Punter Southall Governance Services

The future of trusteeship & governance consultation – PSGS response

September 2019

Overview

PSGS supports The Pensions Regulator (TPR) in its drive to raise the standards of pension trustee knowledge and understanding and wholeheartedly agrees requirements should be more onerous for professional trustees.

However, we feel further legislation is too heavy a solution as it would add additional governance costs onto schemes and employers and put off lay trustees from undertaking the trustee role. The worst possible result for defined benefit (DB) schemes is to bring in the over regulation that has blighted defined contribution (DC) schemes over the last few years.

Trustee knowledge and understanding (TKU)

TPR could quite easily monitor whether trustees have undertaken the Trustee Toolkit, for example. Checks against this could be done on a comply or explain basis. Ongoing learning could easily be captured in training logs and by building on the excellent Toolkit framework.

Most professional trustees have existing relevant pension/professional qualifications and/or significant experience working in the pensions industry that need to be properly recognised within the TKU framework. It isn’t helpful trying to achieve higher standards for professional trustees by imposing additional qualifications that provide no evidence of a higher level of TKU than completing the TPR Toolkit.

Governance structures for effective decision-making

We don’t agree with the mandatory appointment of professional trustees for all schemes. It wouldn’t be fair to those that are already very well governed and do not have a professional trustee. The focus should be to push poorly governed pension schemes to appoint a professional trustee, highlighting this isn’t an additional layer of cost. A good professional trustee will save time and expense by focusing advice in the right areas, improving governance and strategic thinking and delivering quicker, better decision making.

Forcing CPD requirements onto lay trustees will only push more schemes down the sole trustee route, which TPR also has some concerns with. Sole trusteeship isn’t the answer for all schemes but it has been very beneficial to many and especially those at the smaller end. We’d argue a sole trustee is more beneficial than consolidation for these schemes.

Having a close relationship with the employer in a sole trustee model is not necessarily a conflict. It can really help implement progressive strategy changes. Sole trusteeship also delivers efficient decision-making and conflict risks can be mitigated by using a team approach where all work and every decision taken is peer reviewed.

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

1. Do you agree that the expectations set out in the 21st century trusteeship campaign (see Annex 1 of the consultation) is a good starting point for defining a minimum standard for trustee knowledge in the code? Is there anything else that should be added that would be necessary for all trustees to know?

Yes

The 21st century trusteeship standards are a good starting point. However, some of the requirements for defined benefit (DB) and defined contribution (DC) schemes are very different. Governance requirements for DC schemes such as 'value for members' should be clearly defined as relevant for DC trustees.

2. Should there be legislative change for trustees to demonstrate how they have acquired a minimum level of TKU, for example through training or qualification?

No

Legislation feels to be too heavy a solution. The Pensions Regulator (TPR) could, however, quite easily monitor whether trustees have undertaken the TPR toolkit, for example. Checks against this could be done on a comply or explain basis.

The minimum level of TKU should be higher for professional trustees than for lay trustees. TKU can be achieved in many forms and should not be limited to purely an examination.

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?

No

Again, legislation is too heavy a solution. It would add additional governance costs onto schemes and employers and put off lay trustees from undertaking the trustee role. Forcing CPD requirements onto lay trustees will only push more schemes down the sole trustee route, which TPR also has some concerns with.

If minimum levels of ongoing learning are implemented, they should be higher for professional trustees than for lay trustees. This could easily be captured in training logs and by building on the already excellent framework of the Trustee Toolkit ie complete the Toolkit or explain why not.

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?

Yes

Absolutely. There should be higher TKU expectations for professional trustees. What's important, however, is most professional trustees have existing relevant pension/professional qualifications and/or significant experience working in the pensions industry that need to be properly recognised within the TKU framework.

It is not helpful trying to achieve higher TKU standards for professional trustees by imposing additional qualifications such as the PMI Award in Pension Trusteeship which provides no evidence of a higher level of TKU than completing the TPR toolkit. This qualification does not even have any accredited learning material.

Relevant pension and professional qualifications could be accredited/accepted by TPR as appropriate for pension trusteeship. Evidencing ongoing CPD for such relevant qualifications would then also evidence compliance with a higher standard for ongoing TKU.

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?

Our response is a qualified yes. TPR should focus on establishing, setting and communicating standards and leave delivery of education principally to the industry (with the exception of the excellent work of the Trustee Toolkit).

However, the main concern appears to be poor practice in smaller schemes that have small governance budgets and where adviser fees are kept to a minimum. The focus should be on how to improve governance in these schemes without adding to the governance burden for others that are already being governed appropriately. The problem with simply establishing and setting standards is the trustees running poorly governed schemes will not even be aware of the information TPR is pushing out.

