

Consultation response

# Future of trusteeship and governance

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## Introduction

The pensions landscape, and legislative framework surrounding it, continues to evolve in response to changes to the way people work and save for retirement. There are now more than 10 million workers newly saving or saving more through automatic enrolment, and recent analysis shows that the saver population is more diverse, with more young people in their twenties and as many women as men now saving into a workplace pension scheme<sup>1</sup>.

We have also seen a shift away from traditional single-employer trust-based schemes towards larger, multi-employer DC schemes such as master trusts. While the number of DB schemes are in decline, we see continued growth and consolidation in the DC market. This shift towards DC means that savers bear the risk on the retirement income they will get and are more dependent on the decisions of others to secure good retirement outcomes. It is therefore important that trustee boards have the right mix of knowledge, skills and experience to understand and protect the needs of savers.

We want all savers to participate in well-run schemes that have excellent standards of governance and 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 good investment decisions.

Our trustee landscape research and engagement<sup>2</sup> tells us more needs to be done to raise standards, particularly among small and micro schemes. These findings led to our consultation paper on the 'Future of trusteeship and governance'<sup>3</sup>, which set out our aspirations for reforming standards to better protect the interests of savers, both now and in the future. We made clear in the paper that schemes unable or unwilling to meet those standards will be expected to improve or transfer savers to a well-run alternative and wind-up.

The consultation paper called for evidence on a number of matters and sought views on proposals for protecting the interests of savers. Unless otherwise stated, the paper was relevant to trustees and pension managers across DC, DB and public service schemes. While some of the broader principles in the paper might have been relevant to Small Self-Administered Schemes (SSASs) and Executive Personal Pension Schemes (EPPSs), they were not our target audience for this consultation given these types of schemes are not run by trustees on behalf of savers.

1 <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/automatic-enrolment-commentary-analysis-2019.ashx>

2 A summary of key findings was provided in our industry consultation paper 'Future of trusteeship and governance'.

3 <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/future-trusteeship-governance-consultation-july-2019.ashx>

We asked for views and ideas across industry and ran supporting events in Manchester and London in September 2019 to hear directly from stakeholders. We received a total of 114 written responses to the consultation from a mix of lay and professional trustees, chairs of trustee boards, pension managers, advisers, consultants, industry stakeholder organisations and trade bodies. Where respondents gave their consent to be identified, they are listed in the Appendix on pages 24 and 25.

We are grateful to everyone who took the time to respond to our consultation.

In this document, we provide a summary of the responses we received, including feedback gathered at the stakeholder events, and set out what we intend to do next.

## The consultation

Our calls for evidence and proposals fell into three key areas:

1. **Trustee knowledge and understanding (TKU), skills and ongoing learning and development:** We looked at how we could ensure those managing schemes have the right knowledge and understanding and appropriate skills, and that these are kept up to date.
2. **Scheme governance structures for effective decision-making:** We looked 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 their schemes, including the proposal for there to be an accredited professional trustee on every board in the future.
3. **Driving DC scheme consolidation:** Schemes 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 sought ideas on how to remove barriers to DC consolidation and ensure more savers have access to well-run schemes.

## Comments received and our response:

### 1. Trustee knowledge and understanding, skills and ongoing learning

We asked:

- **Question one:** Do you agree that the expectations set out in the 21st century trusteeship campaign (see Annex 1 of the consultation) 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?
- **Question two:** 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 three:** 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 four:** 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?
- **Question five:** 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?
- **Question six:** 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.

### Content and level of TKU (Questions 1 and 4)

You said:

Most respondents supported our proposal (Question 1) to review and update our Code of Practice on TKU, using the expectations established as part of our 21st century trusteeship campaign<sup>4</sup> as a starting point. There were also calls to include broader topics such as environmental, social and governance (ESG) considerations, such as climate change, while others stressed the importance of 'soft skills', including negotiation, decision-making and communication. The clear majority agreed we should have higher TKU expectations for professional trustees (Question 4), though many stressed this should be consistent with industry-based standards already established for professional trustees and the upcoming accreditation framework.

