



FUTURE OF TRUSTEESHIP AND GOVERNANCE

RESPONSE TO THE PENSIONS REGULATOR

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About ICAS

ICAS is a professional body for more than 22,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business and in the not for profit sector; many leading some of the UK's and the world's great organisations. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854.

Overall comments

The ICAS Pensions Panel welcomes the opportunity to comment on The Pensions Regulator's (TPR's) consultation on the Future of trusteeship and governance. We have set out our comments on selected consultation questions in the Appendix and we raise the following key points:

- We would support an approach to achieving a minimum level of TKU through codes of practice and accompanying guidance as a response to genuine concerns about the quality of the service provided by some trustees and trustee boards. However, we would accept a legislative approach if TPR deems this to be the more suitable approach to achieve that objective.
- We support a verifiable CPD-style approach to training for all trustees, both professional and lay. However, this would need to be a two-tiered approach with more stringent requirements placed on professional trustees.
- We agree that TPR has a key role in establishing and setting standards even if this is in collaboration with or through oversight of another body. We also agree that TPR has a key role in ensuring trustees are aware of the standards expected of them.
- What is missing from the consultation is consideration of how trustees report what they have done rather than what they know. Information on what trustees have achieved on behalf of scheme members would be of value to the members and this may be an aspect of governance and accountability that TPR may wish to explore further, including how to gather relevant data from schemes about the achievements of the trustees.
- While we think it would be beneficial if every scheme could have access to the skills and knowledge of a high performing professional trustee due to their breadth of experience, this may never be feasible for all schemes on the grounds of cost. Therefore, what is key is that the trustees should demonstrate that the scheme is being managed properly in the interests of its members

The approach taken towards the consultation is an examination of the merits and challenges faced by traditional trust-based workplace pension schemes, particularly defined benefit schemes, and to some extent single-employer defined contribution schemes, where TPR is encouraging consolidation.

However, the consultation does not specifically address trusteeship and governance in relation to the DC master trust model, the main vehicle for pensions auto-enrolment, which has features akin to the provision of retail savings vehicles. Therefore, any legislative or other changes arising from this consultation will also need to address whether or not they also apply to the trustees of master trusts.

Contact details

If you have any queries arising from this briefing, please contact Christine Scott, Head of Charities and Pensions at ICAS, on 0131 347 0238 or at cscott@icas.com.

Response to selected questions

Part 1: Trustee knowledge and understanding, skills, ongoing learning and development

Question 2

Should there be legislative change for trustees to demonstrate how they have acquired a minimum level of trustee knowledge and understanding (TKU), for example through training or qualification?

Response

We agree in principle with mandating a minimum level of TKU. We would support an approach to achieving a minimum level of TKU through codes of practice and accompanying guidance as a response to genuine concerns about the quality of the service provided by some trustees and trustee boards. However, we would accept a legislative approach if TPR deems this to be the more suitable approach.

As a minimum we believe that all trustees should complete TPR's trustee toolkit. Professional trustees should be responsible for meeting TKU requirements themselves, but schemes should be satisfied that a professional trustee they may wish to hire can validate their professional competence and training record.

Lay trustees should be given a reasonable period of time from the date of their appointment to complete the toolkit. Other trustee training would need to include scheme specific training and for professional trustees this would need to be sufficient to meet the needs of all of their appointments.

TPR scheme returns could ask a question about completion of the trustee toolkit by professional and lay trustees.

Also, when TPR issues a new or updated code of practice or guidance note it could insert a training module connected to that guidance to entice lay trustees to do some immediate training on it. We recognised that the toolkit is updated but guidance specific self-testing may be helpful too.

We believe in the value of discussions that take place around the table at trustee board meetings and we would favour as far as possible the continuing involvement of lay trustees in the governance of schemes.

It is our experience that recruiting lay trustees, both members and employer nominated, has become quite difficult, in part due to many schemes being closed to future accrual and therefore the pool of deferred and retired members for whom it would be practical to take on a trusteeship is diminishing.

Taking these two concerns together, introducing legal requirements around TKU which apply to lay trustees, and we include employer nominated trustees in this, may further reduce the pool of people willing to take on the role.

An unintended consequence of reducing the pool of lay trustees may be to push smaller schemes into sole trusteeship. This increased demand would need to be met by an increase in the number of professional trustees, without seeing a reduction in the quality. There is only a finite pool of professional trustees available and there may be insufficient capacity from the existing pool of professional trustees to step in.

Question 3

Should there be a legislative change to introduce a minimum level of ongoing learning for all trustees, for example through CPD-type training? If so, how many hours a year would be suitable?

Response

We support a verifiable CPD-type approach to training for all trustees, both professional and lay. However, this would need to be a two-tiered approach with more stringent requirements placed on professional trustees.

Taking a non-legal route to a CPD-style scheme may be more straightforward to implement. We recommend that in the first instance, TPR explores the feasibility of a non-legal route to the introduction of such a scheme.

Professional bodies take different approaches towards continuing professional development. For example, CPD requirements could be hours based with a minimum number of hours of formal/structured training included within that. Alternatively, CPD requirements could require an individual to judge the nature and the extent of the activities they need to undertake in order to maintain and acquire sufficient knowledge and skills to provide the appropriate level of service to clients.

Both of these models have pros and cons. However, it is worthy of note that completing a certain number of hours of formal training does not necessarily mean that the training was of value in relation to the role of pension scheme trustee.

A common feature of any CPD-style approach should be the requirement to have an individual development plan and for activities to be undertaken during a particular period, normally 12 months, to meet development plan objectives.

