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Department of Work and Pensions
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Dear all

Trust-based pension schemes: Trustees and governance, building a stronger future

I am writing on behalf of the **Association of Consulting Actuaries** in response to this consultation on trustees and governance.

Much of the current system works well and copes with the wide range of trust-based pension schemes in the UK. Many schemes – including the vast majority of the largest schemes - are operating well.

We discuss potential conflicts of interest which can arise for professional trustee firms, both in terms of the appointment of connected firms as advisers and/or service providers and from the employer's power to appoint or replace a professional trustee. The latter will become increasingly relevant when trustees have increased powers to distribute surplus to the employer. We would not want to see a change to the balance of power impacting employer appointments of trustees. However, we suggest that consideration should be given to a more formal process for appointment – including notification to the Pension Regulator where a professional trustee or Professional Corporate Sole Trustee (PCST) is being appointed and/or replaced.

We have a strong view that the requirements for lay trustees should not be raised, as this would make it even more difficult to attract candidates to these key positions. It is the trustee board as a whole that needs to have the appropriate skills. If overall skill requirements were applied at the individual trustee level, this is likely to have a detrimental impact on recruitment of new lay trustees and diversity. We think diversity of trustee boards is very important and lay trustees, including member nominated trustees, play an important role in bringing a range of experience and perspectives to trustee decision making. This reduces the risk of groupthink and leads to a better quality of debate and overall decision making. The Pensions Regulator produces very good material for lay trustees to understand the role, and we strongly support this continuing to be made available.

Our comments on your questions are set out in the Appendix. We hope that you find the contents of this letter of assistance. We would be happy to discuss them further if that is helpful.

In this event, please contact me on 07799 893797 or stewart.hastie@isio.com, or Peter Williams on 01372 733763 or peter.williams@aon.com

Yours sincerely

Stewart Hastie
Chair of the Association of Consulting Actuaries
On behalf of the Association of Consulting Actuaries Limited

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APPENDIX: ACA RESPONSE TO DWP CONSULTATION ON

Trust-based pension schemes: Trustees and governance, building a stronger future

Specific consultation questions

Chapter 1: Good governance

1: What do you think works well in the current trusteeship and governance system?

Much of the current system works well, including aspects of built in flexibility which can be helpful. The system has to cope with a wide range of schemes, varying from large financial institutions with assets amounting to many billions of pounds through to much smaller arrangements with perhaps only a few million pounds of assets and much more limited resources for governance.

Many schemes – including the vast majority of the largest schemes - are operating well, within the current system, including in obtaining appropriate input from members.

2: What are the barriers to good trusteeship?

The key barriers are:

- The time commitment required to carry out the trustee role well. Trustees may well have other commitments that present a barrier to them allocating as much time as they would like to the role.
- Ensuring trustee boards have suitable skills – including the training that is required to get new trustees up to speed and the ongoing training required for experienced trustees to keep up with the general pace of legislative and regulatory change in the world of pensions.
- Finding suitable new trustees – this can be a particular issue for schemes which are closed to new entrants or future accrual.
- Costs of ensuring compliance and obtaining appropriate advice.
- Conflicts of interest – see comments below.

3: Looking ahead to 2030 and beyond, what further support will trustees need to ensure effective scheme governance?

We envisage a continuing trend towards more professional trustees and a smaller number of larger schemes. This should help to further improve overall standards of governance.

AI is likely to impact schemes, including the way members or third parties interact with those schemes (e.g. member queries, complaints or potential cyber-attacks). Trustee will need to monitor this carefully and be ready to react to both opportunities and threats.

The shift from DB to DC is likely to continue, with an increasing number of members reaching retirement with all DC or predominantly DC benefits. Trustees in general are likely to need to shift their focus increasingly on to DC benefits – including guided retirement, and the support members need to make appropriate decisions.

4: Does effective scheme governance in a Megafund require additional support or any specific changes in regulatory approach?

We agree that additional support is appropriate for the largest schemes, given the number of members likely to be impacted by any issues.

We note that master trusts are already subject to a specific and enhanced regulatory regime and that larger schemes in general are more likely to attract regulatory attention.

5: Can you describe any potential or actual conflicts of interest that stem from the provision of further services within professional trustee firms and other third-party providers? How are these conflicts managed now? What is the scale of the residual risk in the market?

