authorisation will pass to only one of the two sections (and most likely to the section that may be closing to new accrual). We would suggest that the description be replaced with wording emphasising the need to liaise with the Regulator in advance of sectionalisation in order to ensure that the necessary authorisations are put in place.

It would also be helpful to state in the code that only a significant change in investment strategy is likely require consideration of whether this would meet the legislative threshold for sectionalisation, i.e. that qualifying benefits are “materially different, or subject to materially different expected adjustments, as a result of a change to the scheme’s investment strategy”. It would be helpful for the code to make it clear that trustees should not need to consider this issue as a result of tactical changes to asset holdings, or changes that do not have a significant impact on expected returns.

7: Is it clear how the authorisation fee will be set for schemes with multiple sections?

It is not completely clear, as the fee for each additional section is not fixed, although we can see why it has been drafted in this way and we are supportive of the approach adopted.

8: Is it likely that existing schemes will set up a CDC section and do we need further consideration of such mixed benefit schemes?

Whether CDC benefits are provided through a trust providing only CDC, or via a CDC section of a trust also providing DC and/or DB benefits, does not appear to raise additional issues as far as the code of practice is concerned – the same requirements should apply to a CDC scheme and a CDC section of a scheme providing wider benefits from separate sections.

Systems and processes

9: Is the level of detail we have set out sufficient for schemes to meet our expectations for systems and processes?

Under “Systems and processes: Member communications” we do not think it is appropriate to add references to “and employers (for multi-employer CDC schemes only)”, as you have done in a couple of places referencing the requirements for consideration of member feedback. These references to employers should be removed.

10: Are there any industry standards or other approaches that could be used to satisfy us that a scheme is meeting our expectations?

We would expect the Regulator to take into account the usual quality marks that may to be in place for the administrators.

Fitness and Propriety

11: Is it clear which roles subject to fitness and propriety are unique to multi-employer CDC schemes?

The drafting seems reasonable.

12: Is the description of the roles requiring a fitness and propriety check sufficient to identify them within a scheme's governing structure?

The drafting seems reasonable.

13: Is the expected level of competence clear and appropriate for each role subject to a test of fitness and propriety?

We do not think the "competence of persons who promote or market the scheme" should focus on experience in a 'regulated environment'. It should be possible for CDC schemes to be set up and promoted/marketed by those with suitable experience derived from advising employers on occupational pension schemes.

14: Are there any potential conflicts of interest that could arise from trustees acting as chief investment officer in a multi-employer CDC scheme?

Trustees have a key responsibility to set the investment philosophy and objectives for pension schemes while maintaining independent oversight. As CDC schemes expand and invest in complex asset classes, the trustees' role in monitoring becomes crucial. If a trustee were to also act as the chief investment officer, it creates a potential conflict of interest, as they are effectively overseeing their own decisions. This can lead to unconscious bias and sub-optimal outcomes for members.

Similar conflicts arose historically in the era of with-profits policies, where benefit decisions and investment strategy were made by the same individuals, who were remunerated based on (amongst other things) investment performance and returns and often given undue incentives to use certain asset managers. This resulted in a range of decisions that were not aligned with policyholders' best interests.

We therefore advocate for a framework where the chief investment officer is distinct from the trustee role, ensuring better challenge and oversight.

As an aside, we would also question whether trustee boards (or individual trustees) possess the necessary expertise and, crucially, time to fulfill the chief investment officer role effectively.

Scheme proprietor

15: Is the level of detail we have set out sufficient to understand the role and responsibilities of the scheme proprietor?

Yes – the level of detail seems reasonable.

16: Are any of our expectations of the scheme proprietor likely to deter prospective new entrants?

The approach suggested seems reasonable.

17: Can you tell us more about prospective business models, for example how the scheme proprietor is likely to be used in practice?

We will leave this question for individual firms, who might be considering particular business models, to comment on.

Financial sustainability

18: Are the expectations we have set out for the business plan appropriate for multi-employer CDC schemes?

It would be helpful to clarify the requirement for the business plan to state the number of employers and the number of members. In particular, what would the Regulator expect to see in the business plan that is required prior to authorisation, when there may not be any employers or members yet.

The text under the heading 'business strategy' suggests that the strategy should normally lead to a point where continuity option 3 is viable. We think this text should be reframed to avoid suggesting that continuity option 3 is the default. This could be done by adding text noting that trustees should consider and evaluate all options if a triggering event occurs.

19: Does treating the CALP as a separate element of the business plan remain reasonable for multi-employer CDC schemes?

