

The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

24 September 2019  
Via email

Dear Sir/Madam,

### **Future of trusteeship and governance consultation**

On behalf of The Chartered Governance Institute (the Institute) I am pleased to provide feedback on the future of trusteeship and governance consultation.

The Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

The Institute has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables The Institute to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our wealth of expertise and experience has informed our response.

### **General comments**

As in other sectors, the drive for better, more professional governance is growing and is being driven by a number of factors, although regulatory pressure is probably the most effective in terms of the speed in which developments are made. As a professional body promoting good governance across all the sectors, the Institute welcomes all reasonable attempts to drive up standards.



Improving standards of board performance and governance, however, can have an adverse impact on those interested, willing and able to become a member of any board, including a pension trustee. Due consideration therefore has to be given to the impact on any efforts to increase trustee take up, diversity, representational spread and competence. A solution which adds to the responsibilities, but sees a drop in those willing to be a trustee, is unlikely to generate widespread success.

It is imperative that the proposals within this consultation balance the potential benefits against any likely adverse impacts, some of which can be easily identified from the experience of other sectors. Knowing, and then accepting, the pitfalls of the final recommendations must be articulated openly with actions identified to mitigate the worst side-effects.

### Specific questions

**Q1. Do you agree that the expectations set out in the 21<sup>st</sup> century trusteeship campaign 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?**

Minimum standards set out on the code are a good place to start, but could benefit from additional thinking around how the trustees can:

- demonstrate effectiveness, both collectively and individually;
- perform their duties in line with accepted standards of stewardship (akin to the Nolan Principles); and
- welcome reasonable challenge from scheme members regarding the use of the powers of trustees and the decisions made.

**Q2. Should there be legislative change for trustees to demonstrate how they have acquired a minimum level of TKU, for example through training or qualification?**

It is noted that many schemes, and their trustees, undertake formal opportunities to improve trustee knowledge and understanding and general scheme governance. This can be achieved via the regulators' training and development resources or through organisations, such as the PMI's, training programme.

Mandatory training might not be a panacea for improving scheme governance, though it is likely to have a positive impact on some individual trustees and schemes. A better inducement to improve behaviours and standards might be to highlight the benefits to scheme members, trustees and employers of good governance. Re-framing discussions around good governance as being a business enabler and facilitating the fulfilment of trustee duties rather than inadvertently promoting governance as 'red tape' or unnecessary bureaucracy could be helpful in demonstrating benefits to all sizes of scheme not just large ones.



Regulatory returns with specific questions about trustee induction and development programmes, combined with external reviews, could be another way the regulator can nudge schemes to adopt better governance without recourse to minimum statutory requirements. The findings of any internal and external reviews should be widely publicised for stakeholders to assess.

Finally, the appointment of a suitably qualified and experienced governance professional to support all size and type of pension scheme is likely to be a more cost effective way of improving the standards of scheme governance and trustee effectiveness. An in-house or contracted governance professional will be able to identify and facilitate ongoing training and development needs specific to the scheme and draw on experience across the sector to inform and drive performance and compliance.

**Q3. Should there be 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?**

As detailed above, there may be other options available that are more effective at driving standards up which could be tried before reverting to mandatory training and development.

If mandatory CPD is introduced there should be clear expectations about what constitutes CPD and how the trustee is to structure their development in order to address their particular areas of weakness or identified areas of improvement for the scheme as a whole and this should be on the basis of training and development outcomes rather than a number of hours attended. Trustee development plans should be publicly reported for each scheme.

**Q4. 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, there should be higher expectations of professional or paid trustees of pension schemes. In other sectors, if the situation arose where trustees were facing court proceedings the court would be expected to hold the professional or paid trustee to a higher standard than lay or voluntary trustees. A similar expectation is reasonable for pension trustees.

Where higher standards are introduced their promotion and monitoring should be more prominently reported by both schemes and the regulator.