A smaller number of respondents emphasised that TKU standards should relate to the type of scheme (DB, DC, public service schemes) and many called for us to take in to account the size of the scheme, rather than take a 'one size fits all' approach.

4 <https://www.thepensionsregulator.gov.uk/en/trustees/21st-century-trusteeship>

Content and level of TKU (Questions 1 and 4) continued...

**Our response:**

Although the concept of TKU has not changed in the 15 years since it was introduced, the nature of what trustees need to know and understand has changed, as the law and risks facing pension schemes has altered over that period. We intend to review and update our Code of Practice<sup>5</sup> so that our expectations for the content and level of TKU<sup>6</sup> that trustees need to attain, including those for professional trustees and board members of public service schemes, remain appropriate for safeguarding the interests of savers. Our review will extend to scoping guidance<sup>7</sup> on TKU and supporting web pages to ensure consistent messaging. We will look to incorporate the TKU expectations communicated in our 21st century trusteeship campaign<sup>8</sup> as part of this work.

We will seek to simplify how we present TKU expectations, so these are differentiated by trustee role-type and type of scheme (DB, DC and public service schemes). Several respondents suggested that we take a 'tiered approach' so we are clearer about what 'level' we expect lay trustees, chairs and professional trustees to acquire knowledge and understanding as a baseline level of competence - recognising that there are already different expectations attached to trustee role-type. For example, chairs are expected to possess adequate leadership and board management skills, while professional trustees are expected to bring a range of technical pensions and governance expertise to the board.

Our single code project<sup>9</sup> seeks to consolidate all our 15 Codes of Practice into a single web-based code, and is expected to be published for consultation during the first half of this year. It will include content on new topic areas such as ESG, including climate change, and will provide an easier look-up function for trustees to locate content more easily.

The single web-based code will form the foundation for our subsequent review and revision to TKU-related content, which we hope to consult on in the early part of 2021.

5 [https://www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/code-7-trustee-knowledge-and-understanding-\(tku\)](https://www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/code-7-trustee-knowledge-and-understanding-(tku))

6 Sections 247 - 248 of Pensions Act 2004

7 <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/trustee-knowledge-and-understanding>

8 A summary of the standards of the 21st century trusteeship campaign was included in Annex 1 of our consultation paper 'Future of trusteeship and governance'.

9 <https://www.thepensionsregulator.gov.uk/en/document-library/statements/single-code-of-practice-statement>

## Demonstrating TKU and ongoing learning (Questions 2 and 3)

### You said:

Many respondents supported the need for trustee boards to adequately demonstrate how they meet TKU requirements (Questions 2 and 3), both to us and the scheme's savers. However, there was little support for introducing a statutory minimum qualification as a route for doing this (Question 2). A large number felt a qualification would likely discourage both existing and potential trustees from participating in trusteeship, reducing board diversity overall. Others argued that a qualification would overlook all important soft skills, which are key to effective trusteeship. Those that did support some form of a qualification suggested this should be limited to the Trustee toolkit.

Several respondents expressed the view that the legislative framework was already sufficient for us to regulate TKU standards on a 'comply or explain' basis and that we needed to do more in this area – for example, by periodically checking Trustee toolkit module completions or requiring boards to declare compliance with TKU standards via the scheme return or DC chair statement (with calls for a DB equivalent). Related to this was the suggestion from a smaller number of respondents that competency should be measured at the collective level of the board, rather than at individual level.

In terms of ongoing learning (Question 3), most respondents supported the need to keep TKU up-to-date. However, many felt that mandating a minimum number of CPD-type hours per year was too arbitrary and would lead to individuals focusing on the hour target rather than addressing individual training needs. Many suggested that we provide an indicative number of hours instead, while allowing sufficient flexibility for the board to address the specific needs for their scheme.

