Industry consultation

Future of trusteeship and governance

July 2019

Contents

Foreword

Our vision for the future of occupational pensions is one where all savers are in schemes that have excellent standards of governance that deliver good value. Over time we think this will mean having fewer, but better governed schemes in the market. This will be good for savers – they should benefit from more efficiently run pensions, with the right people in place to make better investment decisions.

We believe our proposals outlined in this consultation, alongside changes to the way that we regulate, will help make this vision a reality over the coming years.

We will seek to facilitate and encourage scheme consolidation as a way of supporting efficiency and closing the quality gap for schemes that don't meet the standards we expect. Trustees of underperforming schemes will need to consider whether they are able to offer value for members or whether savers are better provided for in larger schemes, which typically benefit from economies of scale. Authorised master trusts offer a route for consolidating defined contribution (DC) schemes, with Group Personal Pensions (GPPs) providing an alternative route for securing savers' benefits. We are working with the Department for Work and Pensions (DWP) to find a solution to support defined benefit (DB) consolidation, with discussions currently considering the shape of an authorisation and supervision regime for DB superfunds.

In terms of scheme governance in the future and encouraging opportunity for all groups consistent with our Public Sector Equality Duty[1], we are considering how to promote more diversity on boards, recognising that better decisions and good governance relies on a mix of skills, knowledge and different perspectives. This includes encouraging the make-up of the board to reflect the savers it represents.

As part of that mix, we are considering whether an accredited professional trustee should sit on every board. The forthcoming industry accreditation for professional trustees, based on the standards developed by the Professional Trustee Standards Working Group (PTSWG), aims to create greater consistency of standards in the market. Having a professional trustee on every board may also help to drive up standards of governance and administration in areas we are concerned about.

The evidence that the current system doesn't work for all is stark.

When we published our first consultation on 21st century trusteeship in 2016, there was a broad consensus across the pensions industry that good governance was key to ensuring positive outcomes for savers[2]. There was also a recognition that while there were a great deal of good governance practices in the occupational pension sector, there were sections of the industry that were not performing as well as others and more needed to be done.

1 Section 149 of the Equality Act 2010.

2 https://webarchive.nationalarchives.gov.uk/20170106081821tf_/http://www.thepensionsregulator.gov.uk/doc-library/closed-with-response.aspx

This led to our 21st century trusteeship campaign during 2017 and 2018, which served to make our expectations clearer. Stakeholder reaction was positive and there was broad support for simplified content, with a clearer focus on good governance behaviours.

Despite the wide reach of the campaign, there remains a subset of disengaged trustees that are either unable or unwilling to take action to improve scheme governance, particularly in relation to small and micro schemes. We see this pattern replicated across our research activities, including our 2018 thematic review on value for members and annual schemes surveys.

There are various reasons for this disengagement. Some trustees of small and micro schemes believe the standards don't apply to them, and for others the trustee role is largely 'symbolic' and peripheral to their main employed role. We know that poor governance is likely to lead to poorer outcomes for savers and we cannot allow badly run schemes to carry on putting their savers at a disadvantage.

Things need to change. We want all savers to have access to well-run schemes. The trustee model isn't broken but it does need to work better. This will require attention from TPR, employers, advisers, trustee representative bodies and trustees themselves.

All of this will not happen overnight, but we believe that the proposals and pursuit of the aspirations outlined in this consultation will help close the quality gap. This will mean savers have access to fewer, but better governed schemes in the future. We welcome your thoughts and comments on our proposals and how they might be implemented in the future.

David Fairs
Executive Director of Regulatory Policy, Analysis and Advice

Introduction

The boards of occupational pension schemes play a pivotal role in achieving good saver outcomes. Across all scheme types, they are responsible for managing £1.7 trillion of assets in respect of 45 million savers[3]. Running a scheme is becoming ever more demanding in an environment that is constantly changing and growing in complexity, where more savers than ever bear all the risks of providing for their retirement. Regulatory requirements are growing in complexity, with legislative change increasingly requiring trustees and pension managers to publicly account for their actions and decisions[4].

Effective trusteeship and good governance is the bedrock of any well-run scheme. It is essential for boards to have the right people that possess the right balance of knowledge and skills to deal with the needs of scheme savers. It is also important for boards to have the right structures and processes in place to enable effective and timely decisions to manage risks appropriately.

The government and the EU have sought to strengthen governance requirements of occupational pension schemes in recent years. In March 2018, the DWP published a white paper[5], which included proposals for strengthening the funding and governance of DB schemes. The EU has also introduced the second European Pensions Directive (IORP II[6]), which has been transposed into UK law. This places specific emphasis on establishing 'effective systems of scheme governance'.

In July 2016, we published a discussion paper[7] on how standards of trusteeship and scheme governance could be improved. Its purpose was to stimulate a debate within the industry on how to address the issues we saw in some schemes being able to meet the governance and administration standards we expect. There was broad consensus from lay and professional trustees that good governance is vital in ensuring schemes are well-run.

3 Note the value of total assets does not include public sector schemes as the majority do not hold assets in the same way other occupational pension schemes do. Also note the total number of 'savers' does not equate to the total number of individuals, as one individual can have multiple pensions.

4 For example, the introduction in April 2015 of the requirement on trustees of relevant schemes to produce a chair's statement containing certain prescribed information within seven months of the end of each scheme year and then, from April 2018, to publish certain information included in the chair's statement on a free of charge website.

5 https://www.gov.uk/government/publications/protecting-defined-benefit-pension-schemes

6 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L2341

7 https://webarchive.nationalarchives.gov.uk/20170106081821tf_/http://www.thepensionsregulator.gov.uk/doc-library/closed-with-response.aspx

We received widespread support at the time for our focus on driving up standards of scheme governance through targeted trustee communication and education. This culminated in our 21st century trusteeship campaign, which started in September 2017 and sought to make our expectations clearer by setting out what ‘good looks like’ as part of the fundamentals of good governance[8].

The 2016 discussion paper also explored whether professional trustees should be held to higher standards compared to lay trustees, given professional trustees act in the course of the business of being a trustee with no independent body regulating professional standards. Most respondents thought they should uphold higher standards. Industry responded by creating the PTSWG, which established a set of voluntary professional trustee standards[9] in March 2019. The PTSWG will also be looking to establish an accreditation framework in relation to those standards in the near future.

Since then, we have evaluated the impact our 21st century trusteeship campaign has had on improving the standards of trusteeship and governance in schemes. While most savers are now in schemes that take governance very seriously and have high standards, some are still not meeting the standards we expect.

We continue to see a strong correlation between scheme size and governance behaviours, with smaller schemes often associated with lower quality of governance and administration. We remain concerned that the poor performance of some smaller DC schemes leads to a disparity in saver outcomes, merely because of the size of scheme they belong to.

Our findings from the 21st century campaign and broader research – conducted by us and the wider industry – tells us more needs to be done to raise the standards of trusteeship and governance, particularly in small and micro schemes[10]. Providing clearer communications and education is not always enough to drive up standards, even when coupled with enforcement activity, and it increasingly calls for a new approach.

8 https://www.tpr.gov.uk/en/trustees/21st-century-trusteeship
9 https://www.tpr.gov.uk/en/trustees/professional-pension-trustee-standards
10 Small (12-99)/Micro (<12 members).

We want to ensure all savers participate in well-run schemes, with the right governance structures in place to support effective decision-making. This paper sets out our aspirations for further reforming our standards on trusteeship and governance, ensuring these continue to be appropriate for addressing the risks we see today and protecting the interests of savers in the future. They fall into three key areas and, unless otherwise stated, are relevant to trustees and pension managers across DC, DB and public service schemes:

- **Trustee knowledge and understanding, skills and ongoing learning and development:** We want to look further at whether those managing schemes have the right knowledge and understanding[11] and appropriate skills, and that these are kept up to date.
- **Scheme governance structures for effective decision-making:** We want to look at how boards could become more diverse, inclusive and be able to demonstrate that they have the right mix of skills, knowledge and understanding for running the scheme, including our aspiration to see an accredited professional trustee on every board in the future.
- **Driving DC scheme consolidation:**[12] Schemes that are unable to meet the standards of trusteeship and governance we expect will need to improve, face enforcement action or be actively encouraged to wind up. We are looking at how to remove barriers to consolidation, to ensure more savers have access to well-run schemes.

