

Draft standards for professional trustees

Muse Advisory response to consultation paper

2 March 2018

[Muse Advisory's response to the PTSWG consultation paper on draft standards for professional trustees of occupational pension schemes issued in December 2017.](#)

Muse Advisory is an independent consulting business founded in 2006 providing support to pension scheme trustees and sponsors who would benefit from the knowledge and insight of experienced professionals to review and enhance the governance and management of their pension arrangements.

Please note we have not repeated more detailed points already raised and taken on board by the PTSWG in the recent workshop at Sackers and SPP event, such as PI cover and points on Schedules 1 and 2.

Our overall comments

We applaud the PTSWG for taking this on and working through some of the initial judgement calls to articulate an achievable set of expectations for what is a non-homogenous group of trustees who fit (or may fit) the recently revised description of 'professional trustee'. It's not easy to design a 'one size fits all' initial standards policy for such a group without overdoing it – for the most part, what you have set out appears a good starting point.

Over time, we would expect to see a greater convergence between these base standards for professionals and TPR's guidance on the standards expected of all trustees (where relevant). Many points supporting the six standards that are set out in Schedule 1 are also relevant to non-professional trustees.

Similarly, the additional standards for professional trustees who act as chairs should apply to all trustee chairs. Clarity on the role and qualities of non-professional Chairs, together with guidance on trustee tenure and succession planning would help improve Trustee governance. 'Raising all boats' should start with Chairs, particularly given that DB Chairs statements are also to be required, which we strongly support.

As accreditation and experience evolves for the professional group, their required standards might then become more demanding over time, given the continuing change and complexity in pensions.

In relation to the standards, a professional trustee (when employed as such) ought to be able to maximise impartiality and minimise the potential for a conflict of interest through complete independence from the sponsoring employer and any other services their firm may otherwise seek to offer. To do otherwise may lead to unsatisfactory compromises when problems arise. This standard should particularly apply to professional trustee chairs.

Professional trustee chair standards should include more on the appointment, managing, better use of and oversight of providers/ advisers. This can be extended further to ensuring their trustee board receives the appropriate information and advice to make decisions, recognising that parking a decision is a decision not to change right now.

Notwithstanding, there are some unintended consequences that the industry will need to watch out for in a trend towards higher standards (and penalties), and in designing accreditation:

- Whilst we understand the position the industry has adopted, a higher standard with higher penalties applying to professional trustees could fly in the face of the joint-and-several liability of trustees and informed collective trustee board decision making, if it serves to increase reliance on the professional.
- Higher standards may also drive some increase in cost for individual professional trustees. This may deter employers from continuing with or appointing a professional, yet such schemes may particularly benefit from such skills and experience.
- This initiative may (or should) mean that professionals carry out more due diligence before accepting an appointment, to understand the professional risks they are taking on, and what may be demanded of them. This may lead to fewer good candidates for very challenging roles – where such people are needed. How else can TPR support individuals going in to such situations, for example viz-a-viz the employer's duties?

Finally, and importantly, there will be individuals who do not *intend* to be professional trustees, but who have the attributes needed – such as experienced NEDs or Chairs from corporate or other backgrounds. More thought needs to be given in the TPR description for professionals and in the accreditation approach, since many of these individuals would ideally contribute their skills and time in trustee roles and not be scared off. They often bring very useful board skills and corporate transaction experience, with an ability to help pension trustee boards focus on what is important and to make decisions more effectively. Boards will be much weaker without such talent.

The accreditation system needs to be properly funded and it must be robust, as professionally accredited trustees will be in the spotlight when there are scheme crises, public failures or TPR naming-and-shaming. At the start there will likely be a need for core seed funding, alongside a realistic membership fee set at a level similar to those for other professional services bodies such as accountants or lawyers.

Consultation questions

1. To what extent do the proposed standards make clear the higher standards expected of professional trustees?

The six standards set out reflect what every trustee should be able to demonstrate as an effective board member for the scheme they serve and represent a base level of standards for professional trustees.

There is another important aspect to work in to the standards; role modelling and mentoring. Could these words be more visible please either in the text around the standards, or in the numbered points in the Appendix.

Over time the standards expected should be moving upwards as the market (hopefully) self-regulates.

These could be articulated by TPR in the next phase of the 21st Century campaign and made more visible to members and to employers – possibly via introduction of Chairs statements for DB as well as for DC.

2. What impact do you expect adherence to the standards will have on improving the quality of professional trustees?

The standards are largely aimed at the part of the 'professional' market outwith the well-established corporate trustee firms, as expectations set out in the consultation would be de minimis for such firms.

It would be helpful for the PTSWG to outline how each standard (or a combination) is expected to push back against poor practice – that phrase is used in PTSWG's introduction, but not explored further. And how each standard looks when it is done well – examples of good practice.

Being more specific about common problems to address among professional trustees could be a helpful wake up call to those who are on the wrong side of this practice line – assuming they read the guidance.