Those supportive of some form of CPD (whether voluntary or mandatory), suggested a minimum number of hours that ranged between one and 50 hours per year, though most respondents suggested somewhere between 10 and 25 hours as a baseline.

A subset of respondents supportive of some form of CPD, indicated that we need to be clear on what counts towards ongoing learning. Some suggested this should include a mix of formal and informal training, as well as face-to-face and online activities. Others suggested the Trustee toolkit could be adapted for annual refresher training and just-in-time learning.

Demonstrating TKU and ongoing learning (Questions 2 and 3) continued...

**Our response:**

Our supervisory approach allows us to have contact with the trustees, managers and sponsoring employers of pension schemes. Key to extending our supervisory contact is the concept of 'regulatory initiatives'. A regulatory initiative involves us contacting a large number of schemes about a particular risk and engaging with those that have not adequately addressed the risks we identified. We seek assurances from the schemes about how they will assess the risk, and if their response does not adequately address it we will engage directly with the scheme or other stakeholders to do so.

We plan to run a regulatory initiative on TKU once the revised TKU content and guidance is in place and after a reasonable period has been given for schemes to adjust. It is therefore important that we are clear about how TKU compliance and trustee competence can be demonstrated in practice sufficiently far in advance of that.

Rather than seek to change current TKU legislation<sup>10</sup> to require qualifications or CPD to demonstrate how TKU is acquired and maintained, we will look to articulate a range of acceptable methods for demonstrating TKU when we review and revise TKU content and related guidance. We acknowledge that there are a number of ways TKU can be demonstrated in practice including, for example, completion of the Trustee toolkit, relevant work experience and other industry-based training. For professional trustees, industry accreditation is likely to be another route for demonstrating how they have acquired TKU for their role. Allowing for a range of different options for demonstrating TKU should help reduce barriers for participating in trusteeship and support board diversity.

We will explore whether to set expectations on what we think is appropriate for ongoing learning as part of the TKU content and guidance review, including setting indicative number of hours and types of activities that count towards learning. In line with the suggestions of respondents, we think setting 15 hours per year as an indicative baseline for ongoing learning is reasonable for lay trustees. Professional trustees will be expected to follow the industry-based standards on ongoing learning, which is currently set at 25 hours per year.

<sup>10</sup> Section 247 and 248 of the Pensions Act 2004.

## Trustee education (Questions 5 and 8)

### You said:

We asked as part of the consultation whether we should focus more on setting standards, with industry taking the lead in trustee education (Questions 5 and 8). Most respondents felt that our Trustee toolkit and other education resources, such as assessment tools and templates, were valuable and authoritative.

Many argued that we should continue to provide free, accessible training for trustees to acquire the necessary level of TKU when newly appointed in the trustee role, noting that many trustees are lay trustees with limited time and access to educational resources. While there was an apparent strong attachment to the Trustee toolkit, there were calls for it to be improved, noting the format is sometimes ‘cumbersome and difficult to navigate’. Several respondents made suggestions for improving the toolkit, so its functionality can handle day-to-day query management, scheme business planning and it is better aligned to topical and scheme lifecycle issues.

While a small number of respondents supported increased reliance on industry-based training with TPR focusing on setting standards and checking compliance, a much larger number said we could collaborate with industry more to fill in gaps on scheme-specific topics and do more to improve quality of training and advice.

### Our response

We recognise there is still a need to provide free-to-use learning so trustees (and in particular, lay trustees) can attain the level of knowledge and understanding necessary to act in the interests of savers. We will keep this under review as the landscape changes.

We accept that the Trustee toolkit could be improved, and that the way people learn, access and use information has changed since it was launched in 2006. Facts and standards can be accessed in seconds online, and there is now a greater emphasis on ‘just in time training’ and peer networks to share learning.

