

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**

PLSA RESPONSE: TPR FUTURE OF TRUSTEESHIP AND GOVERNANCE PAPER

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ABOUT THE PLSA

We're the Pensions and Lifetime Savings Association; the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels. Our purpose is simple: to help everyone to achieve a better income in retirement. We work to get more money into retirement savings, to get more value out of those savings and to build the confidence and understanding of savers.

INTRODUCTION AND SUMMARY

The PLSA welcomes the opportunity to feed into this important piece of work from The Pensions Regulator (TPR). Our members strongly believe that good governance is vital to ensuring well-run schemes and achieving good member outcomes. Having the right people in place who have the right mixture of experience, skills and understanding is a key part of effective governance. We therefore welcome TPR's decision to focus on governance issues over the next 12-18 months, including those around trustee diversity, trustee knowledge and understanding (TKU) and barriers to winding up.

Pension schemes are currently dealing with a significant amount of regulatory and industry change including, but not limited to: the impact of pension freedoms and choice; DB and DC sector consolidation; new investment and benefits disclosure requirements; and greater regulatory focus on value for money. Any new regulatory requirements must therefore be purposeful, proportionate and pragmatic. In particular, they must allow good schemes of all shapes and sizes the space to continue to thrive. They must also be undertaken as part of a clear-sighted and coherent assessment of the bigger issues around scheme governance, which we hope will form an explicit part of TPR's thinking on this area over the coming months.

The main points in our response are as follows:

- **TPR Focus:** There is a difference in the scale and type of challenge presented by those schemes which do not engage with regulators or advisers and where there is little to no actual governance going on, and those schemes which are engaging but need to improve to ensure they achieve high quality standards. Therefore, we think TPR should focus on locating and approaching the most disengaged schemes rather than setting new and higher standards for all schemes: there are substantial parts of the market which are already delivering high quality provision.
- **Central database of Chair's Statements:** Greater accountability to scheme members and civil society more generally is key to improving governance outcomes. We believe that a proportionate approach to ensuring that trustees are held accountable for the training they have or have not undertaken is for there to be a central, accessible and easily searchable database of all schemes' Chair's Statements.
- **Trustee board diversity:** We support new reporting requirements on the steps that trustee boards are taking to become more diverse. It is important that this information is made publicly available and given the momentum for change, focuses on the work being undertaken now as opposed to longer-term outcomes.
- **Professional trustees:** We do not think that it should be mandatory for every scheme to engage a professional trustee. The market and regulatory environment for professional trustees is currently undergoing significant change, and time must be allowed for these changes to bed in and for standards across all professional trustees to be raised, before such

a step is taken. We believe there is scope for TPR to assess how it makes use of its current power to appoint an independent trustee to schemes where it has concerns.

- **Consolidation:** We believe that TPR must be clear about distinguishing between poor- and well-performing smaller schemes. This is necessary to design regulation which allows well-run schemes of whatever size to thrive and which does not impose a disproportionate regulatory burden on those schemes which have fewer resources.
- **Executive support:** One area which we believe is worth highlighting for TPR's consideration is that of executive support (either external or, in particular, internal). We do not believe that in its work on governance to date, TPR has sufficiently explored how to support scheme trustees and decision-makers achieve well-resourced and efficient executive support and what such executive support looks like across a variety of scheme sizes and types.
- **Sole trustees:** We would urge TPR to undertake further research into the nature of issues (if any) with sole trusteeship before it considers regulatory intervention in this space.

More generally, when considering what the correct course of regulatory action should be (if any) and what schemes should be targeted, we believe that TPR should also bear the following in mind:

- Whether TPR is making sufficient and sufficiently targeted use of its existing powers;
- How different policy proposals might work in combination, or impact on different segments of the market, and the need to avoid any duplication of demands on trustees (which then achieve little additional positive impact);
- Whether there are any other aspects of good governance – aside from the quality of trustees – which could benefit from closer TPR scrutiny and where the positive impact of guidance or regulatory scrutiny might be maximised;
- How TPR can ensure it maintains a focus on oversight of the key 'inputs' into scheme governance instead of the 'outputs' or processes.

