Regulating work-based defined contribution pension schemes

RESPONSE FROM ICAS TO THE PENSIONS REGULATOR

26 March 2013
Introduction
The ICAS Pensions Committee welcomes the opportunity to comment on The Pensions Regulator’s (TPR’s) consultation on regulating work-based defined contribution pension schemes, which are trust-based.

Our CA qualification is internationally recognised and respected. We are a professional body for over 19,000 members who work in the UK and in more than 100 countries around the world. Our members represent different sizes of accountancy practice, financial services, industry, the investment community and the public and charity sectors.

Our Charter requires ICAS committees to act primarily in the public interest and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members’ views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

Key points
We have considered the quality features, code of practice and accompanying guidance in the context of the overall volume of guidance which the trustees of trust-based defined contribution schemes are expected to comply with. We believe that the volume of guidance, including the material covered by this consultation, is likely to push employers towards removing trust-based arrangements and replacing these with contract-based arrangements. While we agree that some rationalisation of the sector is required, trust-based arrangements provide additional protection for members relative to contract-based arrangements and therefore should not be made unsustainable due to voluminous regulatory material.

We have not considered each of the 24 consultation questions individually but have provided answers to questions 1 to 5 below on the DC regulatory approach and quality features. We have a number of overall comments on TPR’s proposals on the regulation of work-based defined contribution schemes as follows:

- We have a specific concern that the code and accompanying guidance will be the spring board for yet more guidance on legal and regulatory compliance and this increases the risk that trustees will become overwhelmed by the sheer volume of guidance they are required to follow: this is potentially detrimental to member outcomes. We believe that it is important for trustees to understand pensions law and their responsibilities under the law. However, by generating so much material, TPR is discouraging trustees from accessing the law which is the source of their duties.
- While the principles set out in the code sound good, we are concerned that their application is being made over complicated leading to over-regulation. We believe that the over-regulation of trust-based schemes will lead to the over-regulation of contract-based schemes as this approach is rolled out. We would have preferred an approach to the regulation of work-based DC schemes which focused on outcomes for members and could have been applied to both trust-based and contract-based schemes.
- Financial education is a major issue for individuals saving for retirement. Financial advice is a key element of financial education and this appears to be a missing element of the regulatory regime for DC pensions. We would welcome proposals from TPR to address the financial education piece.
- We believe that figures used in the impact assessment are not supported by robust evidence. For example, the resource and cost implications for small schemes using the ‘comply or explain’ approach are not addressed within the consultation. Also, without a fully scoped approach on the assurance framework for master trusts, we do not believe it is possible to assess the potential costs of these engagements.
- Benchmarking arrangements for reporting member outcomes could be the answer over the long-term. For example, information on the performance of NEST will become available once the scheme has been running for a period of time. Although, with so many variables to consider in assessing the performance of a scheme, like for like comparisons could be difficult to achieve and the framework for delivering this would be complex. The Master Trust Association, established recently, may at some point in the future be able to provide benchmarking information. This could facilitate cost comparisons with contract-based schemes.

Any enquiries should be addressed to Christine Scott, Assistant Director, Charities and Pensions, at cscott@icas.org.uk.
Detailed comments

Questions on DC regulatory approach and DC quality features

Question 1
Since publishing the draft features in June 2012, we have made some drafting improvements to make the DC quality features clearer. What further changes could we make to improve the quality features?

Answer 1
We have no specific drafting changes to recommend. However, we would have expected the material to provide more information around auto-enrolment, for example, information on the portability of pension pots.

Question 2
Do the DC code and DC regulatory guidance, together with the DC regulatory approach, sufficiently address risks to members within the different segments of the DC market, for example, those relating to master trusts? Please comment on coverage by segment.

Answer 2
We believe that larger schemes will cope with the volume of guidance but smaller schemes will not, for example, the trustees of smaller schemes may only meet once a year and over burdensome guidance will not be helpful to them in discharging their responsibilities.

Smaller trust-based schemes are not really fit for purpose and the volume of guidance could lead to the rationalisation of the trust-based sector by the back door. We support the rationalisation of the trust-based sector but would prefer TPR to take a proactive and strategic approach to this.

Trust-based schemes are in decline and the volume of guidance could be off putting leading to more contract-based arrangements which would add to the workload of the FSA’s successor. The guidance should focus on member outcomes and in this regard trust-based and contract-based schemes are no different. The NAO report on DC regulation recommended that regulators should spend more time establishing how best to assess member outcomes and we support this recommendation.

Question 3
Do you agree that voluntary disclosure of consistency with the principles and features is a suitable approach for trustees to demonstrate the presence of DC quality features contained in the DC code and DC regulatory guidance? If not, why not? When responding to this question, it would be helpful if you could outline what you envisage trustees disclosing to demonstrate their accountability to members.

Answer 3
We believe that the voluntary ‘comply or explain’ approach for trust-based schemes, except master trusts, will encourage a tick box mentality. Furthermore, there is no evidence that this approach will improve outcomes for members.

The consultation paper does not set out how the results of the trustees’ assessment should be communicated to scheme members or employers or how TPR plans to monitor the practice or its impact. The biggest schemes will have websites which can refer to this exercise. Presumably, there will be a requirement for the results of this exercise to be communicated to key stakeholders annually?

Question 4
Do you agree that independent assurance will help provide another layer of rigour to help improve standards of governance and verify accountabilities of trustees of master trusts? If not, what other sources of assurance can trustees of master trusts use to demonstrate the presence of DC quality features and operational effectiveness of related control processes?
Answer 4
The statutory accounts for master trusts must receive an independent audit in accordance with International Standards on Auditing (UK & Ireland). It is not clear from the consultation what TPR’s expectations are around the additional role external auditors would have in the provision of independent assurance on the presence of quality features and the operational effectiveness of related control processes i.e. how any additional work would lead to improved outcomes for members.

Large schemes, including master trusts, will have internal auditors and trustees are likely to prefer any costs arising from these proposals to be internal costs. Any additional work to be carried out by auditors would need to be carefully scoped and would need to demonstrate value for money in relation to improved member outcomes. We envisage that any additional assurance work would need to focus on the following four key risk areas for schemes: administration; investments; contributions; and change in sponsor status.

Given that administrators have a key role to play in relation to some of the processes covered by the quality features, the scope of any further independent assurance would need to be considered in the context of any other engagements conducted by the external auditor on behalf of the scheme.

Question 5
Should requirements outlined for disclosure and independent assurance outlined above be incorporated in pensions legislation? Please given reasons?

Answer 5
We do not believe that there is a requirement for additional legislation. The proposals on independent assurance are not entirely clear and no evidence has been presented which demonstrates that this would improve outcomes for members. Therefore, the case for making independent assurance a statutory requirement has not been demonstrated.