We are keen to hear views from industry to inform our thinking and next steps, and to consider what more can be done (including changes to the legislative framework) to ensure savers have access to better governed schemes in the future.

We welcome your views on the topics and questions raised in this paper and are keen to hear from those across industry, including from lay and professional trustees. We would also encourage professional advisers reading this consultation to share it with their peers and trustee clients so they can respond.

Please complete and return the questions fields at the end of this consultation by **Tuesday 24 September 2019** and send to: **futuretrusteeship@tpr.gov.uk**

11 Sections 247-249B of the Pensions Act 2004.

12 While some of broader principles of consolidation cut across DB and DC, this paper does not specifically consider DB consolidation or 'superfunds', which are currently being considered for legislation by the DWP. Further information can be found: https://www.thepensionsregulator.gov.uk/en/employers managing-a-scheme/transfer-your-db-scheme-to-a-superfund

Trustee landscape research and engagement

We have continued to carry out research to better understand the risks and barriers faced by trustees in meeting the standards we expect and have summarised the key areas of research in relation to trusteeship and governance below.

Annual scheme surveys

We continue to conduct and publish our annual surveys on DB and DC trust schemes, and on public service schemes[13] to understand how schemes are performing against the expectations set out in our codes of practice.

While our survey results show that most savers are in schemes that meet the standards we expect, this is mainly attributable to larger schemes and the increase in the number of savers in master trusts. However, the numbers of small and micro schemes meeting expectations continue to be persistently low across both DC and DB segments. This pattern is repeated in our latest DC schemes survey results, which have been published alongside this consultation.

For example, the results of our 2019 DC schemes survey shows that the trustees of just 1% of small schemes (12-99 savers), and less than one fifth of medium schemes (100-999 savers), are doing everything we believe is essential to assess and deliver value for savers. This includes trustees having good knowledge and understanding of the costs and charges paid by savers and carrying out an annual assessment of the value the scheme represents. We saw a similar picture in our 2018 DB schemes survey, which showed that smaller schemes tended to display poorer governance standards, with trustees placing less emphasis on assessing the fitness and propriety of new trustee board members.

13 https://www.tpr.gov.uk/en/document-library/research-and-analysis

21st century trusteeship campaign

Our 21st century campaign ran from September 2017 to September 2018 and its objective was to make our expectations clearer using targeted communications and education to help trustees understand the basics of good governance.

We launched a dedicated web page and issued monthly targeted emails to trustees, scheme managers and advisers of both DB and DC schemes, linking to monthly themes underpinning good governance. These emails served to exemplify behaviours linked to good governance and included case studies on how schemes delivered better value and outcomes for savers through better governance. Emails also directed trustees to additional learning material on our Trustee toolkit and assessment tools, including a risk matrix tool and business plan templates.

Feedback was positive, particularly from the advisory community, with broad support for simplified content and a clearer focus on steps for facilitating good governance behaviours[14]. However, the campaign only drove a relatively small number of trustees from being disengaged to engaged and we did not see significant improvement overall in levels of engagement, particularly in relation to trustees of small and micro DC schemes.

Thematic review – assessing value for members

We carried out a thematic review[15] during 2017-2018, which looked at how trustees of small and micro DC schemes assessed value for members[16]. Trustees of many DC occupational pension schemes are legally required to assess whether charges and transaction costs paid from saver funds provide good value and include findings in their annual chair's statement[17].

The thematic review was prompted by the findings of our 2017 DC schemes survey, which showed only a third of trustees of small and micro schemes engaged with our codes of practice and supporting guidance, indicating that they were unlikely to be aware of the standard of value for members assessment we expect[18]. Value for members underpins all areas of scheme management and was an important area for us to explore further.

Of the 68 chair's statements we reviewed, the majority provided inadequate or incomplete explanations of how the scheme's costs and charges represent good value for members and that many trustees did not understand the requirement to carry out a value for members assessment or had not carried out an assessment that met the standards set out in our DC code of practice and supporting guidance.

14 Both 2018 DB and DC schemes surveys included questions about the 21st century campaign: https://www.tpr.gov.uk/en/document-library/research-and-analysis

15 Thematic reviews allow us to conduct structured, time-bound and risk-focused assessments on important topics.

16 Value for member thematic review findings: https://www.tpr.gov.uk/en/about-us/how-we-regulate-and-enforce/thematic-reviews

17 The Occupational Pension Schemes (Charges and Governance) Regulations 2015 and the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

18 2017 DC schemes survey: https://www.tpr.gov.uk/en/document-library/research-and-analysis

Attitudes to winding up among small and micro dc schemes

In recognising the role of DC consolidation in ensuring savers have access to better governed schemes, we commissioned a piece of qualitative research in October 2018 to identify the perceived barriers to wind-up among trustees of small and micro DC schemes and to better understand, more generally, how these schemes are run.

While small and micro schemes are not homogenous and attitudes to wind-up varied, the research highlighted that the trustees of small and micro DC schemes tended to interact with us on a reactive basis and usually those interactions were limited to completing a scheme return. Small employers and trustees operating small and micro schemes tended to express a sense of personal obligation in running the scheme on behalf of employees and there was a sense of ‘if it isn’t broken, don’t fix it’ mind-set which may limit the active consideration of winding up.

The knowledge and understanding of wind-up process was varied among trustees, though there was a tendency to perceive this as a long-winded and laborious process due to gathering information, tracking down members and delayed by slow responses from providers and/or advisers.

These various research findings support the need to change our approach for driving up the standards of trusteeship and governance in schemes, particularly at the small/micro end of the scale. A further summary of the qualitative research findings on attitudes to winding-up are provided in Annex 2.

Driving compliance through supervision and enforcement

Supervision and enforcement continues to have an important role in the way we regulate the standards of trusteeship and governance.

In Autumn 2018 we launched, for the first time, one-to-one supervision for 25 of the biggest DC, DB and public service pension schemes.

One-to-one supervision involves regular and ongoing contact with trustees or managers and sponsoring employers of pension schemes depending on a range of criteria including size, risk and previous interactions with us. We will have regular meetings to review their progress and for example, may agree improvement plans to address concerns.

The number of schemes subject to supervision will grow in the next year or so, as we embed our new regulatory approach. We will build relationships with schemes whose size means they are strategically important regardless of whether they trigger our traditional risk indicators.

All schemes can expect a higher level of regulated activity more generally. For example, we will develop ‘regulatory initiatives’ to tackle particular risks identified as part of our intelligence and horizon-scanning approach. This will involve proactive contact with more schemes through calls, emails and letters.

We will analyse responses, and, if concerns are not properly addressed, schemes and sponsoring employers can expect an escalation in our approach and more intense regulatory activity. This might include, for example, face-to-face meetings to agree actions, issuing formal improvement notices or the use of enforcement powers. Where schemes continue to struggle to meet our expectations, we will encourage and support consolidation.

Over the next two years we expect to proactively drive up a range of specific governance and administration standards through a number of regulatory initiatives, including those on investment governance, record-keeping and prompt and accurate financial transactions. We will follow this with further initiatives on costs and charges, trustee knowledge and understanding, and public service scheme administration.

We will continue to oversee compliance with basic trustee and manager duties such as completion of scheme returns and production of chair's statements, taking enforcement action where appropriate. We will also continue to assess risks identified by whistleblowers and breach of law reports, which all help to inform and prioritise our interventions.

