Article Information

Authors: Lisa-Marie McKechnie, Kathy Neilson, Kerry Jacobs
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APRA hones in on trustee spending behaviour

The Australian Prudential Regulation Authority (APRA) recently put the superannuation industry on notice that it intends to intensively review and scrutinise fund expenditure as one of its supervision priorities. This article looks at trustees' obligations to put the financial interests of fund members first when making fund expenditure decisions and APRA's planned supervisory approach to ensure trustees undertake better practices in this area.

On 22 October 2024, APRA published a letter to all registrable superannuation entity (**RSE**) licensees putting the superannuation industry on notice that APRA intends to intensify its scrutiny of fund level expenditure.[1] APRA's supervisory attention follows observations of "questionable" expenditure decisions and trustees' variable compliance with the duty to act in the best financial interests of members.[2] APRA intends to prioritise its supervisory attention on expenditure where member benefit is not apparent straight away or may not be reasonably justified.[3]

Prioritising members' best financial interests

In a speech to the AFR Super & Wealth Summit 2024, APRA Deputy Chair Margaret Cole spoke about APRA's sharpened focus on trustee spending behaviour in the context of trustees' best financial interests duty.[4] Replacing what had previously been the best interests duty, the best financial interests duty was introduced following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as part of the Your Future Your Super reforms in July 2021 amidst criticism of the scale and extent of trustees' discretionary spending in areas such as advertising, sponsorships and corporate entertainment.[5] The new duty meant that trustees needed to put the financial interests of fund members at the heart of each expenditure decision and that they could no longer justify such decisions based on non-financial benefits to members.[6]

APRA's concerns

However, despite trustees' obligations to consider the best financial interests of their members, Ms Cole reported that APRA has continued to observe deficient practices and questionable expenditure, causing the regulator growing concerns about trustee spending behaviour.[7] As highlighted by Ms Cole, "[a]ny trustee expenditure that does not align with members' best financial interests, risks compromising member outcomes and eroding retirement incomes."

Ms Cole said that APRA's observations follow analysis of the expenditure data it has collected for the 2022-2023 financial year – as part of its recently expanded approach to data collection – to identify any "outlying" spending, such as that which is unexpectedly large when compared to peer funds or a fund's activities.[8] Ms Cole indicated that APRA has followed up questionable spending with trustees and pursued enforcement action where there were more serious concerns.[9]

Whilst APRA annually publishes statistics on superannuation funds and their trustees – including information on fund profile and structure, financial performance and position, conditions of release, fees and membership – APRA released, in October 2024, supplementary information on superannuation fund expenditure for the first time, leveraging the new expense reporting standard and including a more detailed breakdown of expenditure.[10]

Scrutinising expenditure

In intensifying APRA's supervision approach to trustee expenditure, Ms Cole said that APRA intends to "follow the evidence" by leveraging the data now held for the 2022-2023 and 2023-2024 financial years as a powerful source of information about trustees' expenditure patterns and behaviours.[11] However, this does not mean APRA intends to review every single expenditure item. Instead it will look to identify expenses where member benefit is not immediately evident or may not be reasonably justified.[12] Ms Cole said that APRA intends to prioritise expenditure where there is potential to improve industry practices and outcomes, where market intelligence is held or where there is significant public interest.[13]

In its letter to RSE licensees, APRA stated that it will take a targeted supervision approach, partly informed by *SRF 332.0 Expenses data*, with an initial focus on areas such as discretionary expenditure categories like travel, entertainment and conferences.[14] APRA also plans to initially focus on relative and absolute size outliers and particular payee and payment types where members' benefits are not immediately evident.[15]

What trustees can expect

APRA has indicated that it has already begun engaging with a number of RSE licensees and further work will soon commence using data collected for the financial year 2023-2024.[16]

APRA has foreshadowed that, where expenditure is reviewed, APRA will issue notices requiring RSE licensees to provide information that demonstrates how they determined that expenditure is in the best financial interests of members.[17] RSE licensees' decision-making processes, practices, outcomes and ongoing monitoring and oversight of transactions and expected outcomes will also be reviewed.[18] This will include considering matters of governance, conflicts of interest, and attestations recommended under *Prudential Practice Guide 515 Strategic Planning and Member Outcomes* (once effective) and accountable persons' roles under the Financial Accountability Regime.[19]

APRA has also forewarned that it will continue to hold industry and RSE licensees accountable for expenditure practices by promoting strong member outcomes.[20] APRA will require trustees to make any necessary improvements where issues are identified, which may include rectification measures and, in line with APRA's enforcement approach, will typically be made public where it is deemed suitable to do so.[21]

In addition, APRA has indicated that information obtained during this process will inform its RSE licensee risk assessment and could lead to increased supervision staging.[22]

As a key takeaway, trustees should note that, in APRA's view, whilst trustees may be compliant with their best financial interests duty obligations *on paper*, this is not enough – trustees must translate this substantive duty by putting it into action, without exception, and with rigour, caution and care.[23] Coining the phrase "don't tell us, show us", APRA means business with this renewed focus and prudent trustees would be wise to review their own practices now and follow suit.

How we can help

The superannuation team at Piper Alderman has a detailed understanding of SPS 515 and has recently run a number of masterclasses on this topic partnering with the Association of Superannuation Funds of Australia (ASFA). We can assist you with implementation and operationalisation of SPS 515 including advice on trustee duties and other obligations, reviewing business plans and expenditure management policies and procedures and undertaking readiness and compliance assessments. If you need assistance with addressing any of the issues raised above or other superannuation matters, please contact us.

[1] APRA, 'APRA intensifying supervision of fund level expenditure' (Letter, 22 October 2024).

[2] APRA, 'APRA Deputy Chair Margaret Cole – Speech to the AFR Super & Wealth Summit 2024' (Speech, 29 October 2024).

[3] APRA, above n 1.

[4] Ms Cole in APRA, above n 2.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] APRA, 'Annual fund-level superannuation statistics' (Media Release, 30 October 2024).

[11] Ms Cole in APRA, above n 2.

[12] Ibid.

[13] Ibid.

[14] APRA, above n 1.

[15] Ibid.

[16] APRA, above n 1.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Ms Cole in APRA, above n 2.