

**For the attention of:**

Mark Potter  
Regulatory Policy Directorate  
The Pensions Regulator  
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Brighton  
BN1 4DW

29 August 2019

Dear Mark,

**Muse Advisory's response to the Consultation on Trusteeship and Governance, July 2019**

In terms of confidentiality:

Muse Advisory can be listed as a respondent and our response need not remain confidential.

Muse Advisory is generally supportive of TPR:

- recognising that scheme size and resources have an impact on quality of trustees and governance;
- clarifying minimum expectations for good trusteeship and governance for schemes to meet, rather than a one size fits all approach;
- focusing in future on overall standard setting and communication, and with a single Code of Practice;
- relying more on the industry to supply relevant education, case studies, practical training (via industry bodies and practitioner firms), although there will be funding and cost implications to resolve; and
- encouraging consolidation for DC schemes where governance, likely member outcomes are poor.

We have made several comments below encouraging TPR to update guidance or engage on relevant aspects of Trustee governance with employers, in aspects where employer engagement will help the scheme Trustee be effective, with the greater likelihood of then also reducing Scheme risks and costs to the employer over time. We have seen good and poor examples of engagement, it does have an impact on the quality of Trustee governance, skills and resources.

## 1.1 Areas to add, clarify in 21<sup>st</sup> Century Trusteeship standards (Question 1)

The standards need to be refreshed and updated for other areas that have developed since the main campaign was run in 2018 (with the Toolkit similarly updated).

We consider these are the main items currently 'missing' or needing more emphasis in the base 21<sup>st</sup> Century Trusteeship standards for trustee boards.

- a. **Trustee Chair role** - the significance of the Trustee Chair's leadership role for the Trustee and the board, what is expected in the role, including soft chairing skills. There is useful guidance in the professional trusteeship standards and in existing DC scheme guidance – the main tenets need to be brought in to the base Trusteeship standards.

think independently ...act effectively

- b. Emphasis on the need for **an agreed Trustee strategy with objectives and milestones**, with consideration **of main risks** that could knock objectives off course, for the trustee board to monitor and seek to mitigate. Currently the Strategy section of the standards talks mainly of the need for a business plan, which many trustee boards would view as a one year (or at most) three year planning tool for trustee board business. The strategic and business plans need to be closely joined up so that progress is being made on agreed objectives and risk mitigations.
- c. **Engagement on appointments** (skills, diversity, succession needs) – with employers, and with members, nominating bodies. Trustee boards can be encouraged to engage around the skills, time commitment etc needed from their new appointees, including member nominated, to help the board ensure it has the capabilities and capacity needed. Equally there are then expectations of employers, nominating bodies, likewise to engage, which TPR can also point to in its guidance and its own engagement with employers.
- d. The potential for **trustees drawn from the deferred membership** (we sometimes see this for employer nominated and also for member nominated), depending on conflicts, availability and (possibly) remuneration for the role. Deferreds are an important member group in many schemes.
- e. **Term of office and tenure** - agreed term of office, maximum tenure/ number of terms for all trustees. Tenure standards set by TPR on a 'comply or explain' basis e.g. 3 or 4 year term for all, a maximum service period of 3 terms for new appointees. Tenure limit applied sensibly for current trustees. So as to refresh the board over time, with planning for skills and succession.
- f. **A simple to understand Trustee remuneration policy** - increasingly required to reflect trends in the incidence of trustee remuneration, and now with the growing number of professional trustees, (and possibly deferred members serving as trustees). It as part of the governance framework e.g. for IORP II.
- g. We anticipate TPR will put out a consultation in time on the planned modular **Code of Practice**, which we will respond to. Reflecting such Codes for other UK regulated sectors outside Pensions, it needs to be kept short in clear sections to focus on some base requirements that are expected for all Scheme Trustees, in a first iteration. Where a Code topic is not mandatory, then encourage trustees to consider and document what is relevant for the scheme Trustee, avoiding boilerplate wording.

## 1.2 TKU, CPD, TPR role, industry resources (Questions 2-6)

Overall, we think too much **nudging from TPR** may have the unintended consequence of putting good people off from serving as trustees, restricting rather than enhancing the pool of suitable people for the future, whether lay or professional. For many lay trustees, particularly MNDs, this is an unremunerated and voluntary role which already involves significant commitment. Many trustee boards are already facing such recruitment challenges, which then means more reliance is being placed on fewer trustees.