In formulating our response to this consultation, we have undertaken extensive member engagement with schemes and their advisers. We have also built on our previous policy positions on governance issues including our *Hitting the Target* and *DB Taskforce* programmes of work as well as on our 2018 paper *Good Governance: How to Get There*. We answer each of the consultation questions in turn below and also highlight other areas which we believe merit further consideration. If you would like any further clarification, I hope you will not hesitate to get in touch.

OUR RESPONSE

We answer TPR's specific questions in its paper below. However, we think that there are some other issues not explicitly explored in the paper which we believe are worth highlighting here.

TPR's approach to governance

We welcome TPR's decision to consider how best to fulfil its oversight role on scheme governance. However, it is vital that TPR is clear about the problem it is trying to solve and is targeted in its approach instead of pursuing a blanket solution. There is a difference in the scale and type of challenge presented by those schemes which do not engage with regulators or advisers and where there is little to no actual governance going on, and those schemes which are engaging but need to improve to ensure they achieve high quality standards. Therefore, we think TPR should focus on locating and approaching the most disengaged schemes rather than setting new and higher standards for all schemes: there are substantial parts of the market which are already delivering high quality provision.

We hope that TPR will take a step back to consider where its interventions (if any are needed) can be most usefully targeted and where it will have the most significant positive impact. If it decides that regulation is the appropriate response, it should also ensure it considers: how to ensure it maintains its focus on 'inputs' to good scheme governance, as opposed to 'outputs'¹; whether it is making sufficient, and sufficiently targeted, use of existing powers, such as the power to appoint independent trustees to scheme boards; how different policy proposals might work in combination and how best to avoid duplication of demands on trustees; and what other parts of the pensions industry and which other actors in the governance chain might benefit from closer TPR scrutiny or intervention.

The vital role of strong executive support

In our *Hitting the Target*² and *Good Governance: How to Get There* work, we noted the importance of an effective scheme executive to good governance and recommended that schemes implement a governance structure involving a board or committee carrying out strategic oversight and an executive body responsible for day-to-day running of the scheme: such a body would closely resemble the corporate model of a board and an executive committee.

We also note recent comments and research by Squire Patton Boggs³ which highlighted the fact that schemes' in-house teams have often been downsized as employers look for cost efficiencies and noted the risk this may pose to scheme governance.

In its work on governance to date, we do not believe that TPR has sufficiently explored how scheme trustees and decision-makers ensure a well-resourced and efficient executive nor what the executive support landscape currently looks like. Although we recognise that 'what good looks like'

¹ Please also see our *Good Governance: How to Get There* discussion paper (August 2017).

² Full details can be found in our *Hitting the Target: Final Report* (July 2018).

³ In its recent assessment of risks faced by trustees, as reported in *Pensions Expert* ("Skeleton staff levels pose hidden dangers for pension funds") on 19th September 2019. Accessed 22nd September 2019.

will vary for the type and complexity of scheme, we believe that TPR should undertake research into the quality of schemes' executive arrangements, with the results published and used as the foundation of future TPR work, including in its expectations and standards for trustees and any accompanying guidance.

Quality of external advisers

We support TPR's clear emphasis in its standards that trustees appoint "good quality advisers and service providers, and regularly review and manage their performance". However, we and many of our members have both seen and heard of several examples of poor quality advice across the full range of governance-related issues. Although we are aware of the Financial Conduct Authority (FCA)'s current work on bringing investment consultants and fiduciary managers more fully into their regulatory remit in the wake of the CMA investigation, this focuses on a relatively narrow area of advice to schemes.

There is currently a lack of publicly available and easily accessible data on what kind of advice schemes are getting, or even where they are getting it from. We would encourage TPR to undertake research into the quality of external scheme advice on issues including communications, administration, investment governance, regulatory and other relevant issues and to use this research as the basis for their work on trustee standards, and other regulatory work, in this area.

