ASSOCIATION OF
aca
CONSULTING ACTUARIES

Warnford Court, 29 Throgmorton Street, London EC2N 2AT
Tel: +44 (0)20 7382 4594 Fax: +44 (0)20 7374 6220 EMail: acahelp@aca.org.uk
Web: www.aca.org.uk

31 December 2008

The Regulated Community Learning Team
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW

Dear Sirs

REVIEW OF THE TRUSTEE KNOWLEDGE AND UNDERSTANDING (TKU) CODE OF PRACTICE (CODE OF PRACTICE 7) AND SCOPE GUIDANCE

I am writing on behalf of the Association of Consulting Actuaries (ACA) with our comments on your consultation on the above Trustee Knowledge and Understanding documents.

Members of the Association are all qualified actuaries and are subject to the code of professional conduct of the Faculty and the Institute of Actuaries. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the vast majority of members of defined benefit pension schemes.

The ACA is the representative body for consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies.

We welcome the opportunity to comment on the review of the trustee knowledge and understanding (TKU) code of practice and scope guidance. We recognise the need to review the content of the documents in line with changes in the pensions landscape and are generally supportive of the contents of the drafts. We address below the particular questions raised as follows:

Draft revised code of practice

1. Are there any other examples which have arisen in your work which would be useful for further illustration of appropriateness?

We believe that the code gives sufficient examples of what knowledge, understanding and conversance might be ‘appropriate’ in particular circumstances, and gives trustees an indication of the appropriate knowledge. It is for individual trustees and trustee bodies to establish whether there are other issues that are appropriate to their circumstances.

You have stated in the preamble to the draft Code that it is well understood that there is no expectation that trustees “should take on the mantle of the expert”, but should be able to understand the advice they are given, question it where necessary and make informed decisions. We support this view and suggest that this statement is included in the Code.

There is much more emphasis on the knowledge of individual trustees and we consider that this can be placed in the context of the level of knowledge required of the trustee body as a whole. It is only briefly covered in the section commencing with paragraph 30 and we feel it would be helpful to include a more general statement that it should be acceptable for all trustees to have a certain level of knowledge of pensions overall, but with some to have more detailed knowledge on particular aspects.

2. We have amended the references to learning delivery in this draft revised code. Do you think that this matter has been adequately addressed?

In our experience, the trustee toolkit has been well received and feedback has generally been positive. However, we do not agree with the suggestion that it should be the centrepiece of trustee training, with anything else supplementing it (for example paragraph 40 suggests this is required unless trustees can find an alternative that fully covers the Code). This also places a significant responsibility on the Regulator to make sure that the toolkit is fully up-to-date and does not recognize that different trustees have differing learning preferences, that some may not be able to access the on-line version or that different trustee bodies have specific tailored training structures. In our experience, the most helpful training is that tailored to a specific scheme’s circumstances.

Our members, as advisers to schemes, bring the toolkit to the attention of trustees and encourage those that are interested to work their way through it. However, we were surprised to see that you are now saying that all trustees should complete the toolkit if they have not already done so, unless they can find an “exact equivalent” (paragraph 41). It is difficult to envisage an exact equivalent and we do not think that there should be a mandatory requirement for all trustees to complete the toolkit. This is an unnecessary time-commitment for trustees who already have onerous duties, particularly when many of them have already undergone training to give them the necessary knowledge and experience. We would not have an issue with the Regulator recommending the completion of the toolkit as you have been encouraging in your recent emails, but the emphasis on requirement is too strong.

We note that paragraph 47 has been re-worded and the reference to an annual review of trustees’ knowledge and understanding has changed from “recommends” to “strongly recommends”. It is not clear if this is a required change and there remains the reference to an annual recommendation later in the same paragraph, which is now repetitive. If there is to be an annual requirement to compare knowledge to the Code it would be consistent for the Regulator to also commit to an annual review of the Scope to pick up any new developments during the year that it feels trustees should then be conversant with.

3. On the matter of learning delivery, there are implicit demands on those who carry this out which are not new to the draft revised code. To what extent are these requirements being met and is there more the regulator could do to help those who deliver learning to achieve them?