One potential conflict of interest concerns a professional trustee firm appointing itself, or a connected entity (i.e. where there is common ownership or control), to carry out work for the scheme or trustees.

A related conflict that can then arise, is in managing any significant problems during the course of the appointment – such as dealing with errors, whether the provider should be reviewed or replaced, or in extreme cases consideration of whether legal action might need to be taken against the provider (i.e. would the trustee sue their own or connected firm).

Transparency can help in managing such conflicts. We would expect professional trustee firms to be transparent about whether a potential provider is connected to their organisation and to highlight this. Once highlighted, the position might be easier to manage where professional trustee is one of a wider group of trustees, who are all involved in the decision-making processes. However, as professional trustees usually have greater pensions experience and knowledge than lay trustees, it may be difficult for lay trustees to robustly challenge or make objective assessment of any conflict and its management.

Such conflicts are likely to be more difficult to manage transparently where a sole trustee is appointing a connected organisation to carry out work for the scheme.

There is a general awareness that these sorts of conflicts can arise and the need for them to be managed appropriately and transparently.

A further potential conflict can arise because a professional trustee is appointed by the employer and could be replaced by the employer. This employer power could influence the decisions taken by the professional trustee. This potential conflict will become increasingly relevant when trustees have increased powers to distribute surplus to the employer, under the anticipated Pension Schemes Act 2026, and therefore to decide how surplus should be shared between employers and members.

6: Are additional safeguards needed to effectively manage these risks, given the need to balance members' interests with effective scheme management?

On the potential conflict relating to the appointment of connected advisers and service providers, there is a wide spectrum of circumstances – both in terms of the size of scheme (with efficiencies gained by bundling services being particularly valuable for small schemes) and the wider services being considered (from scheme secretarial only, through to ‘all services’ including those that potentially stray into the provision of advice in its widest sense). It is therefore difficult to draw a firm line around what is acceptable and what is not. Flexibility can be helpful, and for smaller schemes there may be good reasons for having most services provided by one provider.

There needs to be a transparent governance process around appointing advisers and service providers, where an organisation to be considered for the appointment is connected to the professional trustee (i.e. the same firm or a connected entity with common ownership or control). In addition, where such an organisation is appointed, there need to be transparent processes for review of the appointment and for dealing with any significant issues that arise as a result of the appointment.

As part of this transparent governance process, consideration should be given to the financial strength/situation of service providers, particularly when appointing new providers and reviewing existing providers. There could be increased conflicts on the appointment or retention of service providers to a scheme if the professional trustee firm (or a connected firm) starts to experience financial difficulties.

Consideration might be given to whether the Regulator should be notified of the wider services provided to each scheme by organisations connected to its professional trustee or PCST. This would enable the Regulator to ask questions on any areas of perceived risk. The Regulator might consider working closely with the largest professional trustee firms/PCSTs, consistent with its risk-based regulatory approach.

Where a wide range of services relating to a particular scheme are all carried out by an organisation connected to the professional trustee, this can create a concentration of risk in a single provider.

On the conflict arising from the employer power to appoint a professional trustee, we would not want to see a change to the balance of power impacting employer appointments of trustees. However, consideration should be given to a more formal process for appointment – including notification to the Pension Regulator where a professional trustee or PCST is being appointed and/or replaced. As a minimum, it would seem appropriate for the Regulator to be notified where a traditional trustee board is replaced by a PCST. In addition, the PCST might be required to contact the outgoing trustees and ask them to comment on any issues they would like to highlight and this communication could be copied to the Regulator. Alternatively, the former trustees could be contacted by the Regulator to identify if they have any significant concerns about the handover.

7: Should there be restrictions on individuals acting as professional trustees, such as the number of trustee appointments they can hold, to ensure individuals have the appropriate capacity to manage schemes?

It may not be appropriate to put specific limits in place, given the very different business models (with differing levels of ‘back-office support’) operated by difference professional trustee firms. These are very different to the approach to directorships in the corporate governance world, which should be reflected if any limits are put in place.

We suggest, instead, there should be a professional obligation for an individual professional trustee not to take on more schemes than they can provide with the necessary levels of support.

Regulator guidance could support this and if the Regulator was to be notified of all appointments, then it would be possible for them to identify any trustees who were carrying out large numbers of appointments and engage with the trustee to ensure that they had the appropriate bandwidth and support to look after their schemes.

