



21st Century Trusteeship and Governance

ICAEW welcomes the opportunity to comment on the *21st Century Trusteeship and Governance* published by Department the Pensions Regulator on 22 July 2016, a copy of which is available from this [link](#).

This ICAEW response of 8 September 2016 reflects consultation with the Pensions Sub-Committee of the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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MAJOR POINTS

1. Recent regulatory developments in this area have been helpful and we believe that it would be appropriate for the Pensions Regulator (TPR) to follow a gradual evolutionary approach rather than making radical change, in the near term at least.
2. Given the number and variety of pensions schemes, we are not convinced that 'professional trustees' of pension schemes should be required to be members of a profession akin to established professions such as lawyers, chartered accountants and actuaries. If this approach were to be adopted, it would be important that members of these professions would be entitled to act as professional trustees without dual qualifications or memberships being required to avoid unnecessary duplication of effort and wasted cost.
3. The consultation considers all trustees who are paid to provide their services to be 'professional trustees', but this is potentially too broad because some trustees may, in essence, be volunteers, but paid nominal amounts. There is also a variety of paid trustees, from individuals performing part time services to large specialist corporate trustees; it is not necessarily the case that the same standards should apply universally, particularly where a board involves a mix of trustees and it might be helpful if TPR could provide guidance in this context. The use of the term 'professional' is itself perhaps confusing in this context as it may imply the existence of certain professional standards (as opposed to minimum standards identified by TPR) that do not necessarily apply to those acting as trustees of pension schemes.

RESPONSES TO SPECIFIC QUESTIONS

Board effectiveness and the importance of diversity

Q1: There are currently no barriers to entry for professional trustees. Should there be? For example, should all professional trustees be required to be qualified or registered by a professional body?

4. Being a member of a profession such as the chartered accountancy profession does not simply involve qualification or registration. For instance, members of ICAEW are subject to periodic monitoring, ongoing ethical, business conduct and insurance requirements and are subject to disciplinary control in addition to qualification and ongoing continuous development requirements. We are not aware that any shortcomings of the current regime are sufficiently serious to require pension trustees to become members of this kind of profession, bearing in mind the quantity and variety of pension schemes and diverse nature of pension fund trustees today. This approach would also seem to be at odds with Government efforts to reduce regulation/red tape.
5. Requiring professional trustees to be members of a professional body might increase costs and reduce choice for pension schemes. It would be necessary for Government to identify the professional body, or bodies, in question to ensure that appropriate standards apply across the market and that there is no confusion in the market. If Government were to make being a professional pension trustee a regulated activity, we believe that ICAEW and various other existing professional bodies should be designated as appropriate authorising or licensing bodies. We have extensive and longstanding experience as a professional body for a range of services (including, recently, for certain reserved legal services) and would be happy to comment further on this alternative if this would be helpful.
6. A body might keep a register of professional trustees without imposing the full rigour involved in membership of a professional body as described above. This would, however, inevitably provide only a limited level of assurance for those relying on the register and, in view of the large pool of potential trustees, it is questionable whether this could provide a meaningful control, at least initially. Keeping such a register might also be administratively burdensome.

7. TPR might perform a role of this kind based on its current [register of independent trustees](#) for appointments made pursuant to its statutory powers. For instance, it might list trustees who apply to it and meet requirements of fact and judgement set by TPR for the purpose. Many of the current requirements for inclusion on the register would be relevant in this context, but some (such as the requirement to have had five years' experience) might need to be adapted. Membership of a relevant professional body of the kind outlined above might be expected to satisfy a number of these requirements or be treated as equivalent.
8. We doubt that simply requiring minimum qualifications without ongoing monitoring or supervision will raise standards materially. If minimum qualifications are required, it would be important to ensure that they are not too restrictive because those with, for instance, legal or accountancy qualifications could be expected to have the necessary foundations to perform the role.

The role of the chair

Q2: Do you think it is the role of the chair of trustees to support trustees and use their leadership skills to improve the likelihood of appropriate scheme processes being put in place? Given the crucial role played by chairs, do you think more needs to be done to raise the standards of trustee chairmanship? For instance, do you think that chairs should be required to meet a minimum standard through having minimum qualifications or experience or belonging to a professional body?