Key themes

Here, we consider some of the key themes emerging from our research and engagement and their implications for the future. For a complete overview of the findings, please refer to the reports listed on pages 8 to 11.

It is important to note that our findings are based on the accounts given by trustees and pension managers in relation to their successes and challenges. We did not, for example, seek to verify answers given. As such, the research findings should not be interpreted as a representation of levels of competence across the landscape. However, many of our findings are consistent with our other research and surveys on governance and administration, what we have heard from our engagement with the industry and our intelligence gathered from our ongoing involvement with schemes.

Trustee knowledge and understanding, skills and ongoing learning

Research findings

- The 2019 DC schemes survey shows that by size of DC scheme, most medium schemes, large schemes and master trusts met trustee knowledge and understanding (TKU) requirements. In comparison, just under a quarter of small and less than a fifth of micro schemes reported meeting the TKU requirements.
- Both DB and DC schemes surveys in 2018 asked questions about the 21st century campaign. Results showed that 58% of DB trustees and 48% of DC trustees assessed new trustee fitness and propriety. Most schemes used an external adviser or service provider (including a third-party administrator). However, only 34% of micro and 44% of small DC schemes reviewed provider performance.
- The most common reason across all scheme types for not meeting standards of 21st century trusteeship, was that schemes did not believe it was relevant to a scheme like theirs (eg they were too small). The proportion giving this reason ranged from 66% of those not having trustee training and development plans in place, to 68% of those not assessing the fitness and propriety of trustees.

See pages 8 to 11 for evidence base.

We are concerned by some of the gaps identified from our research as we believe effective stewardship and good governance depends on having the right people in place, with the right knowledge, skills and motivation.

Trustees and pension board members have a statutory duty[19] to ensure they have sufficient TKU of the law relating to pensions and trusts, as well as the principles relating to the funding of pension schemes and the investment of scheme assets. They are also required to be familiar with certain scheme documents including the trust deed and rules, the statement of investment principles and the statement of funding principles. Individuals new to the trustee role are generally given six months from the date of their appointment to get up to speed with the TKU requirements.

While we acknowledge that it is unrealistic, and even unnecessary, to expect each trustee and pension board member to know all topic areas in detail, it is important to ensure individual trustees have a level of knowledge and skills appropriate to perform their role effectively.

19 Section 247–249 of the Pensions Act 2004.

Under the legislative framework, the degree of TKU required of trustees must be appropriate to properly exercise the function of their role as a trustee[20]. For directors of a corporate trustee, they need to ensure that the level is appropriate to enable them to exercise the function in question[21]. Our TKU code of practice[22] and scoping guidance[23], sets out what we expect from trustees and pension board members in terms of the level of TKU they should possess.

We plan to revisit the TKU code and scoping guidance, given the priorities and focus of trustees will have changed since these were last reviewed in 2009. Under the second IORP II[24] and enabling legislation[25], trustees are required to establish and operate an effective system of governance[26]. We will be looking to review and revise our codes of practice to help trustees meet this new requirement, providing us with an opportunity to review TKU-related content and make sure it is simpler, clearer and easier for trustees to translate into good governance behaviours.

One way to do this could be to move away from a broad TKU syllabus as currently reflected in our TKU code and guidance, and towards setting competency-based standards in the code reflective of those covered in the 21st century campaign. We received positive feedback on the standards communicated through the campaign, and there was broad support for simplified content and a clearer focus on steps for facilitating good governance behaviours. A reminder of the 21st century standards are provided in Annex 1 for reference.

Our supervisory approach will mean that trustees will increasingly be expected to demonstrate how they meet TKU requirements – for example, through regulatory initiatives. This approach will involve proactive contact with more schemes through calls, emails and letters with a view to tackling specific risks identified as part of our intelligence and horizon-scanning approach.

20 Section 247(5) of the Pensions Act 2004.
21 Section 248(6) of the Pensions Act 2004.
22 Code of Practice 7 – Trustee Knowledge and Understanding (TKU): https://www.tpr.gov.uk/en/document-library/codes-of-practice/code-7-trustee-knowledge-and-understanding-(tku)
23 TKU scope guidance: https://www.tpr.gov.uk/en/document-library/regulatory-guidance/trustee-knowledge-and-understanding
24 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L2341
25 The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018.
26 Section 249A of the Pensions Act 2004.

We are keen to hear views on whether there should be a legislative requirement to demonstrate a minimum level of TKU – for example through relevant training or qualification, and whether this would have the desired effect of ensuring trustees have the necessary skills and knowledge to carry out their role. Professional trustees may find it easier to demonstrate appropriate levels of TKU through attaining industry accreditation.

Attaining an appropriate level of knowledge and skills is not a onetime event, and given the ever-changing regulatory environment, we believe all trustees should be able to demonstrate a minimum level of annual ongoing learning through formal Continuing Professional Development (CPD)-type training. Many pension scheme boards hold training days to learn about new developments, address potential knowledge and skills gaps or to refresh themselves on the basics. Large numbers of trustees also attend courses, lectures and conferences throughout the year. We would be interested to hear your views on what any annual minimum level of CPD-type training should be.

Many lay trustees will need to balance the responsibilities of their substantive employed role alongside their trustee role. Employers have a duty to afford trustees reasonable time off for performing trustee duties or undergoing training relevant to the trustee role[27]. It is also important that employers consider and address the potential impact of any paid-for performance or on-target bonuses attached to the employed role which could deter individuals from fully engaging in their trustee duties. Acknowledging the work of lay trustees when reviewing performance is one way of helping to strike the right balance and ensure individuals are not discouraged from performing the trustee role.

In revisiting our TKU code and scoping guidance, we could look to revise the TKU levels expected from professional trustees. We believe we should expect more from all professional trustees in terms of TKU levels (not just those gaining accreditation), given they typically act across multiple schemes of various type, sizes and complexity – compared to lay trustees who tend to act on a single scheme. This position is supported by the voluntary industry standards now in place for professional trustees, with accreditation expected to follow.

27 Section 58 of the Employment Rights Act 1996.

Click on any of the questions below to go to the response form at the end of this publication

- **Question 1: Do you agree that the expectations set out in the 21st century trusteeship campaign (Annex 1) 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?**
- **Question 2: Should there be legislative change for trustees to demonstrate how they have acquired a minimum level of TKU, for example through training or qualifications?**
- **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?**
- **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?**

How we will communicate with our regulated community

We have been thinking more about how we communicate and engage more generally with our regulated community, recognising that our audience is not a homogenous group and that individuals will have different priorities, needs and motivations depending on a number of factors such as time spent in their role and the type of scheme.

Traditionally, we have sought to educate trustees in our efforts to improve scheme governance and general compliance. Education was a key component of the 21st century trusteeship campaign and while reaction to the campaign was generally positive, we only saw a modest improvement in outcomes. Two-thirds of those taking action in response to campaign emails had visited our website (65%). More generally, subscriptions to our e-learning resource – the Trustee toolkit[28] – are generally high, with coverage extending to 84% of schemes and 74% of individual trustees, and 42% of trustees accessed the toolkit in 2018. This indicates that many trustees and pension managers are at least familiar with our educational material.

Where we did see a small improvement following the campaign, this tended to be from trustees that are motivated and periodically engage with educational content more generally as part of maintaining TKU. This audience may also already be accessing education from other sources such as advisers and/or commercial education providers.

28 The Trustee toolkit (TTK) is a free, online learning programme to help trustees meet the minimum level of knowledge and understanding as required by the Pensions Act 2004.

These findings have led us to question the effectiveness of our educational content in driving up standards across all schemes, for example, whether the current learning material is demotivating time-poor trustees to engage (our Trustee toolkit consists of 16 hours of e-learning, presented across around 600 screens). Some trustees have expressed some uncertainty around the volume of content in the Trustee toolkit and the impact this has on their ability to retain, and in turn, apply the learning.