8: Are there situations where a PCST model is more or less appropriate and why? Should there be any restrictions or suitability guidelines on PCST appointments?

There are situations where a PCST approach might be very appropriate:

- Small schemes benefiting from efficient streamlined decision making, particularly where finding lay trustees with the right skills and availability is difficult;
- Schemes who are in the process of moving to buy-in, which is usually a singular and complex event that lay trustees are likely to have had little experience of managing;
- Schemes in the post-buy-in phase, where all the contentious decision have been made and the scheme is being managed through to buy-out.

Equally, there can be situations in which a PCST approach might be less appropriate:

- Where a scheme has a significant surplus, part of which may be distributed to the employer or to members – or where the scheme is planning to run-on with a view to distributing surplus in the future;
- Large schemes, where finding lay trustees with adequate time is less difficult.

The conflicts outlined for professional trustees in general in our response to question 5 can be exacerbated for PCSTs. In such situations, a PCST may already be in place and/or it can still be appropriate to appoint a PCST. However, we suggest the associated conflict risks can instead be addressed through greater guidelines or requirements on the PCST (e.g. where surplus is being distributed).

9: If the Government introduced an enhanced code of practice for sole trustees what specifically would you like to see included? Do you think existing codes of practice (Code of practice) already cover some or all of this?

Where another Professional Trustee is standing down or has been removed the existing code includes a requirement for the PCST to seek a written statement from the preceding Professional Trustee detailing the circumstances. We would like to see this extended to cover all trustees that are being replaced by a PCST. As noted above, this information may also be of interest to the Regulator. It should be an option for trustees to notify the Regulator if they have been replaced by a PCST without their consent.

Chapter 2: Trustees and their appointment

10: Given the future landscape for pensions, are any further controls or safeguards needed on the appointment of trustees to ensure that decisions are made in members' interests?

We do not think further controls are needed. Adding further hurdles could make it more difficult to attract a diverse range of lay trustees.

11: What role can government and regulators play in helping schemes to attract a diverse and talented pool of individuals to trusteeship?

We think that an increasingly diverse range of trustees, with appropriate talents, are being attracted to the role and the Pensions Regulator should continue to play an important role in encouraging this.

12: Should there be any limits on length of trustee appointment, or should they be limited in number of repeat appointments to the same trust?

No. Prescribed limits could have significant downsides and make it difficult for some schemes to retain valuable historical knowledge.

13: Would it be appropriate to introduce a new public trustee who could be appointed by the Pensions Regulator? If so, in what circumstances would a public trustee appointment be preferable to a professional trustee from TPR's independent trustee register? And why?

We do not see a compelling justification for a new public trustee.

14: Are there any reasons why TPR's powers of intervention regarding trustees should be modified and if so in what way should they be modified?

The Regulator's existing powers appear to be sufficient.

15: How can TPR ensure it has the information it needs for the directory without creating greater administrative requirements for schemes?

We are not completely sure what issue the Regulator is trying to address here, but it seems likely that appropriate information could be collected using the scheme return, rather than creating a separate new administrative burden. It would only be appropriate to collect extra information (even via the scheme return) if the Regulator was sure that the additional benefit obtained by it having this additional data justified the combined additional administrative costs of supplying the information.

Chapter 3: Skills and knowledge

16: What skills will trustees of trust-based pension schemes need in order to be an effective and efficient trustee board? For example, areas such as leadership experience, negotiation skills, investment management, (including sustainability-related investment management), communications, financial planning? What other areas should trustees have proficiency in?

A key point to note is that it is the trustee board as a whole that needs to have the appropriate skills, rather than each trustee needing to have all the required skills. If overall skill requirements were applied at the individual trustee level, this is likely to have a detrimental impact on diversity.

In addition, the skills required of the trustees should take into account that the trustee board should have access to appropriate professional advice.

17: Would it be appropriate for TPR to set statutory higher standards for professional trustees? What should these standards look like?

Yes, we would expect professional trustees to have higher standards than lay trustees and this could be a statutory standard requiring accreditation.

For the avoidance of doubt, we have a strong view that the requirements for lay trustees should not be raised, as this would make it more difficult to attract candidates to these key positions.