Q1. Do you agree that the expectations set out in the 21st century trusteeship campaign are 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?

We agree that the standards cover broadly the right areas. However, as expressed previously in our response, we think that the expectations – and need for any accompanying guidance – regarding how a trustee body takes steps to ensure it has good quality, appropriate and efficient executive support should be further explored by TPR.

Please also see our response to question 6.

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

There is general agreement across our membership that it should be made easier for scheme members to be able to hold their scheme trustees accountable. In our *Hitting the Target* programme of work, the PLSA has called for more in-depth evidencing of trustee capability, such as details of what training has (or has not) been undertaken over the previous year, in Chair's Statements. We have also previously urged TPR to publish all pension schemes' annual Chair's Statements centrally on its website; we believe that doing so would ensure that schemes are more accountable and would better enable effective scrutiny by civil society, scheme members and the industry.

Any such regulatory step should be combined with a careful assessment of the balance between encouraging trustees to achieve sufficient levels of trustee knowledge and understanding (TKU) to make good decisions, while also enabling an approach that supports diverse groups of people or members to remain or participate as scheme trustees. We hear from PLSA members that recruitment of lay trustees in particular remains challenging but that, alongside knowledge, one of the most important attributes in good trustees is a commitment to, and enthusiasm for, the role and a determination to act in members' best interests. It is important to ensure that any regulatory regime does not crowd out trustee boards' focus on recruiting for these and other 'softer' skills⁴ and attributes, such as willingness to challenge and ability to persuade and negotiate.

Please also see our response to question 3.

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?

Trustee training should not be considered a 'once and done' deal, particularly given the rapidly changing legislative, industry and financial markets landscape. It should also be noted that committed, enthusiastic trustees will be sufficiently motivated anyway to ensure they continue to have the skills, knowledge and understanding necessary to make the best possible decisions in the best interests of members.

There is support amongst members for a minimum level of annual CPD-type training amongst trustees, though with some caveats. Firstly, there must be a recognition that not all training is equal or equally suitable for all trustees of all schemes, so there should be a degree of flexibility and self-certification in any CPD approach. Secondly, that any minimum ongoing learning requirement for trustees should be designed in a way which discourages a box-ticking approach. Finally, that it is not pitched at a level – particularly for those that would not be classified as 'professional' under the new standards – which is so stretching that it overly restricts the pool of potential trustees.

Recognising that current levels of CPD for accredited professional trustees have been set at 25 hours per year, respondents to our member survey⁵ suggested a level of CPD from anywhere between 10 and 25 hours per year.

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?

We agree that professional trustees should be held to a higher level of TKU. However, TPR should consider carefully how this will interact with likely future trends in the professional trustee market, including a shift amongst trustees towards becoming accredited under the new Professional Trustee Standards accreditation and standards framework, and avoids unnecessary duplication.

⁴ Please also see our *Good Governance: How to Get There* report (August 2017).

⁵ This survey of PLSA members ran from 19th to 27th August and received 47 full responses.

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?

We believe that TPR has an important role to play in signposting to the education provided by organisations which are experienced in providing educational services. We think that TPR should emphasise in its guidance and communications that trustees consider carefully the mix of the training that they receive in terms of who provides it and how independent or objective such training is likely to be.

Q6. 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.

We would encourage TPR to consider whether its toolkit is pitched at a sufficiently stretching level, or whether it is framed in the right way. This is particularly the case should TPR make any moves towards mandating completion of the toolkit amongst trustees. Although we believe that the toolkit as currently constituted is a helpful learning and development tool, we do not believe that completion of the toolkit in and of itself provides sufficient evidence of the requisite level of knowledge and understanding to be a scheme trustee in a way that will ensure good scheme governance. This is particularly the case given the increasingly complex legal, policy and financial world which trustees must navigate.