The fundamentals of good governance covered in our campaign is required of all schemes, regardless of size or status. However, the campaign failed to reach a subset of trustees that were either unwilling or unable to take steps to improve scheme governance. This finding is more pronounced for trustees of small and micro schemes, whose interactions with us were more likely to be reactive and limited to basic compliance activities, such as completing the scheme return. As part our qualitative research in to the attitudes to winding up[29] among small and micro DC schemes, trustees reported having less time and resource to do more (over and above what they saw as basic compliance) and did not always perceive the need to do more. We also note that Trustee toolkit usage is lower among trustees of small DC schemes.

Click on the question below to go to the response form at the end of this publication

- **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?**

To deal with this, we will seek to take a more directive style of communication with this hard to reach group – clarifying priorities and providing 'simple steps' for complying with the fundamentals of good governance. Trustees of small and micro schemes are more likely to be lay trustees and rely on external advisers and service providers to support compliance. We therefore think it is important we seek to communicate more clearly with intermediary groups on how they can support lay trustees to improve scheme governance. Nonetheless, we will seek to actively encourage consolidation in schemes where trustees are persistently unable or unwilling to meet the standards we expect.

We believe these proposals will help to improve knowledge and understanding among trustees where standards are low, by making it easier and simpler for trustees to engage in their role.

Click on the question below to go to the response form at the end of this publication

- **Question 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.**

29 A summary of our findings is provided in Annex 2.

Specific proposals for improving governance on boards

Here, we put forward some options for addressing the issues emerging from our research, engagement and their implications.

Improving the diversity of trustees on pension boards

Research findings

- Recent analysis of official data on UK household incomes suggests the gap between men and women's pension income is nearly 40%, nearly twice that of the gender pay gap[30].
- Other analysis found women aged 50 have on average only accrued half the private pension savings of men[30].
- Research indicates that those who are disabled or from a Black, Asian and Minority Ethnic (BAME) background also have poorer pension outcomes than other workers[30].

A lack of diversity in the composition of pension scheme boards is something that has been recognised for a number of years. For example, the 2016 PLSA Annual Survey found that, on average, schemes had more than eight in 10 (83%) male trustees, with one quarter of trustee boards being all male[31]. Our own audience research[32] in 2016 looked at the age profile of trustees and found that around half of chairs and a third of trustees are over 60 years old, which does not reflect the profile of savers of most schemes.

This problem continues despite there being clear evidence that diverse groups are more effective at making decisions[33]. Share Action[34] argues that if governance groups better reflect the diversity of the wider group they represent, their collective life experiences will improve their capacity to understand the unique challenges faced by each of their pension scheme savers. Many of the respondents to our 2016 discussion paper on 21st century trusteeship and governance recognised the importance of diversity on trustee boards – citing it as a key benefit of the trustee model[35].

30 https://www.ft.com/content/c9b74996-b582-11e7-aa26-bb002965bce8
30 https://www.ftadviser.com/retirement-income/2018/01/30/women-aged-50-have-half-pension-savings-of-men/?page=1
30 https://www.tuc.org.uk/sites/default/files/TheUnder-pensioned.pdf
31 http://www.actuarialpost.co.uk/downloads/cat_1/PLSA-Annual-Survey-2016-Exec-Summary%2012.07.2016.pdf
32 https://www.thepensionsregulator.gov.uk/en/document-library/research-and-analysis#cd3be41e6d0a4ad9ad7437f5821d2363
33 https://www.forbes.com/sites/shereeatcheson/2018/09/25/embracing-diversity-and fostering-inclusion-is-good-for-your-business/#751ca97572b1
33 https://hbr.org/2016/11/why-diverse-teams-are-smarter
34 https://shareaction.org/wp-content/uploads/2018/06/TheEngagementDeficit.pdf
35 https://webarchive.nationalarchives.gov.uk/20170106084957/http://www.tpr.gov.uk/docs/21st-century-trusteeship-governance-discussion-response-2016.pdf

Our view is that pension boards benefit from having access to a range of diverse skills, points of view and expertise as it helps to mitigate against the risks of significant knowledge gaps or the board becoming over-reliant on a particular trustee or adviser. It also supports robust discussion and effective decision-making. As part of our 21st century trustee communications campaign we highlighted the importance of having a diverse board not only in terms of societal demographics but also in terms of skills and experience (including skills such as the ability to negotiate, influence and communicate) as part of our skills and experience theme[36]. We also provided links to various tools like our skills matrix[37] and board evaluation tool[38] to help schemes evaluate and address skill gaps.

We believe the pensions sector should encourage people from all backgrounds to work in the industry and we need to make every effort to attract and include them. Limited participation on trustee boards in relation to protected characteristics, for example age, race, gender, sexual orientation, religion or belief or disability, can act as a barrier to success. Unconscious bias can also lead to an environment which stifles fresh thinking or approaches and a failure to properly recognise issues that have a real-life impact on savers' outcomes.

There are a number of initiatives, such as 'Next Generation'[39] and the Young Pension Trustee Network[40], which are finding ways to involve younger people in all aspects of the pensions industry, which we are supportive of. There is however a question of whether these initiatives on their own are sufficient to turn the tide quickly enough.

So, what more can be done? In the Netherlands, the Code of the Dutch Pension Funds[41] states that each governance body must include at least one man and one woman, one person younger and one person older than 40 years old. However, given the current size and breadth of the UK occupational pension landscape, we do not believe that some form of quota on pension board make-up in the UK is currently desirable or practical. It is difficult to see how many of the smaller schemes, with a much smaller pool of resources from which to select trustees, could meet any quota introduced. Besides which, the aim of this proposal is to encourage pension schemes to make efforts to draw from a wider, more diverse pool of prospective candidates than they currently might when they need to fill positions on their pension board. It is not intended to force schemes to remove good trustees with valuable skills in the pursuit of quotas.

36 https://www.tpr.gov.uk/en/trustees/21st-century-trusteeship/5,-d-,-skills-and-experience
37 https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/board-skills-matrix.ashx?la=en&hash=19A10223AE6A02A0FAD444367B1A2E1261FE7A47
38 https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/board-evaluation.ashx?la=en&hash=50384142FE0B9ADC4167B1A10CD7BA85A7776B0F
39 https://www.nextgennow.co.uk
40 https://www.linkedin.com/groups/12125753
41 https://www.pensioenfederatie.nl/cms/streambin.aspx?documentid=4570

As a public body, we are required to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it when exercising our functions. Seeking practical ways of enhancing diversity and inclusion in the make-up of pension scheme boards is part of that process[42].

We would be interested in hearing views on whether we should seek legislative change for schemes to report on the steps that they are taking to ensure the pension board has the necessary diversity of skills and reflects the membership of the scheme. We believe this initiative would help to drive positive change by raising the profile of diversity. We recognise that this might not be practical for small and micro schemes and so would also welcome views on whether this should only apply to schemes of a certain size and what the mechanism for reporting might be (for DC schemes it might be practical to use the chair's statement as a vehicle but that wouldn't currently work for DB or public service schemes so another vehicle might be required). Different types of scheme would not necessarily have to use the same reporting mechanism.

Click on the question below to go to the response form at the end of this publication

- **Question 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?**

We would also like to explore ways in which the industry can build on the work and initiatives that already exist to encourage a greater diversity of strong applicants for trustee roles. There are a number of good practice examples in terms of trustee recruitment where the focus has been on the benefits and skills that can be developed or gained by becoming a trustee and not solely on the existing expertise or background of the potential candidates. Employers are also likely to benefit as newly developed skills such as communication, decision-making, and influencing would not only be useful for the pension scheme but could also be utilised in the workplace.

In March 2018, the PLSA commissioned Winmark to undertake research[43] to better understand how trustee chairs approach diversity and how they try to ensure the recruitment of diverse trustees. One strand of the research focused on how current approaches to recruitment and selection do not always support diverse candidates, with interview processes tending to focus on experience rather than skills and those nominees who were close to getting appointed being lost in future recruitment processes.