Yes – this seems reasonable.

Continuity strategy

20 Is the level of detail we have set out sufficient for schemes to present coherent continuity strategies?

The drafting seems reasonable.

21 Is it appropriate to use continuity option 3 as an illustrative measure of a scheme's ability to provide for its members in the long term?

We agree that continuity option 3 would only be viable for schemes above a certain size, and that it is reasonable for a projected assessment to be made of when this might become a viable option. This will be helpful for planning purposes, although the date would inevitably rely on significant assumptions and may vary significantly as experience develops.

We are not convinced of the justification set out in the draft code of practice, that "it is important that members can be reassured of the longevity of the scheme providing their pension" and that this in turn is justified because "Pensioners in a scheme unable to proceed under continuity option 3 are likely to see a significant reduction in income if continuity option 1 is followed."

- We do not agree that pensioners are likely to see a significant reduction in income if continuity option 1 is followed – it may be that a transfer can be made to another CDC scheme or to a flexi-access drawdown fund, which can provide similar levels of income to the current CDC pension.
- With the above in mind, we are not convinced of the merits of communicating the projected date at which continuity option 3 is projected to become a viable option to members, particularly as it would rely on significant assumptions which may not be borne out in practice.

22 Are there any risks in not expecting a CDC scheme to plan, or reserve, for continuity option 3 when it first comes for authorisation?

It is reasonable for plans for continuity option 3 to evolve as this becomes a realistic possibility if a trigger event occurred in the near future. If the option is not likely to be adopted, or would not be a viable option unless the trigger event occurred many years in the future, then it is reasonable for the plans at authorisation to focus on alternative options (with the reserving requirements based on continuity option 1).

Sound scheme design

23: Does the detail set out in the sound scheme design section provide enough information about the evidence that we would expect to see?

Under 'scheme rules' reference is made to guidance and/or standards issued by the Financial Reporting Council on setting accrual rates. FRC's revised TAS 310 was only published, in draft for consultation, just prior to your deadline for submission of responses, so it is not possible to comment on whether further information would be helpful from the Regulator on this important area. It may also be prudent to also reference any guidance that might be produced by the IFoA on this topic.

Related to the above point, we note that footnote 141 requires updating – rather than just referencing "Regulation 17" it should reference Regulation 17 for single employer CDC schemes and Regulation 40 for multi-employer CDC schemes – the latter including the new requirements for multi-employer scheme rules to set out 'how the rates at which right to benefits under the scheme accrue are to be determined'. It may also be helpful to highlight this additional requirement for the scheme rules of multi-employer schemes in the text to which footnote 141 relates.

(See our comments under question 2 above about the wording of sub-section on "Sound scheme design: viability certificates", and the following subsection.)

Promotion and marketing

24: Are the promotion and marketing expectations that we have set out sufficiently comprehensive for those seeking to set up and run a multi-employer CDC scheme?

See out comments on question 3 above – in our view all multi-employer schemes will need carry out promotion and marketing and the code should highlight that any scheme intending to make use of the legislative ‘carve-out’ from the requirement to have adequate systems and processes relating to promotion and marketing, should make this clear in its application for authorisation and explain how it can operate without any promotion or marketing to employers.

The promotion and marketing here relates to communications with employers who may wish to consider providing CDC benefits to their employees. Whilst we can see that the “reasonable observer” test used by FCA (and set out under ‘Promotion and marketing: introduction’ in the draft code) may be a sensible structure, we are not sure that the “engage in investment activity” wording is sufficiently clear. We would prefer that “engage in investment activity” be replaced with “offer membership of a CDC multi-employer scheme to its employees”.

Under “Accuracy of promotional or marketing material” it would have to clarify that the requirement for consistency with specific scheme documents (to be prepared by the scheme actuary or trustee) does not preclude promotion and marketing prior to such documents being produced (or before the scheme actuary or trustee have been appointed).

It would be helpful to include in the code confirmation that the requirements do not preclude preliminary discussions with potential participating employers based on ‘candidate designs’, provided accurate promotion and marketing material, reflecting the actual proposed design, has been provided to the interested parties prior to the authorisation application.

Under “Transparency of promotional or marketing material” the introduction to the list of legislative requirements commences with “Where applicable, all promotional or marketing materials must… explain the following”. This could be read as requiring each piece of promotion or marketing material to cover all of the listed information. We think that it should be made clear that these extensive requirements should not apply in full to initial marketing intended to facilitate initial conversations with an employer (we think providing a weblink to more comprehensive information should suffice). In addition, in subsequent more detailed correspondence with employers, it would be possible to comply by cross referencing other materials previously provided to the employer.