With these ideas in mind, we intend to review the Trustee toolkit over the course of 2020-2021 to see whether and where we can make improvements. Our review will extend to how we can improve learning so that content is relevant, and how trustees can more easily convert learning into the practical steps needed to manage their scheme well. We will also seek opportunities to collaborate with industry to fill in subject-specific gaps and promote good quality learning content.

## Sufficient time to perform trustee role and engage in learning (Question 6)

### You said:

In response to Question 6, several lay trustees reported not having sufficient paid time to perform the trustee role and engage in learning activities. In some cases, lay trustees reported having to catch up on trustee duties and learning in their own time outside of work hours. It was also reported that access to financial resource for paid training is commonly limited among lay trustees, and these findings tended to be more pronounced among schemes at the smaller end of the market.

### Our response

We intend to run a targeted employer campaign over the course of this year and beyond to remind employers of their duties in law. Under sections 58 to 60 of the Employment Rights Act 1996, trustees have the right to paid time off where they are both an employee and trustee of their employer's occupational pension scheme. This right applies to time off for performing trustee duties, as well as undergoing relevant training. We also plan to address other issues where employers can have a positive impact on the performance of the pension scheme, eg trustee recruitment.

## 2. Scheme governance structures for effective decision-making

We asked:

- Question seven: Should there be a requirement for UK pension schemes to report to TPR 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?
- Question eight: 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?
- Question nine: 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?
- Question ten: 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?
- Question eleven: 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?
- Question twelve: How do corporate professional trustee organisations manage potential conflicts of interest in relation to procurement of services?
- Question thirteen: 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 fourteen: What are the pros and cons of the different types of corporate trustee model that currently operate in the occupational pensions landscape? Are there any circumstances where a particular model would not be appropriate?

## Board diversity (Question 7 and 8)

### You said:

Responses to the question of whether schemes should have to report on the steps they are taking to increase diversity on their boards (Question 7) were fairly evenly split between those for and against the idea. Those in favour agreed it should be based on actions taken rather than the outcome (ie not reporting on how diverse the board is but on the steps taken to ensure it is as diverse as possible), in recognition of existing challenges to developing a robust and diverse pipeline of future trustees and that the chair's statement and/or scheme return were the best vehicle to report. Some felt that making the results publicly available will drive change. One respondent suggested we should look to 'name and fame' exemplar boards, while others were concerned that making data public may invite unfair comparison and scrutiny.

Many of those opposed to the introduction of reporting thought that too strong a focus on diversity could deter those that had the necessary skills and experience from applying for roles on the board. Others felt there were already initiatives in place and that reporting was an unnecessary additional burden to place on schemes.

Despite the lack of consensus on this question there were common themes that emerged:

- We should set out expectations and aims for diversity and provide a clear definition for pensions schemes.
- Recruitment to boards needs to be primarily focussed on skills and competence.
- Improving the member nominated trustee recruitment process for many schemes, for example, moving to a selection process for candidates instead of election, could help to improve the diversity of boards.
- Employers often play a key role in who is appointed to the board and therefore need to be included in any action that we introduce in this area.

There was strong support for the proposal for the industry to play a role in helping schemes to identify new trustees from a wider, more diverse, pool (Question 8). Many respondents thought we should take the lead and are best placed to produce guidance and tools. Some thought it was necessary for us to act as a figurehead. Others noted that industry is already making efforts in this area and we should support and help publicise existing initiatives such as NextGen, Young Trustees Network, and Women in Finance Charter.

Some respondents felt that industry and membership bodies such as the AMNT, PLSA, PMI and APPT were well positioned to support the promotion of good practice.

Many respondents have spoken about the need to make sure trustee boards are as inclusive as possible to help attract and retain a more diverse cohort of trustees.

Board diversity (Question 7 and 8) continued...