**Q5. 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?**

Clearly articulating minimum standards could be helpful, especially where those requirements are staggered to meet the risks associated with schemes of different sizes and complexity. This is an



approach adopted in other sectors, via governance codes, which has had some success in raising standards for those organisations and individuals already inclined to do so.

As mentioned previously, the introduction of a suitably qualified and experienced governance professional in every scheme to advise trustees and help ensure compliance could be one way to improve overall standards. While micro and small schemes will not require the full time attention of a governance professional they could be contracted to provide a minimum level of service that will assist trustees to meet regulatory requirements and provide in-house support to enhance governance arrangements.

**Q6. We would 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.**

In addition to scheme trustees being able to access the support of a governance professional, TPR could look again at its guidance. Guidance could be structured so that the essentials are upfront and followed by further more detailed guidance where necessary. This will enable the time poor or less conscientious trustee to read the essentials easily while more dedicated trustees can be signposted to more detailed information to improve their knowledge and understanding.

The basics could also be reinforced with each contact between trustee and regulator, via a suitably crafted communications strategy.

**Q7. 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?**

Experience in the charity sector has demonstrated that board diversity can be changed by introducing different techniques to recruiting trustees (please see <https://www.civilsociety.co.uk/uploads/assets/uploaded/3010c816-9b5f-473c-ba86f77ec9a8c50c.pdf>). It should therefore be conceivable for all pension schemes to be able to re-evaluate their approach to trustee recruitment in order to attract a more diverse talent pool without incurring undue expense. Reporting methods to improve board diversity should therefore not present a disproportionate obligation on schemes so long as the regulator's expectations are varied according to the size and complexity of schemes.

**Q8. 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, the sector has a role to play in finding internal solutions to improving the talent pipeline. The example provided above could be replicated for the pension sector.



**Q9. 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?**

Mandatory professional trustees is one approach that may raise standards in the medium to long term. In our view a better option would be the mandatory appointment of a governance professional. The governance professional, as an officer rather than a board member, will be better placed to act in the best interests of the pension scheme and deal with conflicts of interests and loyalty by advising trustees on their legal and ethical duties.

**Q10. 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?**

The Institute shares the regulator's concerns in this area of pension administration.

**Q11. 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?**

As in other sectors, perhaps there should be a minimum of three trustees present to ensure that a majority decision can be made, thereby avoiding split decisions or the use of chair's powers (unless conflicts of interests or loyalty require the absence of one of the trustees).

**Q12. How do corporate professional trustee organisations manage potential conflicts of interest in relation to procurement of services?**

The Institute has no examples to share.

**Q13. 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?**

The Institute has no comment.

**Q14. What are the pros and cons of the different types of corporate trustee model that currently operate in the occupational pensions landscape? Are there certain circumstances where a particular model would not be appropriate?**

The Institute has no comment to make in response to these questions.



**Q15. Do respondents have any other solutions for winding up schemes with guarantees without detriment to savers?**

The Institute has no other suggestions to contribute to this proposal.

**Q16. Would it be helpful for TPR to provide guidance on the factors to be considered when winding up schemes with guarantees?**

For conscientious trustees the more information and guidance available the better. As suggested, a stepped approach may be best to meet the individual needs of trustees ranging from those requiring the fundamentals to those wishing to know more.

**Q17. Are there any factors that respondents feel must be considered when winding up schemes with guarantees?**

No comment.

**Q18. Do respondents have a view as to whether the costs involved in winding up a scheme with guarantees would be affordable for small or micro schemes?**

No comment.

**Q19. Do respondents have a view regarding the loss of trustee oversight if benefits are assigned to individual savers?**

Proposals to transfer schemes with poor governance to others that are better run should be balanced with the stated aims of the regulator for trustees to reflect the composition of the savers. A larger pool of funds and savers will make it increasingly difficult for trustees to be representative of the people whose interests they are meant to protect and promote.

I trust the above comments help with the development of any changes to pensions trusteeship and governance. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours faithfully,

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