18: We are moving towards models of trusteeship that do not include as many lay trustees as now, what important benefits or skills of lay trustees should we try to replicate in consolidated structures? And how should it be achieved?

We think diversity of trustee boards is very important and lay trustees, including member nominated trustees, play a crucial role in ensuring adequate diversity of input to trustee decision making. This reduces the risk of group-think and leads to a better quality of debate and overall decision making.

Member representative panels can help where there are no member nominated trustees.

19: What support/continuing professional development (CPD) would you like to see put in place for lay trustees? Should all trustees be accredited? Would it lead to a trustee shortage? Who would pay for it including time as well as any L&D costs?

We do not think there should be a requirement for lay trustees to be accredited, for the reasons outlined above as objections to any form of additional hurdle for lay trustees.

The Pensions Regulator produces very good material for lay trustees to understand the role and we strongly support this continuing to be made available.

Chapter 4: Member voice

20: How can we ensure trustee boards take into account the perspectives of members in their decision making?

For schemes with member nominated trustees, there is automatically a member voice at the table, and this can be extremely helpful.

Where there are no member nominated trustees, member representative panels can be helpful – although it may be difficult to obtain an accurate picture of the views of the membership as a whole, particularly where a subset of vocal members hold strong opinions on certain issues and for many large schemes where the membership covers multiple previous schemes and historic employers that have merged over time.

21: Can you give any examples of best practice in the UK or internationally that demonstrate schemes taking appropriate account of their members' views?

No comments.

Chapter 5: Administration

22: What benefits and challenges do you foresee if mandatory minimum standards were introduced for scheme administrators and/or wider administration services such as Integrated Service Providers?

There are potential benefits in terms of raising standards and minimising undue delays. However, there can be reasonable grounds for complex cases to take longer, and arbitrary deadlines may influence behaviours in unexpected ways.

A possible downside, if standards are not implemented in a good way, would be increased costs and complexity without significant benefits for members.

In terms of operation – would the Regulator monitor the administrators directly or would they monitor the schemes individually?

If new standards are introduced, it would be important to integrate these with existing material (such as TPR guidance and PASA standards) to avoid duplication or inconsistencies.

It would also be important to know the penalty for failing to comply with any new standards.

23: Should TPR have the same levels of regulatory oversight as the FCA regarding administrators and/or wider administration services, and why?

In the long term, we might expect to see large occupational schemes having similar levels of regulatory oversight to large contract-based arrangements.

24: Should administrators have to be registered with TPR to be involved in administering a scheme? If so should TPR be able to deregister an administrator? (A model similar to that in Ireland)

The Regulator (TPR) is likely to have much of the information required for a register of scheme administrators from their scheme returns.

The key issue here seems to be how deregistration might work, and what might trigger deregistration. In our view, deregistration should only impact whether an administrator can take on new business. If, alternatively, deregistration meant that an administrator has to cease servicing existing schemes this would involve significant market disruption.

25: What risks if any, does increased levels of consolidation activity in the DC sector pose to administration service providers? How can these risks be mitigated to ensure an orderly transition to Megafunds?

A move to a small number of much larger providers will introduce larger systemic risks and potentially risks relating to lack of competition and choice for employers and ultimately members.

If there are only a small number of companies that have the scale to administer such large schemes, then if one of those companies hits a problem it may not be possible for one of the others to step in quickly. Therefore, for very large schemes it will be important for the Regulator to monitor the market closely to reduce the scope for unexpected surprises.

There may also be a strong argument for documentation requirements such as a requirement to maintain a transition plan on an ongoing basis.

26: What role should TPR take in reducing the risk and impact of a disorderly market exit by an administration provider?

The Regulator could provide guidance to trustees on what reassurances they should be seeking from their administrators to reduce this risk.

There may be a level of market share above which some form of capital requirement (similar to a continuity plan for a master trust) would be appropriate to mitigate risks of a disorderly market exit.

27: To help us better understand the trustee landscape and the potential impacts of any changes emerging from the consultation, we would welcome some information regarding the scheme or provider you are answering on behalf of in the table below:

Not applicable – the ACA is an industry body.

If you wish to follow up any points, please contact Stewart Hastie, ACA Chair, on 07799 893797 or stewart.hastie@isio.com, or Peter Williams, ACA Pension Schemes Committee Chair, on 01372 733763 or peter.williams@aon.com

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