PLSA members have also expressed concern about poor attendance at trustee meetings, particularly as training is often combined with a trustee board meeting so any failure to attend is a double set-back for trustees – and hence for scheme governance – in terms of their contribution to decision making and their institutional understanding and development. TPR should consider what more it could do in terms of guidance for scheme trustees in this space.

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?

It is well-recognised that greater diversity is vital for effective decision making⁶ in any governance body, be it in the corporate or pension trustee world. We welcome TPR's decision to explore this issue and believe that some limited regulatory support or nudge would be effective in speeding up progress in this area.

We believe that quotas are a blunt instrument and it is also difficult to see how this could be practically applied or tailored to small trustee boards. We would support a requirement for UK pension schemes to report to the regulator on what actions they are taking to *work towards* greater diversity on their boards and, if they are not, explain why doing so is not relevant to their scheme

⁶ The FCA-commissioned report *Research Report on the Effectiveness of Oversight Committees: Decision-making, Governance, Costs and Charges* (Tilba, Baddeley and Liao, 2016).

governance and membership. We think that there would be benefit in such disclosure being made public, for instance in Chair's Statements and that such a requirement should apply to all schemes, given the importance of having the right mix of knowledge, skills and experience on a trustee board.

At this stage, we would urge TPR in its accompanying guidance and regulatory design to place the emphasis on a requirement for schemes to report the steps they have taken as opposed to the outcomes. This is vital to encourage a meaningful and considered approach to trustee diversity which is not overly prescriptive for schemes, and is also a proportionate approach given the current (welcome) industry momentum on trustee diversity.

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?

As TPR's paper recognises, there are several different organisations within the industry which are looking to ensure greater diversity. Many industry bodies are also taking an active interest in providing practical support to scheme trustees on attracting a more diverse pipeline of lay trustees. In addition to the research that the PLSA undertook with Winmark in 2018, which explored what the leading schemes were doing to encourage greater diversity⁷ and which was referred to in TPR's paper, we are also looking to produce practical written guidance for schemes on this issue in the coming months. We would welcome the opportunity to work with the Regulator and other interested bodies to try to encourage greater diversity and an opening-up of recruitment practices in the industry.

Such work could include a proactive industry and regulatory campaign to highlight the positive aspects of being a pensions trustee, such as the transferable skills it helps build or the positive and tangible impact that becoming a pension trustee can have on individuals' lives and retirement outcomes.

Q9. Should it be mandatory, in due course, for each pension scheme or board to engage a professional trustee? If not, what reasons (other than current capacity) would make such a move undesirable?

The presence of a professional trustee on the board can have a positive impact, bringing experience, skills and in-depth knowledge on pension issues to trustee decision-making, though we are also aware that the presence of a professional trustee can alter the dynamics of any board discussion, in particular when they are the chair⁸.

We are not aware of any research which precisely demonstrates the causal link between having a professional trustee on a board, good governance and good member outcomes, or distinguishes

⁷ This included, for instance, moving from trustee election to selection or becoming more proactive in training a pool of potential trustees.

⁸ This would potentially result in excessive deference from other trustees to the individual's experience and insufficient challenge or diversity of thought.

between the impact that a professional trustee has on decision-making vis-à-vis the impact that having strong executive support, or access to significant governance resources has more generally on governance.

It is also the case that the professional trustee market is currently undergoing a great deal of change, with a growth in the number of firms in the sector, as well as the advent of the voluntary professional trustee standards and accreditation framework – which we hope will be successful in driving up standards for all professional trustees.

It is for these reasons, in addition to the current capacity issue that TPR highlights, that we do not believe that it should be mandatory for each pension scheme or board to engage a professional trustee – particularly given the cost burden that such a measure would place on many schemes.

We would also urge TPR to explore whether it is making sufficient use of its existing power to appoint independent trustees. Given that the circumstances under which TPR can do so include ensuring that a trustee board has or can “exercise the necessary knowledge and skill for the proper administration of a scheme” and “to secure the proper use or application of the scheme’s assets”, this could be a more proportionate and timely approach than mandating the use of professional trustees.