42 Section 149 of the Equality Act 2010, https://www.gov.uk/government/publications/public-sector-quick-start-guide-to-the-public-sector-equality-duty

43 We understand the PLSA are looking to incorporate these findings in their future publications.

The research also highlighted how some trustee chairs are leading the way in trying to improve trustee diversity by focusing on other attributes beyond a candidate's CV and experience. This included undertaking psychometric testing both for chair candidates – acknowledging that a good chair has a crucial role to play in enhancing board diversity – and potential trustees to evaluate their softer skills and how a particular candidate might complement the board. Other examples included running mock board meetings to assess how well candidates manage a boardroom situation. Some trustee boards also organise 'talent pools', designed for applicants who just miss out in the recruitment process. By being in the pool, these candidates are trained as if they were a trustee, so they are in a position of greater strength for the next available opportunity.

Other trustee chairs created a system of 'pension ambassadors', encouraging existing trustees to communicate with their peers directly and face-to-face, rather than through leaflets and formal communication. It was felt that a more informal and conversational approach could be a powerful tool to spread the word and energise other potential applicants.

We believe there is a role for industry to pull together tools, guidance and case studies to take advantage of, and share, the best practice that exists within the industry in order to help boards increase the pool of potential trustees who can offer diversity of backgrounds and skills. This could potentially take the form of an industry working group with a remit to reflect all sizes and types of occupational pension scheme.

Click on the question below to go to the response form at the end of this publication

- **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?**

Should an accredited professional trustee be required to sit on every board?

- We have higher expectations of professional trustees and hold them to a higher standard than lay trustees.
- Professional trustees provide vital skills, knowledge and expertise to pension scheme boards which can be passed on to other trustees on the board.

The PTSWG published the Professional Trustee Standards[44] in March 2019 following a long and detailed consultation with the industry over the previous 18 months. An accreditation framework for these standards is expected to follow later this year. While we have had input on those standards, PTSWG's Professional Trustee Standards are distinct and separate from our own views and interpretation of the legislative requirements for TKU. Accreditation will not affect our approach to enforcement action.

We have higher expectations of professional trustees, hold them to a higher standard than lay trustees, and impose higher penalties on professional trustees where there are legislative breaches which attract penalties[45]. This is because of the role that they play and the expertise that they provide. They play an important and valuable role on pension scheme boards and provide vital knowledge and experience, helping to ensure that schemes are well-run and provide good outcomes for savers.

The PTSWG's new standards are designed to improve the quality of professional trustees and discourage poor practices in the market. Professional trustees who wish to become accredited will have to show they meet these standards – including governance skills, managing conflicts of interest, fitness and propriety and ongoing professional development – in order to gain voluntary accreditation. The PTSWG also set additional standards for accreditation of professional trustees who chair or are the sole trustee on a board.

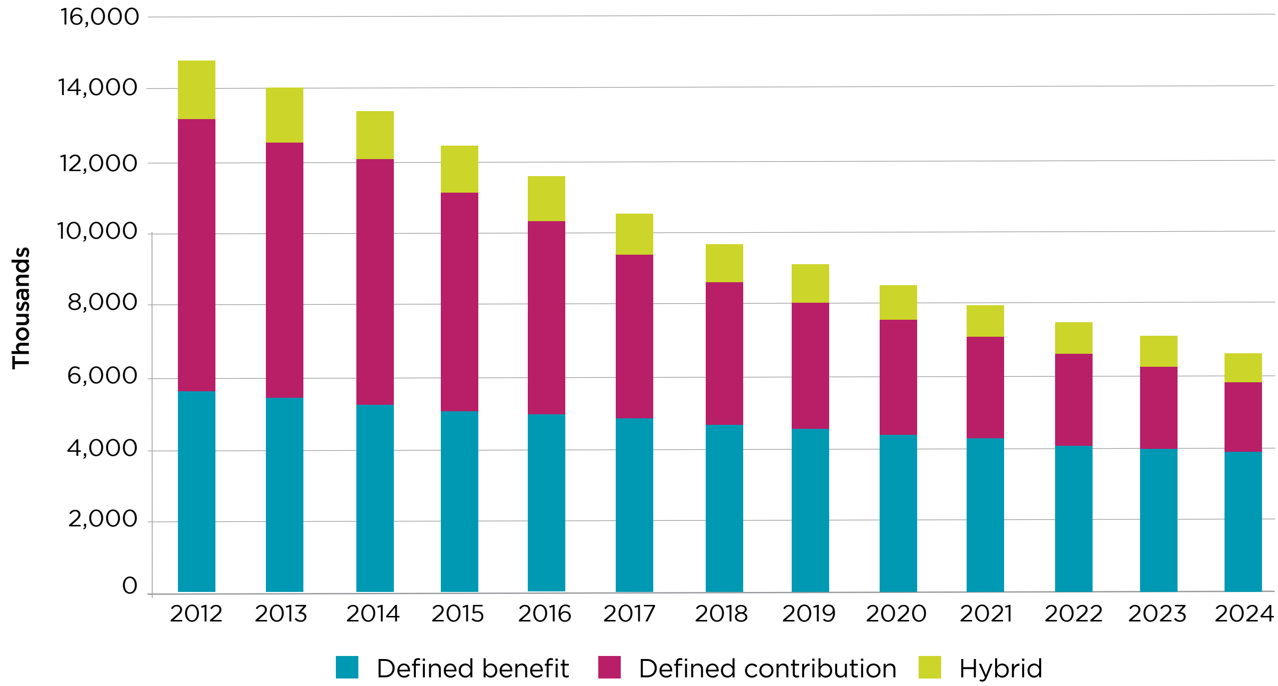
We welcome the PTSWG's new standards and the accreditation framework that is being developed. We believe they could help to improve consistency in the quality of professional trustees and may give us greater confidence that accredited professional trustee appointments meet the standards that we expect. We are hopeful that, in time, the accreditation route for professional trustees becomes the norm across the industry and encourage professional trustees to gain accreditation to show that they meet the standards.

Given the higher standards and skills that professional trustees generally bring to pension boards, which often have a positive knock-on effect on the development of lay trustees, we think the vast majority of pension schemes would benefit from appointing an accredited professional trustee to their pension board.

44 https://appt.co.uk/wp-content/uploads/2019/03/20190306-FINAL-STANDARDS.pdf
45 See our Monetary penalties policy at: https://www.tpr.gov.uk/en/document-library/strategy-and-policy

Analysis of scheme return data shows that somewhere between 20% and 30% of pension schemes[46] (depending on scheme type and size) report that they currently employ a professional trustee on their boards. Clearly it would not be feasible, given the current number of occupational pension schemes and the number of professional trustees in the sector, to require a professional trustee to sit on every board at the moment. However, given current trends on scheme numbers (Figure 1 below), alongside the work that we are doing to promote and encourage consolidation of DC schemes and the enforcement activity outlined on pages 10 to 11, we would expect the number of schemes to which this would apply to be much smaller in five years' time.

Figure 1: Historic and projected pension scheme volumes[47]



Nevertheless, we would welcome views on whether we should seek legislative change to mandate the appointment of a professional trustee onto each pension scheme board in the future.

46 Excluding Small Self-Administered Schemes (SSAS) and Executive Personal Pension (EPP) schemes.

47 Please note that these figures exclude Relevant Small Schemes and Executive Personal Pension schemes. The historic figures (up to and including 2018) are taken from the Pensions Register. Projections are calculated by projecting forward the current trend. For DB and Hybrid schemes, we have calculated the average annual attrition in the known period and applied this to the projected period. For DC schemes, the attrition rate has been increasing. We have therefore projected forward the attrition rate and applied this projected rate to the projected volumes. These projections do not consider the impact of any potential developments other than the existing trend.