We anticipate the professional trustee description and standards will need to evolve as such distinctions become more apparent. So that 'professional trustee' means what the prudent man of business expects.

3. What impact do you expect this will have on trusteeship generally?

As above.

4. What are your views on the proposed interim approach for professional trustees to comply or explain against the standards until an accreditation framework is established?

As a first step, comply or explain could be voluntarily introduced into both TPR and annual member reporting on the professional trustee roles, as accreditation may take say 18-24 months to fully bring in.

Specific 'comply or explain' on CPD, management of conflicts of interest, sufficiency of insurance arrangements, adequacy of systems and controls, with relevant comments on peer review, continuity of service, appointment and (any) re-tendering arrangements would serve to underpin what will likely become more boilerplate 'comply or explain' prose on how the qualitative standards are met.

Once an accreditation system is in place, we would see benefits in an annual 'comply or explain' disclosure continuing to be made, as a visible form of accountability to members and the employer.

As a direction of travel, the trustee board should comment on overall trustee standards and effectiveness via annual Chairs statements, with the specific disclosures on professional trustees forming part of it.

This could tie in to the Chair's update on board skills and training, board diversity, trustee appraisal and board evaluation, board succession, appointments and retirements, and trustee remuneration policy.

Credence should be given for those trustee boards that seek external board and trustee assessment from time to time as part of a strategic rolling programme of improvement.

5. What is your preferred accreditation structure?

This is important and needs to be set in the context of a longer-term plan for professional trusteeship. What might the professional segment look like in 3 to 5 years' time? How can we best fashion a sensible system for existing and future professional trustees that recognises growth in areas such as sole trusteeship, and possibly in trustee practice networks for professionals operating alone or in small firms? Are a lot more professional trustees needed - where will they come from and what support will they need? Is scheme (or scheme governance) consolidation for smaller trusts a real likelihood, in some form in the future?

We believe the accreditation framework needs a mix of the following elements:

- Membership of an approved body for a sensible annual fee (say £500 pa/ similar to other professions)
- The approved membership body/ bodies being properly funded and resourced

- Clarity on whether it is the membership body that will oversee accreditation, or e.g. TPR – and the funding to enable this
- Disclosure to TPR on the scheme annual return – professional status, meets standards, remains accredited
- TPR approved professional trustees register – accredited corporate trustees service firms and accredited individuals, and whether approved trustees for TPR appointments
- Practising certificate completed online – continuing self -certification (with evidence) on the key criteria with personal declaration (which could be sampled for adherence)
- Online CPD record and personal declaration (again with evidence which could be sampled) – with a requirement to spend a proportion of time outside a person’s specialist area of interest such as investment
- Accreditation of corporate trustee firms (and any umbrella trustee networks) based on their externally audited process which then covers the practice evidence below for their client directors
- Practice evidence of scheme and service history completed online for individual professional trustees, skills and experience, sufficiency of access to insurance cover, professional trustee systems and controls, peer and service continuity arrangements
- Qualitative interview by an approved Panel for new individual professional trustees, and others currently serving in that capacity who have weaker practice evidence
- In time, accessible self-study units for CPD purposes (beyond Toolkit) with an approved examination pathway for those who want to go that route (some will), divided into units (the current APT is not fit for purpose, and should not be a basis to start from!)
- Accreditation of corporate trustee firms and umbrella networks based on (existing) audit process.

The membership body will ideally over time offer or provide services for members such as access to:

- Professional network and development sessions and events
- Peer panel and technical question resource
- Mentoring for newer professionals
- Links to cost effective insurance cover, professional trustee systems, other relevant services.

Some of these could generate additional income to support funding for the body.

6. What do you think would be appropriate evidence that a professional trustee meets each of the six standards?

We anticipate the PTSWG members have plenty of material on what good looks like (e.g. for the practising members based on their own firms’ expectations of new hires), which could be collated into bullet point form.

As mentioned above, we think it is important that examples of poor practice are also set out – to raise awareness. The PTSWG will have discussed such examples in distilling the six core standards.

7. N/A - for professional trustees

8. How effective are the conflicts of interest examples in demonstrating how professional trustees might look to manage any actual or perceived conflict of interest? What other examples could be included?

We find them ‘OK as far as they go’ as they are fairly basic. The main conflict is the one with who appoints and pays the professional – normally the Employer. A case study on this would be useful.

A case study on how to deal with poor performance by a non-professional Chair, in a scheme with challenges, would be helpful. This can be a stressful situation for a professional trustee to deal with.

9. Do you have any further comments on how to improve standards of trusteeship generally and specifically to (sic) professional trustees?

As above. We will continue to comment through our website, 21st Century portal, Musings and so on. In particular, standards of trusteeship could be improved through board assessment and external reviews similar to that carried out in the corporate world i.e. on a cyclical basis.

10. Do you have any other comments/ suggestions in relation to the standards?

We strongly support the development of an informative buyer's guide for Employers (and Trustee Boards as some have power to appoint), as discussed at the recent PTSWG workshop at Sackers.

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