The worst possible result for DB schemes is to bring in the over regulation that has blighted DC schemes over the last few years. The DC Chair's statement has resulted in significantly higher advisory fees for trust-based DC schemes and led to significant numbers being wound up with members transferred to contract-based schemes (which have much weaker governance standards) or DC Master Trusts. TPR might be happy with this consolidation for DC schemes. However, consolidation isn't the answer to the problem for DB schemes as they are far too complex.

There is a base level of fees for a DB scheme that cannot be reduced by consolidating into a Master Trust - each scheme requires a three yearly actuarial valuation, all need separate annual accounts, investment strategies are all different depending on strength of employer covenant, funding position, long term funding target etc. These fees can all be managed appropriately in a standalone trust and we work with a number of small schemes (under £10 million in assets) that would not benefit with lower fees in a Master Trust. The major downside with consolidation is being tied into one set of advisers and administrators that support the whole trust. What can you do if the administration service becomes poor? Nothing!

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.

CPD is vital to trustees in carrying out their role. This is normally monitored on a training record per pension scheme. In our preference to avoid additional legislation, setting minimum standards and enforcing them through a properly monitored comply or explain process seems appropriate.

Perhaps part of the answer is a closer engagement and joint initiatives between TPR and the industry and/or professional bodies. Ensuring all trustees are aware of the standards could/should be a formal part of the role of each appointed adviser, such as the Scheme Actuary, as well as the Scheme Secretary and (where appointed) the professional trustee. Establishing a TPR accreditation/self-accreditation scheme for training may also help. Industry could then deliver training with the level of formal CPD hours approved under one 'TPR TKU' brand.

Part 2: Scheme governance structures for effective decision-making

7. Should there be a requirement for UK pension schemes to report to the regulator on what actions they are taking to ensure diversity on their boards? Should such a requirement be limited to schemes above a certain size? How should such a report be made to us?

No

Like any board, a trustee board will thrive with proper diversity and inclusivity. However, in our experience, it is difficult enough finding committed trustees to sit on the pension scheme board.

TPR's focus should generally be on increasing the level of TKU, encouraging boards to understand the skills and knowledge mix their board both needs and has (itself an important part of diversity) and increasing pressure on boards to review their effectiveness.

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?

Yes

Industry has an important role in providing education at no cost to a pipeline of lay trustees to avoid obstacles in achieving this outcome. However, it is less easy to see how this can be promoted to prospective trustees. Trustees also become more effective with experience and benefit from going through multiple valuations, investment strategy reviews etc. Over-rapid turnover of trustees is therefore unhelpful but it's also true that it adds to the aging profile of lay trustees. It may be harder to attract younger candidates for some lay trustee positions as fewer will feel any form of connection with DB schemes as they are less likely to be members of such schemes. Placing greater emphasis on the skills gained as a trustee may be a more successful approach.

Some professional trustee firms offer career progression for junior staff from diverse backgrounds. This experience may make these firms more able to 'get the message out' to more diverse lay trustee candidates.

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

No

We understand why the mandatory appointment of professional trustees would be helpful for TPR to increase the quality of governance of pension schemes in general. However, this would not be fair to those existing schemes that are very well governed and do not have a professional trustee (and for whom engaging one may not currently be beneficial).

We also believe the standard of professional trustees needs to be improved before any such measure can be properly considered.

The focus should be to push poorly governed schemes to appoint a professional trustee and to highlight it isn't correct a professional trustee is an additional layer of cost. A good professional trustee will save time and expense by focusing advice in the right areas, improving governance and strategic thinking and delivering quicker, better decision making.

Perhaps the appointment of a professional trustee could be offered as an alternative to meeting compulsory minimum TKU requirements for lay trustees, or TPR could appoint a professional in cases where the minimum standards are not met.

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

No

We understand a sole trustee is not the answer for all schemes but, from our experience, it has been very beneficial to many schemes and especially those at the smaller end of the market. We would argue a sole trustee is more beneficial than consolidation for these schemes.

You have not asked for examples of good outcomes, but we think it is important you are aware of them so the focus moves from seeing sole trusteeship as 'bad'. Sole trusteeships have helped build closer relationships with the key decision makers. Instead of using adviser budgets to train lay trustees in matters such as actuarial valuations, investments strategies and funding risks, we can spend that time and money on training the key decision makers at the sponsor. Once these individuals fully understand the risks the scheme faces, it is much easier to work with them to agree an investment and funding strategy that is appropriate for all.

