

Response from BESTrustees plc to the Pensions Regulator's consultation on the Trustee Register

About BESTrustees

1. BESTrustees is one of the UK's leading independent trustee companies. We combine the talents of experienced individuals, who are recognised leaders in the pensions industry, with the security of a strong, well-established corporate trustee, to offer a superior quality independent trustee service.
2. Independent trusteeship is our sole business. This gives us freedom from the conflicts of interest that can affect lay trustees, pension fund advisers, and some other independent trustees who also offer other professional services (e.g. actuarial or legal advice). It ensures our independence and our professional integrity.
3. BESTrustees, and those pensions professionals who have chosen to work for us, believe that a corporate structure is the most appropriate way to provide independent trusteeship services. All our professional trustees are employed by BESTrustees (rather than being self-employed). This approach gives us a governance structure; access to peer review; the ability to provide an alternate in the event of illness or meetings arranged at short notice; and professional indemnity cover at a level which we understand is not available to sole practitioners.
4. Unlike many other independent trustees, our emphasis is on ongoing schemes rather than wind-ups (although we do of course handle wind-ups, PPF assessment cases, and cases where the Regulator is involved). With our experience in all aspects of independent trusteeship, we are ideally placed to safeguard the interests of the beneficiaries while taking account of the needs and responsibilities of our fellow trustees and the sponsoring company.

General

5. BESTrustees agrees with the overall proposition of the consultation, which we interpret as being that the Regulator wishes to "raise the bar" for those trustees who wish to be on the Trustee Register. We believe that the Regulator's objective should be to ensure that most independent trustees who are suitably qualified by virtue of their knowledge and experience, and who have appropriate checks and balances in place, should be able to be on the Register without undue difficulty. This will enable the Regulator to have the widest possible choice of independent trustees available to it when making an appointment under its statutory powers.

6. Nevertheless, we believe that the proposed requirements and strengthened assessment criteria for the Trustee Register are not likely to achieve the intended result. We think it is likely that most corporate trustee firms, and virtually all individual trustees, will decide that the requirements and form-filling are too onerous to be worth while for the relatively small volume of work which is likely (on the basis of recent experience) to result from being on the Register.
7. Most independent trustee appointments to ongoing schemes arise from a search and interview process, usually carried out by the person or entity making the appointment (occasionally with the help of a search firm). It is not clear that being on the Register is of any help in this process: certainly, a number of trustee firms and individual trustees operate very successfully without being on the Register.
8. Our limited experience of Regulator appointments has been that the cases where an independent trustee is appointed by the Regulator under its statutory powers have been:
 - small;
 - professionally challenging;
 - resource-hungry; and
 - financially unviable.

Informal conversations with other independent trustees indicate that this opinion is widely shared.

9. Many parts of the consultation paper exhibit a confusion between:
 - the independent trustee's management of its own business; and
 - the independent trustee's governance of the affairs of the pension schemes of which it is a trustee (and often not the sole trustee).

It is important for these to be separated, both in theory and in practice. Different areas of law and practice apply to the two aspects above and they should be clearly delineated throughout the Regulator's assessment.

10. We also wish to make some general observations about the proposed application form. We understand that the proposed application form has to be completed by hand (not on a computer); has to be completed and signed by each Key Person and each Officer in the applicant firm; and has to be resubmitted in full each year. If our understanding is correct, the volume of work will be very substantial and will of itself deter many applicants who would otherwise be suitable for inclusion on the Register.

Responses to consultation questions

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?*

The definitions given on page 9 of the consultation document show some of the confusion mentioned in point 9 above. In particular, of the three points in the proposed definition of an Officer, the first relates directly to an individual’s role as a pension scheme trustee whereas the second and third relate to the management of the applicant’s business.

In our view, these aspects of work should be clearly separated. Independent trustees, whether corporate or individuals, always have people who provide trustee services to pension schemes; they have people who provide services to the business (e.g. company secretaries, office staff or accountants); and they may have people who do both these things. But an individual who only provides services to the business should not be subject to the same requirements as those who provide trustee services to pension schemes. The functions are separate and distinct. It should also be noted that a corporate body has to have a Company Secretary who by law is an Officer of the company, even though this person may well not be involved in trustee work (and in BESTrustees’ case is an outsourced appointment).