Click on the question below to go to the response form at the end of this publication

- **Question 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?**

Sole trusteeship

We have become aware, through our own work and via anecdotal evidence from stakeholders, that a number of employers with DB pension schemes appear to be moving towards a model of using a sole trustee to run the pension scheme. By sole trustee, we mean an individual who solely performs the trustee role for the scheme, including sole trustee directors or other individuals acting on behalf of a corporate trustee – for example, on behalf of a professional trustee firm.

There are a number of reasons why a scheme might have a sole trustee, such as a lack of suitable trustee candidates or a need for more timely management of investments. As a regulator we frequently use our powers to appoint independent trustees to schemes, often to ensure that the scheme is properly administered, and the members are protected when its employer is insolvent. However, there appears to be anecdotal evidence of a small number of employers appointing sole trustees in the belief that a sole trustee arrangement will enable them to negotiate an employer-friendly funding agreement. A sole trustee will also struggle to replicate the advantages of robust decision-making based on a diversity of views which we outlined on pages 18 and 19.

There are several highly knowledgeable and experienced sole trustees in the market offering a valuable service that might be appropriate in a number of circumstances. However, we are concerned that there can be additional risks associated with the appointment of sole trustees, particularly where saver representation is lost. As such we will be alive to the risks posed by such appointments when, for instance, reviewing scheme valuations from sole trustees, and we will continue to monitor the situation.

Click on the question below to go to the response form at the end of this publication

- **Question 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?**

PTSWG's standards for professional trustees[48] and the upcoming accreditation framework that will accompany them could provide a basis for mitigating the risks associated with sole professional trustee appointments who gain accreditation. There are specific additional professional trustee standards designed to prevent sole traders and "those whose firms are not sufficiently resourced to mitigate the additional risks and responsibilities"[49] from acting as a sole trustee under the accreditation framework. Accreditation may serve to give us a higher degree of confidence that, where a sole accredited professional trustee has been appointed, they have the necessary resources and internal mechanisms in place to challenge employers and ensure savers are protected.

More generally, sole trustees across both DB and DC schemes might find it more difficult to maintain the necessary levels of governance. Even when decisions are taken back to a corporate professional trustee firm for peer review or advice, there is the potential for discussions at the scheme level to be misinterpreted or misrepresented. We welcome views on whether the governance standards for sole trustees needs to be strengthened – for example, could a requirement for two or more trustees to be present at relevant meetings help to provide a greater check and balance? This could involve naming at least two trustees on the scheme return and demonstrating that at least two trustees were involved in any decisions.

We would also be interested in your thoughts and experiences more generally on:

- how sole trustees manage potential conflicts of interest and how those who have a preferred supplier of certain services ensure that pension schemes get the best value from these services, and
- the pros and cons of the different types of corporate trustee model that currently operate in the occupational pensions landscape and whether there are certain circumstances where a particular model would not be appropriate.

At this stage we are interested in your views and any evidence that you might have relating to the ideas set out in the preceding paragraphs. We have some anecdotal evidence about what works and what doesn't in the corporate trustee landscape but we would like to expand that evidence base further in order to make considered proposals for regulating this sector in the future.

48 https://appt.co.uk/wp-content/uploads/2019/03/20190306-FINAL-STANDARDS.pdf
49 Schedule 3, https://appt.co.uk/wp-content/uploads/2019/03/20190306-FINAL-STANDARDS.pdf

Click on any of the questions below to go to the response form at the end of this publication

- **Question 11: Should the governance standards for sole trustees be strengthened, for example by requiring two or more trustees to attend relevant meetings? Are there any circumstances where this would not be appropriate or necessary?**
- **Question 12: How do corporate professional trustee organisations manage potential conflicts of interest in relation to procurement of services?**
- **Question 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?**
- **Question 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 certain circumstances where a particular model would not be appropriate?**

Consolidation of DC pension schemes

In this section, we set out the role DC consolidation will have in closing the quality gap and ensuring savers are able to participate in well-run schemes. We have focused on DC consolidation for now, in view of the fact that the DWP is in the process of developing an authorisation and supervision regime for DB superfunds. Nevertheless, there are a number of other ways for DB schemes to consolidate and some of the broader principles of consolidation will read across DC and DB schemes.

Driving DC scheme consolidation

Research findings

- Almost three-quarters of trustee boards of micro schemes and more than half of small schemes reported in the 2019 DC survey that they do not meet any of the five key governance requirements (KGR) applicable to them. Around only a tenth of small schemes and micro schemes reported meeting two or more KGRs.
- Last year (2018) the DC survey showed that the most common reason for not meeting each standard was that schemes did not believe it was relevant to a scheme like theirs (eg they were too small). The proportion giving this reason ranged from 57% of those not having a good understanding of their service providers to 90% of those not monitoring delegated activities.
- General performance of small and micro DC schemes has not improved significantly since the 2015 DC survey.

See pages 8 to 11 for evidence base.

As set out in the previous sections, it is clear from research and engagement with trustees of DC schemes that, although many schemes take governance seriously and have high standards, there are also some, mostly smaller, schemes that do not meet the standards we would expect. In addressing this quality gap, we will seek to use targeted regulatory activity to highlight those schemes that are not well-governed. Asking trustees to demonstrate that they have met certain basic governance requirements will enable us to dig deeper into the general running of the scheme where trustees are unable to demonstrate compliance with a basic requirement.

Any schemes that are unable or unwilling to improve their governance standards will be given the opportunity to wind up their scheme and move savers to a well-run alternative.

We appreciate that the trustees of these underperforming schemes may be well-intentioned but may not have the resources to enable them to improve standards of governance. However, it is unacceptable for savers in underperforming schemes to be put at a disadvantage because trustees or pension managers are either unable or unwilling to meet acceptable standards of governance. We fully support the proposal in the DWP's recent consultation[50] for schemes to have a triennial statement on whether they should consolidate into a larger scheme. We believe that best practice would be for schemes to consider this on at least an annual basis as part of their value for members assessment in order to maximise value and outcomes for their savers.

Through supervision, schemes that do not meet the standards required for governance, administration or any other aspect of running a pension scheme could be subject to investigation and enforcement measures and encouraged to wind-up. We recognise that there might be significant barriers to winding up certain schemes with enhanced characteristics and guarantees, such as with profits funds or Guaranteed Annuity Rates (GARs), or that it might not be practical for very mature schemes. Initially, we will focus on encouraging consolidation in schemes that do not have these enhanced characteristics where they fail to meet the standards we expect.

We anticipate the route most of these schemes will take is to consolidate into a master trust, although employers may also choose to provide a Group Personal Pension (GPP) plan, which savers may choose to transfer their benefits to. Master trust authorisation gives us the confidence that higher standards of governance are being maintained and we will be continuing our close relationships with them as part of our supervision work to ensure these standards continue to be met. Our confidence in the quality of master trusts is borne out by our annual DC survey, where they consistently perform better against our KGRs than other DC scheme groups[51].

50 https://www.gov.uk/government/consultations/defined-contribution-pensions-investments-and-consolidation

51 https://www.tpr.gov.uk/en/document-library/research-and-analysis

Developing a journey through the winding up process

For most schemes, the obvious path will be to transfer their savers into an authorised master trust, taking advantage of the recently simplified legislation for bulk transfers without consent[52] and using our winding up guidance to assist with the process.

We have recently rewritten our guidance[53] with a view to making the winding up process easier to understand and follow for trustees with limited time and resource. We have broken the process down into four stages with detail about the actions required for each stage.

We recognise still more can be done. The qualitative research we commissioned on exploring attitudes to winding up show there are a number of perceived barriers to winding-up among trustees of small and micro DC schemes. These include the perceived difficulty of the task or costs associated with winding up (a summary of our findings can be found in Annex 2). Taking on board the insight from this research, we hope to make further improvements to our winding up guidance to address some of the perceived barriers and help trustees navigate their way through the wind-up journey.