A recent meeting with the CFO of an overseas parent company resulted in a complete change in the CFO's understanding and a shift in his view from wanting to consider a higher risk investment strategy to accepting the trustee's more balanced risk strategy and discussing higher contributions to help reduce the risks further in the short to medium term. This demonstrated having a close relationship with the employer in a sole trustee model is not necessarily a conflict. It can really help implement progressive strategy changes.

The other major advantage of sole professional trusteeship is efficiency of decision making. A decision that could be taken immediately (e.g. whether to follow advice to invest in a LDI strategy) can take months or longer where lay trustees have to be educated, or personnel changes, requiring the process to be restarted.

The word 'sole' does not really help matters as it can lead to the presumption that only one person is involved. For a good corporate trustee firm, this is most definitely not the case. At least two experienced trustees are included in the team for each of our sole trustee appointments, along with experienced trustee support staff. One person is not doing work, dealing with the employer and taking decisions in isolation. Work is carried out by the team and, as is the case with every decision taken, is peer reviewed. It may be our formal process but is an excellent way to mitigate risks.

11. Should the governance standards for sole trustees be strengthened, for example by requiring two or more trustees to attend trustee meetings? Are there any circumstances where this would not be appropriate or necessary?

The whole idea of a sole trustee appointment is that it removes the rigid requirement of quarterly trustee meetings and needing to wait for them to take any decisions. Trusteeship is the day job of any professional trustee and at a firm of professional trustees we are working with our colleagues every day. This means we can make quicker decisions on sole trustee cases outside of trustee meetings with the appropriate peer review. It is this peer review process that should be TPR's focus.

We typically use trustee meetings for two main purposes: liaison with the employer (to update them on pensions matters, discuss strategic matters, provide them with some training/access to our advisers' views so that we all understand the funding risks and what options are available) and to minute compliance with governance requirements (review of scheme policies, business plan and risk register). Decision making doesn't generally happen at these meetings.

As a trustee firm on The Pension Regulator's register we have peer review processes that are independently audited. This can be used as appropriate evidence that one individual is not making all the decisions on sole trustee cases.

12. How do corporate professional trustee organisations manage potential conflicts of interest in relation to procurement of services?

We do not have preferred suppliers. Part of our AAF internal controls sets out a tender process for adviser procurement. This includes specific principles regarding conflicts that must be adhered to, such as not appointing another Group company where we act as trustee, not entering into or engaging in reciprocal arrangements and that adviser must provide best practice advice in our client's interest.

The Pensions Regulator should, as part of the Trustee Register it holds, seek greater assurances on these points.

13. How do sole professional trustee organisations with preferred suppliers ensure that pension schemes get value for savers? Do they run competitive tenders for services? Are regular performance reviews conducted?

We do not have preferred suppliers and do not think having them is appropriate. How can you be sure you're finding the best, most appropriate solution for your client?

14. What are the pros and cons of the different types of corporate trustee model that currently operate in the occupational pensions landscape? Are there are certain circumstances where a particular model would not be appropriate?

For all sole trustee cases and, indeed, for us in general, we believe a team-based model using permanently employed staff and underpinned by formal AAF audited procedures is essential. With this approach, professional trustees work in the same offices so can discuss decisions to be made on their schemes promptly. There also needs to be sufficient cover so that matters aren't delayed when individuals are on leave and that cover needs to be familiar with the scheme in question. That's why the dedicated client team model works so well.

We think this is a better approach than the 'franchise' type model where a collection of individuals benefit from umbrella insurance cover but have limited collaboration or peer review on cases and work with minimal support.

Part 3: DC scheme consolidation and barriers to winding-up for schemes with guarantees

15. Do respondents have any other solutions for winding up schemes with guarantees without detriment to savers?

Yes

Novation of assets to an insurer counterparty is a solution to avoiding loss of guarantees on wind up on encashment.

16. Would it be helpful for TPR to provide guidance on the factors to be considered when winding up schemes with guarantees?

No

Experienced investment consultants already give such advice.

17. Are there any factors that respondents feel must be considered when winding up schemes with guarantees?

Yes

Trustees need innovative investment advice.

18. Do respondents have a view as to whether the costs involved in winding up a scheme with guarantees would be affordable for small and micro schemes?

Yes

Costs need to be weighed up together with the terms of the receiving scheme. Investment advice can mitigate the loss of guarantees by negotiation. Trustees looking to serve their members well will be influenced by the overall outcome for each member with guarantees.

19. Do respondents have a view regarding the loss of trustee oversight if benefits are assigned to individual savers?

Yes

Ultimately members should have a keen interest in their pension savings, but we know they do not. If a poor savings vehicle is assigned to a member then they are in all likelihood going to be locked into that poor vehicle until they retire.

Trustees do have a role, but members would be better served if legislation could be better focused on outcomes rather than, for example, minor DC Chair statements.

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