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?

Several respondents to our member survey said that they had concerns about the use of sole trustees. These concerns mostly focused on the potential for a lack of diversity of thinking – or of suitable means to review or check decisions – and the pushing out of the lay trustee perspective.

However, members also noted that there are many circumstances under which a sole trustee model is appropriate, including where a closed scheme is moving to buy-out and where the trustee’s decisions are primarily around the issue of liability management. Sole trustees can also be a more efficient governance arrangement.

We would urge TPR to build upon its exploration of anecdotal concerns in this paper and undertake robust research into the nature of issues (if any) with sole trusteeship before it considers regulatory intervention in this space.

Q11. 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?

and

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

We recognise and welcome the decision for the new professional trustee standards to include a specific schedule on the particular criteria required to be an accredited sole trustee.

We are also aware that several professional trustee organisations have arrangements where any employee who is acting as a sole trustee is required or encouraged to work together with colleagues who are expected to challenge and offer advice and review. We believe that this, if properly enforced, could be an effective approach for ensuring greater diversity.

We also understand that there are professional trustee firms which operate several controls to manage any potential conflicts, including a formal conflicts of interest policy (and log) or a gifts, entertainment and hospital log.

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? Any regular performance reviews conducted?

We do not have any comments on this issue.

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?

Please see our response to questions 11 and 12 above.

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

Our response here addresses both the specific question asked in the paper as well as more general issues, given the level of industry and policy movement on broader consolidation in the market.

General consolidation issues

We would urge TPR and relevant government departments to bear in mind that it is quality of scheme governance and outcomes that matters, not size. Although there is evidence that scale can lead to better governance, there are small schemes that have good quality trustees and are run in an optimal manner. Such schemes must be given the regulatory space to continue to thrive and TPR must be clear in its future work and when setting its overarching strategic direction for regulation and guidance on governance issues to distinguish between poor- and well- performing smaller schemes. This is important to avoid any 'blanket' regulatory solutions which have the unintended consequence of driving small scale, but well-run, schemes out of the market.

Our *Hitting the Target* programme of work outlined the possible merit in an Australian-style value for money test, with schemes required to assess and state in the Chair's Statement or elsewhere whether they could achieve greater value for money through consolidating into another vehicle. Our *DB Taskforce* programme of work made a similar suggestion for any future DB Chair's Statements, a proposal currently under consideration by DWP.

We also acknowledge, as explored in our *Good Governance* paper, that achieving a shift in regulation and oversight from a focus on outputs to one on inputs may be more straightforward after a period of consolidation in the market.

Barriers to winding up

We would challenge TPR's use of the word "perceived" when referring to barriers to winding up in its paper. Winding-up is a complex, costly and time-consuming process which can often require significant levels of professional support. We would argue that better guidance from TPR can only do so much to fill this gap in pension board understanding on the process. Such complexities present a clear barrier to schemes winding up – particularly amongst smaller or less well-resourced schemes.

Where a scheme refuses, or is entirely unable, to interact with TPR or service providers, we again urge TPR to explore how to make full use of its existing power to appoint an independent trustee where it has concerns and where it believes this might encourage the winding-up process. We believe that there is merit in TPR becoming more robust and targeted in its enforcement approach with the tail of schemes which currently fall far below the quality standards, such as those which do not even fill out a scheme return or have sufficient engaged personnel to even respond to questions from the Regulator.

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

Although further guidance can only provide limited support – particularly amongst the tail of schemes which refuse to engage further – we do think that there would be merit in additional guidance and greater clarity from TPR on what factors should be considered when assessing the ultimate impact of losing the guarantees. When making this decision, trustees and advisers will be particularly concerned about the possibility of retrospective legal or regulatory and TPR guidance could help mitigate these concerns at least in part.

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

Q18. 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?

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

We do not have any comments on this issue, although feedback from members suggests that the cost of winding up a scheme with guarantees is significant and may be unaffordable for the smallest schemes.

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