Removal of barriers to winding up for schemes with guarantees

Our thematic review of the value for members assessment carried out with small and micro schemes revealed that about a third of the schemes which took part in the review were invested in with profits funds. To get a more accurate picture, we added some with profits questions to our annual scheme return. Responses so far indicate that around 40% of DC schemes have some with profits investment.

With profits contracts could have potentially valuable guarantees that savers would lose if they were transferred into an alternative arrangement, there are also likely to be significant penalties for savers who are withdrawn from the funds early. These contracts usually have a guaranteed sum assured and will often have guaranteed annuity and/or growth rates. GARs could be particularly valuable to savers close to retirement and wishing to take an annuity. GARs are not exclusive to with profits contracts, so may be even more prevalent. We also understand that there are some schemes with protected rights to tax free cash that would be lost on transfer.

In April 2018 changes were made to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 to make bulk transfers without members' consent more straightforward for most DC to DC transfers[54]. However, the simplified process is not available for any schemes with an element of guarantee or promise.

52 Regulation 12(1B) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 SI 1991/167.

53 https://www.tpr.gov.uk/en/trustees/managing-dc-benefits/closing-your-dc-scheme

54 Being transfers where, broadly:
- the transferring scheme employer and receiving scheme employer are related
- the receiving scheme is an authorised master trust, or
- the trustees of the transferring scheme have obtained written advice in relation to the transfer from an independent professional.

It is important that trustees of such schemes obtain advice so that they fully understand the nature of the guarantees within their scheme. There are several factors they should consider, including how close savers are to retirement and how they wish to take their benefits.

However, we do not want these types of guarantees to be a barrier to moving savers into better run schemes. We are therefore currently engaging with several providers to try and establish whether there is a way to wind up these schemes without detriment to savers. Through this engagement, several possible solutions have emerged, including:

- Move savers without guarantees into a new scheme, while retaining any savers who have guarantees and for whom a transfer could be detrimental.
- Assign policies with guarantees to individual savers without crystallising their benefits, so they have an identical policy that is no longer written under trust.
- Provide compensation for savers who surrender guarantees via increases in the pot size.

We are keen to hear further from wider industry on the practicality in implementing these possible solutions and whether there are any other options we should consider.

Click on any of the questions below to go to the response form at the end of this publication

- **Question 15: Do respondents have any other solutions for winding up schemes with guarantees without detriment to savers?**
- **Question 16: Would it be helpful for TPR to provide guidance on the factors to be considered when winding up schemes with guarantees?**
- **Question 17: Are there any factors that respondents feel must be considered when winding up schemes with guarantees?**
- **Question 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?**
- **Question 19: Do respondents have a view regarding the loss of trustee oversight if benefits are assigned to individual savers?**

Next steps

Your feedback and answers to the questions posed in this consultation will be crucial in helping us to determine what actions we need to take next. The questions have been collected and included in the response form which accompanies this consultation. You can send your comments and completed response forms to us electronically at: futuretrusteeship@tpr.gov.uk or alternatively, you can post your response to: Mark Potter, Regulatory Policy Directorate, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW.

When responding, please provide your contact details and advise in what capacity you are responding (eg as an individual or an organisation, your role, the type and size of the scheme you manage or advise (where applicable)). Please also confirm whether you are happy for us to provide your associated company name or scheme name on our published list of respondents.

We plan to hold a number of stakeholder events during the consultation period to gather further comments and give stakeholders the opportunity to discuss the issues highlighted in the consultation in more detail. Further information about these events will be made available on our website.

Once we have had an opportunity to review and analyse feedback, we will publish our response setting out our next steps and timings for implementing the proposals and start more detailed discussions with the DWP.

Annex 1: Standards communicated as part of 21st century trusteeship campaign

We have provided a summary of the standards of trusteeship and governance communicated as part of the 21st century trusteeship campaign below. Full details on the standards can be found on our website: https://www.thepensionsregulator.gov.uk/en/trustees/21st-century-trusteeship

Governance, roles and strategy

- **Good governance:** Making sure you understand the importance of good governance, starting with the basics.
- **Clear roles and responsibilities:** Make sure you are clear on roles, responsibilities, decision-making, governance structures and processes.
- **Having a clear purpose and strategy:** Make sure you have a business plan so that you manage your scheme effectively and get good outcomes for savers.

Training, skills and advisers

- **Trustee training and improving knowledge:** Make sure the trustee board as a whole has the skills, knowledge and understanding to run the pension scheme properly.
- **Skills and experience:** Make sure the people on your trustee board have the skills, knowledge and experience to run the scheme well. These skills should work as a whole for the board.
- **Advisers and service providers:** Appoint good quality advisers and service providers, and regularly review and manage their performance.

Risk and conflicts of interest

- **Managing risk:** Make sure you identify, document, evaluate and manage risks to your pension scheme.
- **Managing conflicts of interest:** Make sure you have policies and procedures in place to identify, manage or avoid conflicts for trustees, employers, advisers and service providers.

Meetings

- **Meetings and decision-making:** Make sure you have effective board meetings and conduct timely decision-making.

Value for members

- **Value for members:** It’s essential to monitor and record the value the scheme is achieving so you can make informed decisions on behalf of your savers.

Annex 2: Attitudes to wind-up among trustees of small/micro schemes

In October 2018, we commissioned a piece of qualitative research in effort to better understand the attitudes to wind-up among trustees of small and micro DC schemes. We wanted to understand the following:

- How small and micro schemes are being run.
- Trustee knowledge and understanding of the wind-up process.
- Why trustees may have not considered winding up.
- What prompted trustees to look into winding up.
- Experiences and perceptions of the wind-up process among those planning a scheme wind-up.
- Barriers to winding up.
- The role of advisers.

We conducted a total of 18 telephone interviews, ranging between 30-45 minutes, with representatives of small and micro schemes that participated in the 2018 DC survey and who agreed to be contacted for further research.

Respondents declared themselves as best placed to talk about the governance of their scheme and included lay trustees (6), administrators (7), professional trustees (1) and IFAs (4).

Research findings

- Scheme interaction with TPR is more reactive and usually limited to completing a scheme return.
- Schemes which had considered winding-up were not always prompted by a single factor.
- Trustees that have considered it do not always consider that winding-up a scheme will improve saver outcomes.
- There are many perceived barriers to winding up and many trustees have an emotional attachment to their scheme which can cloud their judgement on what is best for savers.
- When winding-up is actively considered, consultation with experts is common, as knowledge and understanding of winding-up is inconsistent, so external advisers play an integral role, but advice from third parties isn't always scrutinised and challenged for conflicts of interest.
- Initial data from the 2019 DC schemes survey suggests that those that have actively considered winding-up meet more KGRs, including the value for members requirements/expectations.
- The experience of winding-up, although reported as not difficult, is often seen as long winded and laborious. This is due to gathering information and tracking down members and is delayed by slow responses from providers and/or advisers. This highlights the need for schemes to maintain high standards of administration and effective scrutiny of service providers/advisers.

Industry consultation: Future of trusteeship and governance consultation questions and response form

This form is interactive. Please save the whole consultation pdf to your computer, fill in your response to the questions as appropriate and return it by **12 noon** on **24 September 2019** to the following email address: **futuretrusteeship@tpr.gov.uk**

Your details

Your name:	Rachel Croft
Organisation (if applicable):	Independent Trustee Services Limited
Job title (if applicable):	Director
Postal address:	4th Floor, Cannon Place | 78 Cannon Street | London | EC4N 6HL
Telephone:	07387258538
Email:	rachel_croft@itslimited.org.uk
Which category best describes you or your organisation?	Professional Trustee Please select one category from the drop down menu above.

Confidentiality

Please confirm whether you would like us to list your organisation on our list of respondents to this consultation:

☑ Yes, I wish my organisation to be included on the list of respondents

We may need to share the feedback you send us within our own organisation or with other government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your response, in whole or in part, to remain confidential, please tick the box below:

☐ Yes, I wish my response to remain confidential.