The description of ‘Evidence showing promotional or marketing material meets all regulatory requirements’ should be tightened up. In particular, this should refer to “relevant” regulatory requirements and list the specific requirements that are relevant.

We note that marketing material requires approval and that this approval should be obtained by an 'independent person' to mitigate the risk of conflict of interest. We suggest that this point be raised more prominently in the code – rather than being covered in parenthesis in a bullet point under systems and processes. It may also be helpful to expand on how independence should be assessed in this context e.g. whether this role could be carried out by an internal compliance team or individual.

The section on 'Promotion and marketing: rectification' does not seem to fully reflect the fact that promotion and marketing material will be focused on employers, who are deciding whether to offer a CDC scheme to their employees. If a material issue in the accuracy of the material presented is identified, we might expect this to be flagged to employers swiftly, so that they can reconsider their decision before implementation occurs. Some of the wording seems to be drafted on the assumption that the promotion and marketing will be directed at particular employees/members – for example, once bullet says "remedy where financial loss has been identified so that the member is not worse off".

25: Is the balance between the obligations of the promoter and those of the trustees sufficiently clear, and workable in practice?

We do not think the description of the relationship between the trustees and those undertaking promotion and marketing set out in the consultation document is correct. In particular, the trustees are not engaging those promoting or marketing the scheme to carry out this role *"on their behalf"*. The promotion or marketing may be carried out on behalf of the scheme proprietors, but the trustee role is distinct – to ensure that the scheme is managed in line with the scheme's rules and in the interests of the scheme's beneficiaries. Of course, it may be in the interests of the scheme's beneficiaries for the scheme to add new employers and members in order to achieve scale, but it is not clear that helping to encourage this would (or should) form part of the role of the trustee.

26: Do you see any barriers in meeting our expectations for effectively using members' feedback and communicating how benefits may potentially vary from target?

As noted above, there seems to be some confusion over whether promotion and marketing will be provided to employers or their employees. Our understanding that there will be no direct promotion or marketing to employees – therefore this question should refer to "employer feedback" (given that it relates to promotion and marketing). We would expect that scheme proprietors would naturally want to reflect any relevant feedback from employers in their promotion and marketing material.

The issue of communicating how benefits may potentially vary from target seems to be an entirely separate issue. We would expect communication of this issue to be carefully considered – both in promotion and marketing and in communications with members.

27: What controls are the promoter and trustee of a scheme likely to use to seek assurance that their scheme has not been misrepresented when being promoted or marketed?

Regular reporting and visibility of marketing plan and any materials. This should aim to give the promoter and trustee comfort that materials are kept under regular review, and updated for changes, and also allow them to input on significant changes to marketing materials in advance of them being released.

Supervision

28: Is the level of supervision detail we have set out sufficient?

Broadly yes, although it might be helpful to expand on how to interpret the legislative event of "a proposal to begin promotion or marketing". Generally, we might expect multi-employer CDC schemes to be open to accepting potential new employers consistently from outset, although in practice the production of materials might be fairly 'lumpy' depending on when specific employers engage with the details. It would help to clarify that this 'significant event' would only occur where a scheme proprietor intends to start to actively engage with potential new employers again, after an extended period of not promoting or marketing the scheme.

The footnotes do not appear to be correct. For example, footnote 180 refers to "Regulation 23(1)(o) of the Regulations". We presume this means the single employer regulations (SI2022/255), where Regulation 23(1) does set out the significant events, although there is no 23(1)(o). We believe the reference should be to Regulation 46(1)(o) of the multi-employer regulations (SI2025/313), which sets out the equivalent significant events for multi-employer schemes.

29: Can you share your thoughts on the ways that our approach to regulation of multi-employer CDC schemes may have to change over time.

This will depend to a large degree on the way in which the CDC market develops. If (as we expect it might) the market evolves into a relatively small number of very large and well-run CDC schemes, delivering benefits that closely match their members' needs, the need for regulatory involvement may be low.

Other issues

30: Do you have any other issues that you wish to raise in relation to this code, the approach we have taken, or the expectations that we have set out?

One minor point is that whilst the vast majority of the footnotes provide the legislative references, there are a handful that contain additional guidance (e.g. footnotes 81, 94 and 114). We would suggest that all the guidance should be contained in the body of the text.