We are advocates of regular training for trustees and the areas that you highlight are good starting considerations for training courses in general but we question the practicality of trainers needing to certify that delegates have actively participated and demonstrated increased knowledge and understanding. The listed criteria will not be suitable in all forms of training (eg e-learning compared with a regular training session at a trustee meeting) and we would prefer that the emphasis was changed to the delegate being satisfied that their knowledge and understanding has increased as a result of participation in the course. The trainer can assist this process through the steps you set out and through, for example, provision of self assessment exercises as part of the training provision.

Scope guidance

4. Has wind-up been covered adequately?

We believe wind-up has been covered adequately.

5. Similarly, we have included reference both to buy-in and buyout in the scope guidance because of increased regulator interest in those areas. Have we handled these topics adequately?

These have been covered adequately in the document, but if items are to be included and removed as they become/ are no longer the subject of Regulator interest, this would indicate that a more frequent review of the scope document will be required. Furthermore, to the extent that the scope guidance represents a framework which should stand the test of time, it surely should not be required to be updated in respect of each topic in which the Regulator currently has an interest.

On a practical level, to make it more helpful to both trustees and those providing training to make sure that they understand any gaps in their knowledge/ training material against the revised scope it would be helpful to also issue:

- a separate document setting out the revisions to the original scope; and
- a link to the additional material in the toolkit to cover the new areas, so that trustees who have already completed the existing version of toolkit can cover these additional elements in an efficient manner

6. Do you think that it will help trustees of very small schemes to have a much reduced scope and have we got the requirements for them about right?

We agree that the format of the small DC scope guidance is now more helpful to the trustees of such schemes.

Might there be a cost benefit in producing a reduced toolkit for those trustees, which will be fully aligned with the new, reduced TKU requirements? If you have experience of these very small schemes (12-99 members) could you contribute ideas about how to reach the trustees of those schemes?

Rather than produce a new reduced toolkit, it may be possible to direct such trustees to the areas of the toolkit that are most relevant to the scope document. It is not clear that the benefit to small DC scheme trustees in their being provided with a new reduced toolkit outweighs the cost of production, but clearly, trustees of such schemes would benefit from the reduction in time spent in studying areas not relevant to their circumstances.

7. While we included administration in the first issue scope guidance, we have laid increased stress on it in the draft revised scope guidance in response to requests from those in administration in the industry and to reflect the regulator's increased interest in administration. However, administration sits slightly uneasily within the regime because it is a matter of 'doing' rather than 'knowing and understanding'. Are we right to strengthen the reference to administration on the face of the scope guidance document and have we approached it correctly?

We believe that this is a governance and internal controls issue, rather than a TKU requirement. Whilst we can see little harm in including it within the framework for trustees to satisfy themselves that they are aware of what the administration issues are, this does not seem to be the appropriate vehicle for ensuring the scheme administration is strong. A better place would appear to be in the internal controls code which we understand you are currently reviewing.

8. We have lost the direct read across from the DB/DC scope to the DC only scope to make the latter more user friendly for trustees of exclusively DC schemes. Do you agree that this is more helpful for DC only trustees and is therefore worth doing?

Yes.

9. We have given more prominence to the employer covenant in the draft revised scope guidance than was the case in the first issue. This also reflects the increasing interest of the regulator in the employer covenant for DB schemes. Is there too much on this issue, too little or about the right amount?

We agree that focussing on employer covenant is very important - the level of coverage here is about right.

10. At the request of the industry we have included mention of Personal Accounts and the issue of qualification for existing schemes under that regime. In current circumstances, where details remain to be settled, would you agree that we have got this about right and would you like to see amendments as matters are decided?

We question the detail on the forthcoming obligation on employers to offer a qualifying scheme at this stage, as very little detail is currently available despite the existence of the Pensions Act 2008. We would suggest that the listed bullet points (in for example, 2i of unit 3 of the scope guidance for defined benefit schemes with associated defined contribution arrangements) are not required, bar the last one. At this stage we suggest that Trustees should be aware of the broad framework of Personal Accounts and the extent to which it will impact their particular scheme. The requirement should be to keep abreast of current issues as relevant to their scheme, whether it is Personal Accounts, the abolition of contracting out for DC schemes or other current issues.

If you have any queries about this letter please do not hesitate to contact me on 020 7432 6635.

Yours sincerely

David Everett
Deputy Chairman, Pension Schemes Committee