If so, please specify which part of your response you wish to remain confidential and why:

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 ☐ No

Please give your reasons.

Overall our view is that minimum standards for trustee knowledge should strike a balance between:
• ensuring the right expectations are set and not unduly discouraging individuals from undertaking the role, and
• ensuring there are appropriate and implementable consequences should individuals not meet the required standards.

At a high level the expectations set out in Annex 1 look to cover the relevant areas. In our view the knowledge required by trustees can be considered at three levels:

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?

☑ Yes ☐ No

Please give your reasons.

From our perspective there is widespread usage of the Trustee Toolkit amongst those trustee boards who engage with the TKU requirement. Making completion of the Toolkit compulsory may not be an additional burden for those trustees and would be a clear way of raising the bar for those who to date have not engaged with the requirement.

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?

☑ Yes ☐ No

Please give your reasons.

Recognising that the pensions environment is complex and continually changing, it would be appropriate for a minimum level of ongoing learning to be required. Again, most well-governed schemes will already plan and implement trustee training and for those that do not currently do so it will raise the bar so as to ensure that trustees are better potentially better placed to address the current and future challenges of the role.
The approach set out in the diagram included in our response to Q1 envisages that trustees periodically reassess the suitability of their strategic objectives and update business plans. We would propose that

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 ☐ No

Please give your reasons.

The requirements of the professional trustee accreditation framework could be set out in the code so as to bring it clearly within TPR's remit and ensure consistency.

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?**

☑ Yes ☐ No

Please give your reasons.

Our view is that carrying out the trustee role effectively is key to the success of every scheme. Therefore, without undue prescription, TPR should establish and set standards for trustees and raise awareness of these standards. It should also be clear about the consequences of failing to meet the standards, and prepared to take the appropriate range of actions where standards are not met.
Trustee education is currently provided through a range of sources and realistically this is likely to continue to be the case. There is however a place for TPR (or another non commercial body) to provide education in certain circumstances where a non commercial source would be

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.**

☐ Yes ☐ No

Please give your reasons.

We would expect that adding suitable questions to the scheme return as suggested above, together with the more tailored interaction with schemes that TPR has already announced, will provide it with greater confidence that trustees have the necessary basic knowledge and understanding to carry out their role (or the ability to take appropriate action if they do not).

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?

☐ Yes ☑ No

Please give your reasons.

We would expect that adding suitable questions to the scheme return as suggested above, together with the more tailored interaction with schemes that TPR has already announced, will provide it with greater confidence that trustees have the necessary basic knowledge and understanding to carry out their role (or the ability to take appropriate action if they do not).

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 ☐ No

Please give your reasons.

Yes. We believe this is an area where the Regulator can assist with case studies and guidance. Given that the majority of trustees are appointed by corporate sponsors there is clearly a role to educate corporates on the qualities they should be looking for and the need for diversity when appointing lay trustees from within their organisations. The move to selection rather than election of member nominated trustees gives those trustee boards lucky enough to have a choice of candidates when MNT vacancies arise the opportunity to think carefully about the skill sets they require to ensure a diversity of approach rather than simply choose the candidate who performs best

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?

☐ Yes ☑ No

Please give your reasons.

Our overall view is that whilst we can see a need for greater professionalism on trustee boards mandating all boards to have a professional trustee does not seem a proportionate approach.
A significant issue is capacity. If the proposal is that only accredited trustees be appointed that would require a long roll out period, probably in excess of 5 years, to enable trustee firms to recruit and train suitably qualified people. Becoming a professional trustee is not simply a matter of completing the Trustee Toolkit, PMI qualification and APPT accreditation. The complexities of the pension system are such that

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?

☑ Yes ☐ No

Please give your reasons.

We have no specific examples of where conflicts are not managed effectively, but we are aware of the concern. Introducing accreditation and requiring sole trustees to meet the standards set out by the APPT should reduce this risk. Our internal governance and quality processes, management and incentive structures are designed to identify and address any such issues. We see greater evidence of such issues in traditional board structures, especially where professional trustees are not in place.

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?

☑ Yes ☐ No

Please give your reasons.

In our view, consistent governance standards should apply irrespective of the trustee model.
We do support the identification of at least two accredited individuals in sole trustee cases and the engagement of at least two accredited individuals when exercising trustee powers and discretions (acknowledging the need for appropriate delegation of powers, in accordance with the Deed and Rules, as at present).
We do not consider specifying the number of attendees at meetings, for example, would be helpful. Trustee business increasingly take place

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

Please give your reasons.

We see no need to strengthen the general governance standards for sole trustees. In our view, consistent governance standards should apply irrespective of the trustee model.
We do however support the identification of at least two accredited individuals in sole trustee cases and the engagement of at least two accredited individuals when exercising trustee powers and discretions (acknowledging the need for appropriate delegation of powers, in accordance with the Deed and Rules, as at present).
We do not consider specifying the number of attendees at meetings, for

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?

☐ Yes ☐ No

Please give your reasons.

As set out above, we do not operate any preferred supplier arrangements.

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?

☑ Yes ☐ No

Please give your reasons.

We presume that this question refers to the different business models for professional trustee firms. We do not believe that it is appropriate for trustee services to be bundled with any advisory services, though we can see some logic for administrative functions, such as secretarial services, to be offered.
Models which cannot demonstrate that they provide sufficient
• Access to expertise, skills and experience
• Diversity
• Robust governance

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 ☑ No

Please give your reasons.

Investment advisers are unlikely and reluctant to advise trustees to transfer members with guarantees into a non-guaranteed investment. The nature of guaranteed sums assured, tax-free cash and GARs mean that they are difficult to replicate or substitute in an 'ordinary' unit-linked investment. Therefore, it is challenging for Trustees to effectively discharge their responsibilities when winding up such schemes and that is why they linger on as legacy schemes – often with largely inactive, orphaned members and poor data quality.
Taking the solutions suggested in the consultation in turn:

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

☑ Yes ☐ No

Please give your reasons.

Yes, this would be helpful. However, as outlined above, each with-profits policy has different wording and terms, so without a professional adviser to assist, many trustees may still struggle. The guidance must also point to relevant powers in the trust deed and rules. If trustees of small and micro schemes provide documentary evidence that they followed TPR guidance In issuing guidance, the Regulator might then consider that a general indemnity is available to trustees.

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

☑ Yes ☐ No

Please give your reasons.

As outlined above, each policy from each insurer will have different terms – as will the trust deed in respect of powers to wind up and discharge benefits. For example, some policies use the term 'guaranteed annuity' while others use 'guaranteed options' – and yet the benefits to members may or may not be identical. To discharge their legal obligations, trustees will always want to seek legal and investment advice based on prudence, regardless of detailed TPR guidance.

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 ☐ No

Please give your reasons.

From experience, we find that most employers are shocked at the costs involved in winding up small schemes. Often data is in poor condition, as are deeds and overall documentation eg access to original policies.
Some areas where relief could be achieved is:

- Standardisation of insurer assignment policy terms
- Improvement of legacy insurer service standards, transparency and response times and methods (eg insurers might benefit from being informed of the 20th century invention of email).
- Relief during windup from TPR on 'BAU' governance requirements.

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

☑ Yes ☐ No

Please give your reasons.

This is a concern because it leaves the individual member to negotiate with the insurer when they take benefits and they may not be aware of the risks involved in various options – regardless of the warnings given in trustee notices. For example, taking benefits at 55 (but prior to NRA) may have implications for loss of GARs, terminal bonuses etc, but this relies on the individual member reading and understanding communications from insurers in writing and on calls. We know that members are reluctant to take advice, especially for smaller sums.
We also have concerns about the insurers' ongoing efforts to keep

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Free online learning for trustees

Industry consultation
Future of trusteeship and governance