**Our response:**

As we stated in the consultation, there is clear evidence that diverse groups make better decisions than non-diverse groups<sup>11</sup>. We believe it would be beneficial to create an industry working group to bring together the wealth of material and experience that is available to help pension schemes (and employers) improve the diversity of scheme boards. In the first instance, we will chair this group, with a view to others taking on the role later. We envisage that this group will deliver the following:

- A clear definition of what is meant by diversity and inclusion.
- Good and best practice guidance on board composition and how boards can make the most of the pool of potential trustees they have available to them.
- Practical tools and case studies to promote the recruitment of diverse trustees<sup>12</sup>.
- Inclusive material that can help to promote the benefits of becoming a trustee.
- Engagement with employers to recognise the benefits of the trustee role in personal development of employees.

You can put your name forward to join the industry working group by letting us know in a couple of lines of why you want to join. Please contact us by 29 February 2020 using the following email address: [futuretrusteeship@tpr.gov.uk](mailto:futuretrusteeship@tpr.gov.uk)

We will also be clearer about how trustees with different life experience, perspectives and skills, alongside the necessary TKU (see previous section of this response), can work with expert advisers to bring about effective decision-making and positive outcomes for savers.

We do not currently intend to pursue the introduction of a requirement for schemes to report on the steps they are taking to increase diversity on their boards. We think raising the profile of diversity and inclusion, along with the additional guidance and supporting material that will be made available through the industry working group, will push the industry in the right direction. There is also scope for us to look at the steps trustees are taking to improve diversity through our supervision and enforcement activity. However, we do not rule out revisiting this idea if the evidence suggests a firmer approach needs to be taken in the future.

11 See pages 18-20 of our consultation paper 'Future of trusteeship and governance'.

12 We do not intend to seek to change the legislation relating to trustee recruitment. Currently, active and pensioner members can use either selection or election for choosing MNTs, which should make up at least one third of the trustee board. Other trustee appointment powers (selection) typically rest with employers and/or existing trustees. We consider selection more appropriate in ensuring new board members have the necessary skills and experience to complement the board, though we recognise that well-run schemes might choose an election process where knowledge and skills gaps are not an issue for the board.

## Professional trustees (Question 9)

### You said:

Our question about whether all schemes should be required to have an accredited professional trustee (Question 9) unsurprisingly raised a great deal of interest and comment, not only in the responses that we received to the consultation, but also in the press and at industry and stakeholder events across the country.

A large majority of responses were against the proposal. Alongside the issue of market capacity, respondents highlighted the additional cost and burden on schemes, the potential to reduce trustee diversity and the fact that the Association of Professional Pension Trustees (APPT) standards<sup>13</sup> have not yet had a chance to bed in. Several respondents also pointed out that we can already appoint a professional trustee to schemes (although this can only be done in very specific circumstances) and that many smaller schemes, where the evidence suggests an issue around governance and trusteeship is more likely to lie, would struggle to attract and pay for an accredited professional trustee to sit on their board.

Conversely, the minority who were in favour of the proposal acknowledged the breadth of knowledge and understanding, independence and higher levels of scrutiny that professional trustees could provide given that they are held to a higher standard by us, and would be able to provide a broader understanding of other schemes and the pensions landscape.

### Our response:

We have always recognised that it is not currently feasible (given existing capacity) to require a professional trustee to sit on every pension scheme board.

As we stated in the consultation, we also hope that the APPT standards for professional trustees (and the accompanying accreditation process) will help to bring greater consistency in the quality of professional trustees and in turn provide greater confidence that accredited professional trustees meet the standards we expect.

With that in mind, we don't propose to take further action yet, but we may well revisit this idea in the future. We will therefore be able to evaluate the impact of the APPT standards and accreditation on the quality of professional trustees and assess the impact that other proposals and activity have had on the standards of governance and trusteeship of pension schemes. We would also expect the number of schemes to be significantly lower given current trends and our desire to see the market (particularly in DC) contract to so that more savers are able to benefit from larger, better-run schemes.

