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**By email only**

[PPTC@tpr.gsi.gov.uk](mailto:PPTC@tpr.gsi.gov.uk)

4<sup>th</sup> Floor  
The St Botolph Building  
138 Houndsditch  
London EC3A 7AW

Telephone 020 7173 xxx  
Facsimile 020 7173 2772  
Website [www.itslimited.co.uk](http://www.itslimited.co.uk)

Our ref:  
Your ref 170509NTTPR001

Dear Sirs

**Response to Consultation on Draft Monetary Penalties Policy and revised Professional Trustee Description**

**Part 1 Draft Monetary Penalties Policy**

Overall we support the general approach to calculating penalties using bands as this will provide greater transparency and should reflect the severity of the breach. The factors to be considered in assessing the band level are those one would expect to be taken into account.

We also consider it fair and reasonable to consider a higher penalty where a professional trustee has been appointed, however we do not believe the reference to remuneration beyond expenses should be considered a relevant factor as the proposed definition of professional trustee makes clear that remuneration alone should not be a determinant on whether an individual trustee is or is not a professional trustee.

The distinction between individuals and other bodies is not particularly clear as there are some cases where the maximum penalty will apply to a trustee board as a whole, and other cases where the individual trustees, whether individuals or corporate bodies, may be fined differing amounts, dependant on their status and presumably their degree of culpability. It is therefore possible that the aggregate fine where a Board is made up of individuals and a corporate trustee (possibly a professional trustee) could be substantially different from a fine of a single corporate trustee made up of lay trustee directors or a combination of lay and professional trustee directors. Given that trustees are generally jointly and severally liable for the actions of the trustee board we would expect the majority of fines to be levied against the trustee board rather than against either individual or corporate board members. We find the ability of the Regulator to impose fines on an individual basis to be inconsistent with the nature of trusteeship.

Our final comment relates to the mandatory fine under the Occupational Pension Schemes (Charges and Governance) Regulations 2015 for failure to prepare a chair's statement. Whilst we do not have issue with fining trustees who fail to comply with this requirement, the mandatory nature of the penalty is at odds with the discretionary nature of the remaining penalties where the Regulator has the option to take into account relevant factors in line with its risk based approach and may decide on alternative actions where there is a genuine mistake on the part of the trustee body rather than a deliberate or negligent failure to act.

## **Part 2 Revised Description of a Professional Trustee**

As a firm of professional trustees we welcome the attempt to define the term 'professional trustee' and believe that those who fall within the definition should be required to adhere to a set of principles which will include demonstrating a higher level of skill and knowledge relating to pension matters than a lay trustee.

We agree that remuneration alone should not be a determining factor when deciding whether a trustee falls within the definition as there are many cases where trustees, whether MNTs or employer nominated trustees, are remunerated by the Company, either in terms of an "honorarium" for MNTS, or in the case of former employees who remain post retirement and are paid for their services. We consider the number of trustee appointments an individual holds to be far more relevant, particularly if those appointments are to unrelated schemes.

On the question of independence we agree that independence from the sponsor and /or the scheme should not be a determining factor. However we believe that there should be a requirement that a professional trustee should be independent from any professional adviser to the scheme as we believe there should be a clear demarcation of functions between the fiduciary duties of a trustee and those who advise the trustee.

On the actual description we believe this should be confined to the first limb of the definition currently, as we believe the second limb is insufficiently specific and therefore capable of a wide degree of interpretation. For example the term "expert" when used in a professional capacity generally denotes someone with many years of experience in a specific area, rather than an expert in trustee matters generally. By way of analogy a Doctor may be a G.P. with a broad overall knowledge of medical matters, or may specialise in a certain area such as ear nose and throat surgery, where he then becomes an expert. We would consider the role of a professional trustee to be more akin to a G.P. although, of course, individual professional trustees may have specialist areas of expertise, depending on their previous background and experience.

We believe a move towards an accreditation process for professional trustees akin to that used in other professions would overcome the problem of determining whether or not an individual met the definition and would provide a more easily justifiable basis for imposing higher penalties for breaches of pension legislation. However we see this is as a longer term objective and in the meantime support the move to provide a clearer set of determining factor on what does and does not constitute a professional trustee.

Yours faithfully



**Nita Tinn**  
**Director**

**On behalf of Independent Trustee Services Limited**