In the case of BESTrustees, the first definition of an Officer – “any person whose signature may authorise (in part or in full) a transaction involving the assets of any scheme for which the applicant acts as a trustee”- will apply to all our Directors and Associates. This means that all our staff, other than purely office-based administrative staff, will be Officers and will have to fill in the application form. This seems both unnecessary and impractical.

2. *Do you consider the regulator’s view of who it considers to have “overall management responsibility” to be reasonable? If not, how would you assess who has “overall management responsibility”?*

The definition of a Key Person refers to “overall responsibility or accountability” but does not make it clear to whom the Key Person is accountable or responsible: this could be an owning company (in the case of a subsidiary), shareholders (in the case of an independent company), or indeed the members of the pension schemes for whom the applicant acts as a trustee. Again the proposed definition lacks clarity as to whether this

refers to the management of the trustee's business or the management of those schemes for which it acts as a trustee.

In the context of an independent trustee business, it seems logical that the Board of Directors, or possibly the executive directors, of a corporate body would have "overall management responsibility". For a sole practitioner, clearly the practitioner would have this responsibility. For the reasons, mentioned above, the Board may include operational staff who are not practising as pension trustees, and it seems illogical to require that such people should have "sufficient relevant experience".

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

The criterion for judging whether someone has "sufficient relevant experience" should not be related solely to pension scheme trustee work. By way of example, under the proposed definition, someone who has three (or five) years' experience as a trustee of a small insured pension scheme would qualify, whereas someone with twenty or more years' experience as an actuary or lawyer dealing with large schemes and difficult issues, would not.

We suggest that each person wishing to practise as a trustee should be required to be able to demonstrate at least five years' *relevant pensions experience*. This could include actuarial, legal, investment or other relevant areas. It could also be a requirement that the individual has completed the Trustee Toolkit (easy to verify).

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?*

The proposed framework is unnecessarily complex and the proposed criteria demonstrate again the confusion between the applicant's own business and the business of the schemes of which the applicant is a trustee. The compliance costs will be very substantial – we suggest multiplying all the figures in the consultation paper by 10 to arrive at a reasonable order of magnitude – and we believe that most independent trustees will judge that such a cost is not a sensible use of resources.

We understand that the ICAEW is seeking a meeting with the Regulator to discuss this subject in more detail. Accordingly, we do not propose to make further comments on this question.

5. *Does the list of control objectives in Appendix D 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?*

The answer to the previous question covers some of these issues. However, we believe it is critical that any requirement in this area is:

- practical;
- proportionate;
- affordable; and
- does not duplicate work already done for others.

We therefore suggest that any oversight requirements in this area should be limited and should be restricted to the applicant’s management of its own business. The operation of pension schemes is already subject to extensive audit and assurance requirements and we do not believe that the Regulator should be adding further to this burden, especially when much of what is proposed is already covered as part of pension scheme audit.

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?*

Broadly we are in agreement with the proposals in this area although we are not clear why a 10-year run-off period was chosen: we understand that claims against trustees can normally be brought within 12 years so perhaps 12 years should be the run-off period, assuming of course that such insurance is available in the market. The Regulator should not require trustees to have cover which is simply not obtainable in the market.

The application form

As mentioned above, the proposed application form is far too long and detailed. In the case of BESTrustees, the form would have to be completed by every person who acts as a trustee (over 20 individuals) and the volume of information to be provided would be very substantial. We wonder if the Regulator will have the resources to check the sheer quantity of information which will accompany the completed application forms. We also wonder whether all of it comes under the heading of relevance, which we understand is required by Data Protection rules. Some of the requested information might be regarded by individuals as being personal and confidential.

We would prefer the form to be divided into categories as follows:

- one to be completed by the applicant;
- one to be completed by each Key Person; and
- one to be completed by each Officer.

In addition:

- the form should be able to be completed and submitted on-line;
- each year, only changes since the previous year should have to be notified; and
- applicants should be able to choose whether to apply for all their Officers, or only a selection of them, to be on the Register.

We are happy to provide more detailed input in this area if required.

Conclusion

Whilst we support the Regulator's aim to "raise the bar" for those trustees wishing to be on the Trustee Register, we feel that the proposed requirements are so onerous that most trustees will decide not to apply to be on the Register. This would, in our view, be a missed opportunity.

We are happy for this response to be made public.

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