Our main points in this section are:

- a. To refresh the **TPR Toolkit**: make the base level of knowledge required clearer, flag what has changed. Encourage and enable regular trustee use beyond induction e.g. so that it is easy to annually review 'what has changed', or take a 'refresher' check.
- b. Trustee boards should agree the amount and types of **trustee CPD** that are suitable for their non-professional trustees annually, then log how this is met. A minimum guideline (not a legislative requirement) for individual CPD may be reasonable (as a minimum after induction, perhaps 8-10 hours pa for simple scheme situations). In addition, whole trustee board training e.g. from advisers should also be encouraged as part of trustee meetings and agenda planning.

- c. **TPR should also encourage and engage with employers** on aspects to help trustee boards secure: the right commitment to time off and support for trustee work and training; greater interest in serving as a trustee to use or develop their skills, areas of knowledge and soft skills.
- d. We agree there should be higher TKU and CPD standards for **professional trustees**, with annual CPD, and for accreditation.
- e. We believe **accreditation** for lay/ non-professional trustees could be available as an option e.g. based on CPD and an updated Toolkit with more self-test questions in the modules.
- f. Equally for use as a lay trustee award (or basic level professional unit) to cement Toolkit knowledge, the existing **PMI Award** in Pension Trusteeship should be updated, and reflect the Trusteeship standards.
- g. **More central funding** will need to be made available to support development of good quality trusteeship resources outwith TPR e.g. for industry guidance, development of training, case studies, online learning tools. Charges to trustee boards need to be kept proportionate and training aids need to be practical and relevant.
- h. However those wishing to serve as **professional trustees** could reasonably expect to incur some cost linked to professional exams and ongoing registration, as is usually the case in other areas of financial and professional services registration and accreditation.

### 1.3 Scheme governance structures for effective decision-making (Q7-14)

These areas of the consultation reflect newer areas of debate and trustee practice, so our responses focus on aspects that we believe are important to help move debate and practice forward, and recognise unintended consequences that could arise in requirements being too proscriptive.

#### Diversity (Questions 7, 8)

- a. **Do not create a general requirement to report on board diversity actions.** Start with engagement via the largest schemes where there is an informed dialogue via TPR supervision for individual schemes. Support the industry in developing case studies and practice e.g. on skills assessment, selection processes, decision making. See how well-governed boards address it, perhaps especially for open DC schemes where gender, ethnicity, age diversity among the trustees may be more relevant to their membership. This will help avoid boilerplate reporting, which serves no useful purpose.
- b. **TPR to support by engaging on trustee diversity with employers** – link to e.g. Hampton-Alexander for prime listed plc boards (although that focus on gender is only one aspect of ‘diversity’), to encourage engagement on how the trustee role can be positioned to attract more female/ younger/ BAME staff etc and as part of their development. Some aspects of diversity *might* be more relevant for open DC schemes than for closed legacy DB e.g. involvement of younger trustees and reflecting a changing membership base.
- c. **In our experience, trustee boards are often more diverse cognitively** (ie diversity for better decision making) than may first be apparent, where there are trustees from different backgrounds, job types, life experience, areas of interest. Good chairing, a decision framework to consider more angles, trustee-only time to discuss ways of working can bring more of this out. So encourage trustee boards to recognise and use the diversity they have available, as well as looking to increase it. Again, this is case study territory that industry practitioners are developing.