If a formal CPD-style scheme is to be introduced, oversight and monitoring arrangements would also need to be introduced. It is not currently clear from the consultation which organisation would take responsibility for the establishment and on-going operation of a CPD-style scheme. For professional trustee, this may form part of any system of accreditation which is introduced. It would also seem desirable for any CPD-style scheme to be handled by one organisation for both professional and lay trustees.

A requirement for on-going training and development does of course raise the question of who would be responsible for organising these activities with training providers. Also, who would provide the training or other CPD-related resources? This aspect of complying with a new CPD-style approach may be a potential challenge for medium-sized as well as smaller schemes. As a starting point, we would welcome consideration by TPR of expanding the toolkit to include modules on specific issues in more detail and on current developments. It would also be possible to tailor modules to the needs of lay or professional trustees.

It is also important that schemes have recruitment and induction arrangements for trustees which are fit for purpose. For lay trustees, new to the role, we would expect there to be a mechanism for ensuring that they are aware of their legal responsibilities as well of expectations around completing the toolkit and undertaking on-going training and development activities.

Question 4

Do you agree that we should set higher expectations on levels of TKU held by professional trustees in the code, recognising that they typically act across multiple schemes of various types, size and complexity?

Response

Yes, we agree that this is appropriate. See our response to questions 3 and 9.

Question 5

Should we focus more on establishing and setting standards and ensuring all trustees are aware of them, while relying more on industry to have the main role in educating trustees in ways more tailored to their individual needs?

Response

We agree that TPR has a key role in establishing and setting standards even if this is in collaboration with or through oversight of another body. We also agree that TPR has a key role in ensuring trustees are aware of the standards expected of them.

However, as per our response to question 3, there is further scope for TPR to be involved in the education of trustees.

Questions 6

We would also welcome any thoughts or ideas that you might have more generally about how we can have greater confidence that trustees have the necessary basic knowledge and understanding to carry out their role.

Response

We are supportive of a verifiable CPD-style approach to TKU and we have suggested that it would be helpful to include a question in scheme returns about completion of the trustee toolkit.

What is missing from the consultation is consideration of how trustees report what they have done rather than what they know. Information on what trustees have achieved on behalf of scheme members would be of value to the members and this may be an aspect of governance and accountability that TPR may wish to explore further, including how to gather relevant data from schemes about the achievements of the trustees.

Part 2: Scheme governance structures for effective decision-making

Question 8

Should industry play a role in creating tools, guidance and case studies that can help pension schemes attract a more diverse pipeline of lay trustees? How would that work and who should take a lead in making it happen?

Response

While we agree that providing tools, guidance and case studies may involve other parties and not solely TPR, pensions industry respondents to the consultation will be better placed to indicate if they see a role for themselves in producing material to broaden the appeal of the lay trustee role.

However, we see a role for TPR in creating tools etc. Also, TPR may be better placed than other parties to host material on its website which pension schemes can signpost potential lay trustees towards.

Question 9

Should it be mandatory, in due course, for each pension scheme board to engage a professional trustee? If not, what reason (other than current capacity) would make such a move desirable?

Response

We understand that DC and in future DB consolidation is TPR's favoured direction of travel for workplace pensions schemes. However, while we think it would be beneficial if every scheme could have access to the skills and knowledge of a high performing professional trustee due to their breadth of experience, this may never be feasible for all schemes on the grounds of cost. Therefore, what is key is that the trustees should demonstrate that the scheme is being managed properly in the interests of its members. For example, lay trustees do need sufficient knowledge and expertise to understand the professional advice they receive and to challenge that advice as appropriate.

There should be a higher bar for professional trustees and it may be true that barriers to becoming a professional trustee are not sufficiently high. This could explain why some employers are keen to see the roll out of the PTSWG's Professional Trustee Standards and accompanying accreditation framework.

Any system of accreditation whether voluntary or compulsory needs to be accompanied by other processes, for example, complaints, investigations, appeals and disciplinary arrangements. Ultimately, there must be a means for withdrawing the accreditation.

Question 10

Do you share our concerns in this area [i.e. about sole corporate trustees]? Do you have any real case examples where you see these conflicts are not managed effectively in the case of sole corporate trustees?

Response

We believe that schemes should avoid appointing 'sole trader' sole corporate trustees. This is not sensible from a risk management perspective and it can, in itself, create higher risks around conflicts of interest between the employer and the trustee, for example, in respect of the payment of adviser fees. There is also acute reliance on the knowledge and experience of a single individual.

The infrastructure provided by corporate trustee firms is an important aspect of the service they provide and this is not referenced in the consultation. Conflicts of interest are difficult to eliminate entirely and therefore those that cannot be eliminated must be managed. Representatives of the sole corporate trustee acting for a scheme have access to peer support and review which should contribute to the quality of scheme governance. Some of these aspects could be mandated, for example, peer review.

Question 11

Should the governance standards for sole [corporate] trustees be strengthened, for example, by requiring two or more trustees [i.e. representatives of the trustee firm] to attend relevant meetings? Are there any circumstances where this would not be appropriate or necessary?

Response

We have some thoughts on the scheme governance where there is a sole corporate trustee. We agree that there should be robust governance in these structures, with a framework to ensure there are sufficient controls and protections, which is formalised and documented.

An alternative governance model that we are aware of is for the scheme which has a sole corporate trustee to also have a separate governance committee of lay members who themselves are not trustees and may not wish to be.

Decisions made by trustee boards are likely to be taken on the basis of the position taken by its professional trustee, should the scheme have one. However, a governance committee can be helpful in that its members can be the holders of valuable knowledge about the employer and the scheme.

Another measure which could be introduced is a requirement for sole corporate trustee or professional trustees more generally, at the point of resignation, to provide a resignation letter which sets out the reason for their resignation and for the resignation letter to be lodged with TPR which would then be aware of any concerns.