13 <https://appt.co.uk/wp-content/uploads/2019/03/20190306-FINAL-STANDARDS.pdf>

## Sole trusteeship (Questions 10–14)

### You said:

Many respondents shared our concerns about aspects of the sole trusteeship model in the DB arena (Question 10), mainly on a hypothetical basis, although there were a couple of examples where trustees felt they had been replaced by some form of sole trustee<sup>14</sup> to make life easier for the sponsoring employer. The responses that supported certain models of sole trusteeship argued that it was not in the best interests of the sole trustee to bow to pressure from an employer because this would have a detrimental impact on their professional integrity. Several of the responses we received were from sole trustee bodies who were keen to explain how they worked and outline the benefits of their model.

Discussions about the type of model used (Question 14) broadly sorted sole trustees into three categories:

- Professional trustee firms with employees<sup>15</sup>.
- Franchise models with smaller operators working under the name of an umbrella organisation.
- Sole traders operating independently.

Many respondents argued that requiring at least two trustees to attend board meetings (Question 11) was onerous and would increase costs unnecessarily, given that they already have processes in place to peer review, scrutinise and ‘sign-off’ decisions made by individual trustees at the corporate level. While other sole trustee models were generally also not in favour of the proposal for two trustees to attend meetings, it was unclear to most respondents how decisions could be sufficiently tested or scrutinised in those cases.

Most felt that the professional trustee firms offered the most benefits compared to the other sole trusteeship models, such as greater flexibility, economies of scale and a strong understanding of the wider market. Professional trustee firms were also more likely to have robust conflicts of interests’ policies in place and run competitive tenders in the procurement of services (Question 12 and 13). Broadly, the view tended to be that the franchise model was not as strong and there was a general feeling that sole traders were not suitable for sole trusteeship roles (Question 14).

Many responses alluded to the belief that it is not necessarily the model of sole trusteeship that is the problem, but the quality of the operator that counts. This perhaps points to a need for greater consistency or standards for sole trusteeship. Several responses pointed to the APPT standards for professional trustees which also cover sole professional trusteeship as a means of providing that consistency and overcoming some of the issues, such as weaker saver engagement, less transparency and the inherent conflict of interest created by the financial relationship with the sponsoring employer.

14 When we refer to sole trustees we mean an individual or a professional trustee company that has been appointed to replace a traditional board of trustees.

15 This does not include traditional trustee boards which have been “incorporated”.

Sole trusteeship (Questions 10-14) continued...

### **Our response:**

We understand that the APPT are developing an industry code for sole trusteeship, which we welcome and support.

We still have concerns about some aspects of sole trusteeship, particularly around how effective some of the models are at dealing with conflicts of interest and ensuring saver engagement. As such, we intend to commission research on the scale and reach of sole trusteeship in occupational pension schemes to give us a better understanding of the landscape and identify any patterns or trends related to their use.

We do not currently propose to make changes to the way we regulate schemes that utilise a sole trusteeship model, although that may change in the future if evidence comes to light that there are fundamental problems which need to be addressed. That means that we will continue to keenly scrutinise schemes that use a sole trustee.

## **3. Driving DC consolidation**

We asked:

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

## Solutions for winding up schemes with guarantees (Question 15)

### You said:

Of the three solutions we asked about (Question 15), assignment was the most popular with respondents, although some warned it may not be possible in all cases and there could be tax implications. Opinions were divided on whether member consent should have to be obtained. One respondent noted that there were ongoing developments in the market which seek to address this issue. Another respondent pointed out that discharge forms for schemes with guarantees tend to be complex and onerous. They felt that standardisation of these forms across the insurance industry would help speed up the process, along with the introduction of minimum service standards.

Providing compensation to those willing to surrender guarantees received some support but questions were raised as to who would provide this compensation, the expense involved in calculating it and the importance of obtaining member consent.

The least popular option was to transfer those with no guarantees to better-run schemes and leave those with guarantees in the existing scheme. The overwhelming response to this was that it would create even smaller, possibly less well-run, schemes.