9. We do believe that it is reasonable to expect leadership and direction from a Chair and for a Chair to ensure that there is appropriate experience on the trustee board and that the dynamics work. However, trustees have collective responsibility and we do not believe that this principle should be undermined by over-emphasis of the role of the Chair. The qualities required of a Chair may differ from board to board depending upon the overall make-up of the board, not only regarding objective matters such as qualifications and experience but also personalities involved. If the Chair is subject to additional standards, there is a risk that other trustees may be perceived to have reduced responsibilities and may be more inclined to defer to the views of the Chair, which would run counter to the principles of openness and challenge involved in good governance.
10. We believe that more detailed guidance from TPR on this would be helpful.

Q3: Should DB schemes be required to appoint a chair and report on compliance with governance standards?

11. Yes, we believe that different types of scheme should be subject to equivalent governance standards in the interests of consistency unless there are good reasons to the contrary. In this case, we believe that the requirements are conducive to good governance and could usefully apply to DB schemes. However, it is important that collective responsibility should continue to apply as noted above and that reporting should be on behalf of the board.

Meeting TKU standards and the role of training and development

Q4: How can we help trustees to be aware of, understand and apply the TKU framework?

12. TPR is already taking appropriate steps through its Codes and the toolkit. We do not believe that the regime should be too prescriptive, but one step to promote good practice would be for TPR to require schemes to confirm on the annual return that trustees have completed the trustee toolkit training.

Q5: Do you have any views as to how we can help new trustees bring their knowledge and skills up to the required standard within the statutory period? For instance would it be useful to make completion of the Trustee toolkit or other equivalent learning tool within six

months mandatory? Or would the introduction of a six-month probationary period for new trustees help to meet standards of TKU? What are the difficulties associated with these options and how could these be solved?

13. See our response to Q4. We support the introduction of a six-month probationary period for new trustees and if a newly appointed trustee fails to master the TKU within 6 months they should be removed. Some trustees may not have the time to complete the training if they are current employees so the employer should be encouraged to provide paid time off to complete trustee training.

Q6: How can trustees demonstrate they have the minimum level of competence required to fulfil their role? For instance, do you think holding relevant qualifications is the right way to demonstrate competence? What are the difficulties associated with this option and how could these be solved? Are there other options?

14. As noted in our response to Q1, we do not believe that qualifications alone would be sufficient to demonstrate competence. Practical experience and appropriate skills are also required. It is also important that the trustee board is able to have diverse membership, including, for example, in relation to member nominated trustees.

15. We suggest that trustee competence could be assessed during a board effectiveness review or annual performance assessments by the chair.

Q7: Do you have a view as to whether a CPD framework would assist trustees to meet the challenges of scheme governance? What are the difficulties associated with this option and how could they be solved?

16. Members of professional bodies such as ICAEW are expected to undertake continuous professional development and members are, ultimately, subject to disciplinary procedures if they perform services without having the appropriate skills. One of the difficulties of trying to impose a CPD framework without the discipline of a professional body behind it is that it may become a 'tick box' exercise and result in cost without any meaningful improvement in standards. It might be helpful if TPR could itself run an annual training which would highlight recent developments in an easily accessible way separately from the other guidance referred to in the discussion paper.

Q8: What further education tools and products would you find useful to receive from us?

17. See answer to Q7 above.

Q9: What do you think is the best way of managing conflicts of interests? How could the system be improved to reduce the likelihood of conflicts arising in the first place?

18. The current system provides a good framework but more detailed protocols might be helpful. While there may appear to be an inherent conflict in relation to employer company appointed trustees or executives, they can be very important to the good functioning of the trustee board and its efficiency, so it is important that any guidance is workable in that context.

Engagement with key governance activities and working with third parties

Q10: What do you think are the key challenges faced by trustees in engaging effectively with administration and investment governance and third party providers and advisers? What could we do to help them in addition to what we outline above?

19. We believe a board effectiveness review would identify the key challenges faced by trustees.

Small schemes

Q11: What should be done with those schemes that are unwilling or unable to deliver good governance and member outcomes? In particular, should small schemes be encouraged or forced to exit the market or to consolidate into larger scale provision? Is regulatory intervention required to facilitate this or can it be achieved through existing market forces?

20. TPR already has considerable powers, for instance to appoint independent trustees, bar trustees and levy fines. If it currently lacks powers to merge or consolidate one scheme with others, then we think it would be sensible for it to have these powers, subject to appropriate constraints, rather than for matters such as this to be left to market forces.

What we will do next

Q12: Would you find it useful to see overarching guidance covering issues common to all schemes, with more specific issues being covered in separate guidance?

21. Yes, we believe that similar principles should apply to different types of scheme so far as possible in the interests of clarity.

Q13: Do you have any other thoughts on the issues raised in this paper or on how standards of trusteeship and the quality of governance can be improved?

22. No further comments at this time.