### Professional trustees (Question 9)

- a. **Do not make it mandatory for all boards to have a professional trustee.** This should at most be subject to comply or explain under a future Code, not a compulsory requirement. Apart from demand and supply, and cost issues, there are governance risks from putting too much reliance on a professional trustee which may in turn discourage others from contributing, that can become a self-fulfilling problem. Not all professional trustees will necessarily be 'that good', even with accreditation and CPD.
- b. **An unintended consequence of a greater focus on professional trustees is likely to be a loss of skilled independent trustees,** often serving as Chair. For many of these, becoming a professional or undergoing accreditation may not appeal yet increasingly with the current direction of travel employers may in future expect, or believe it 'safer', to appoint 'a professional'. It can also be the case that an independent, serving with a professional who brings technical pensions skills, would best meet the needs of a scheme board, involving higher 'cash' trusteeship fees but potentially leading to lower advisory and governance costs, better decision making and improved outcomes for members and also for employers.
- c. So whilst the trustee board and employer need to engage around this (as mentioned elsewhere in our response) **TPR needs to flag** the positive role an independent trustee can play in the make-up of an effective board. For some schemes if new nominees are lacking for appointments, an independent may well fill the gap, and at a worthwhile cost.
- d. **Professional trustees will need to be accredited** to be credible in that role (as any other FS professional) – a time limit of say 3 years could be set to achieve this, once accreditation is fully launched. See also points linked to other areas of the consultation for professionals, their CPD and accreditation in 1.2 above.
- e. **An appointed professional trustee's** objectives, performance, remuneration need to be agreed (employer/ trustee board/ professional engage on this), with annual feedback and formal review at term/ before reappointed. Similarly, for independent trustees.

### Sole trustees (Questions 10 to 13)

We express views based on our knowledge of the way sole trusteeships tend to operate. We anticipate you will glean practitioner views on these questions from the experienced corporate trustee firms providing sole trustee services and from employers who have appointed a sole trustee.

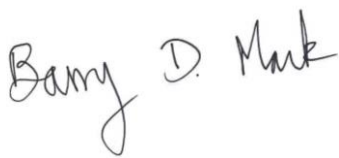
- a. We have heard anecdotally some similar concerns to those raised by TPR. This is an area we expect **TPR to also be engaging on with employers and with corporate trustee firms** to ensure employers are appointing an experienced sole trustee firm with individuals who have the trusteeship skills and experience the scheme needs, via a transparent and well governed process.
- b. **Individuals representing a firm in a sole trustee appointment should be accredited** professional trustees, once such accreditation is rolled out. In time a further level of accreditation for sole trusteeship work may be needed, if the market expands in the way that some expect.
- c. In terms of **TPR's engagement with the employer**, it is vital the employer also ensures sufficient supporting resources (or funding for them if outsourced) are made available for a sole trustee to operate effectively. There may be a tendency to under-estimate or turn a blind eye to the amount of work involved in running or winding up the scheme once it is 'off the employer's hands'.
- d. A **sole trustee should have another colleague known to the employer** to undertake review, act as a sounding board and also attend meetings or calls when needed. In our experience, involving at least two trustees in a sole trusteeship appointment tends to be the arrangement in the main corporate professional trustee firms – a lead director representing the firm with roles for other named colleagues.

- e. **Requiring two people in a sole trustee for all decisions and meetings** is likely to be unnecessarily onerous and costly. Ways of working, meeting attendance, decision protocols need to be agreed and reflected in the sole trustee service contract and applied intelligently as new situations arise. It may not be appropriate or necessary to field two people where business concerns BAU matters or where diaries make it problematic for urgent business within the attending trustee's area of skill e.g. an investment matter. A file note could suffice, backed up by the meeting minutes.
- f. The questions on **services and advisory procurement by sole trustees** are for feedback from the corporate trustee firms with deep experience of providing sole trustee services. Depending on the pace and range of work required, there may be particular advisers better suited to the work to be done. In our overall experience, well run trustee boards will seek to use a well-governed procurement and selection process, regularly review, seek to improve value for money, and will market test and re- tender outsourced services on a cyclical basis or as needed. This is no different.
- g. However, the other side of the coin is that **employers do need to be prepared to pay/ fund** the necessary resources a sole trustee needs to ensure the scheme is being run, or being wound up, properly. An employer may under-estimate this, leaving a sole trustee firm to also cover the supporting work but for little extra fee. This needs to be addressed, in TPR's oversight and engagement with employers on the wider use of sole trusteeship.

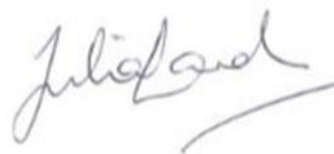
We have not made any comment on question 14 or the DC consolidation technical questions 15-19, but we support consolidation of small DC schemes where governance and outcomes remain poor.

We trust these comments are helpful in informing your work following the consultation.

Yours sincerely,



Barry Mack  
Director



Julia Land  
Senior Adviser