The most popular suggestion for an alternative solution was for a change in legislation to require Nest to accept assignment of such schemes. Nest, in contrast, preferred to be allowed the choice on whether to accept assignment. However, Nest noted that schemes with guarantees are, in the main, legacy schemes. Nest is currently only permitted to accept a bulk transfer if the employer of the transferring scheme is also a participating employer in Nest and is making contributions on behalf of a jobholder.

Other solutions for third party guarantees such as with-profits included assignment to a new trustee with the guarantees remaining with the existing insurer. This is only available if the insurer offering the guarantee agrees and there were calls to compel them to do so.

There were warnings against applying a blanket approach as some small schemes are well-run. Some pointed out that the employer often meets the majority of costs in the existing scheme and this should be taken into consideration when considering the benefits to members of consolidation.

Solutions for winding up schemes with guarantees (Question 15) continued...

**Our response:**

We were encouraged by the fact that most respondents felt that assignment to the individual could be a viable solution for members with guarantees, although we are mindful of the issues raised.

However, the alternative of assigning the scheme to a new trustee while the guarantees remain with the existing insurer would appear preferable in terms of member outcomes. We would like to investigate this further with the DWP to better understand why it is not an option that all insurers are willing to consider.

Although the least popular option was to transfer those with no guarantees to a better-run scheme, we would not rule this option out entirely if no other route was possible. Our aim is to get people into well-run schemes. If the majority of members do not have a guarantee and assignment to the individuals could be achieved for those with guarantees, we think this would be preferable to the alternative of all members remaining in a scheme that was not offering them the best value.

We note that requiring Nest to take schemes with guarantees was a popular option. This would require a legislative change and is not something that could be achieved in the short term. We would like to assure those who expressed concerns regarding a possible 'blanket approach' to consolidation that this is not our intention. If a scheme is well-run and can demonstrate it is offering value for members, we would not push the trustees to consider consolidation.

## Factors to be considered when winding up schemes with guarantees and whether TPR guidance is needed (Question 17 and 16)

### You said:

Most respondents (to Question 17 and Question 16) felt that it would be helpful for us to provide guidance in this area and some had suggestions around the form this might take, such as case studies or project plans. The general feeling was that we should not undertake this guidance alone but should seek input from industry experts.

A few felt that TPR guidance would not be useful as there are already experienced investment consultants providing advice to these schemes and anything from us could 'muddy the waters'. They felt it was more important to find a viable solution rather than provide guidance.

When considering factors that should be taken into account when winding up a scheme with guarantees, a number of respondents stressed the importance of determining the value of the guarantee compared to the alternatives – for example, a guaranteed growth rate if fairly low, may not compare favourably with the potential returns from non-guaranteed investments.

Respondents felt that the decision to wind up a scheme with guarantees could not be undertaken without obtaining legal, investment and actuarial advice.

### Our response:

We do not propose to provide guidance for schemes with guarantees in the immediate future for the following reasons.

As already mentioned, the responses to question 15 give us confidence that there are viable solutions that enable these schemes to wind up while preserving any guarantees or enhancements that members might have. We are also aware that the DWP is currently considering the response to its consultation 'Investment innovation and future consolidation'. In support of regulations to encourage further consolidation, it intends to produce statutory guidance to help trustees establish whether their scheme is offering value for members and whether they should consider making improvements or consolidating.

The DWP's guidance is likely to make specific reference to schemes with guarantees and how trustees might value the benefits offered in such schemes. This should increase trustee confidence when undertaking such valuations and help schemes that do have valuable guarantees to be able to clearly demonstrate that fact.

We are also carrying out some joint work with the Financial Conduct Authority (FCA) to help independent governance committees (IGCs) and trustees of DC schemes carry out more effective value for members' assessments. TPR and the FCA have worked closely with industry experts, including investment professionals, when considering how to best support IGCs and trustees in assessing and comparing the value they achieve for savers. We expect to publish the outcome of this work by the end of the current financial year.

## Costs of winding up a scheme with guarantees (Question 18)

### You said:

Very few respondents (to Question 18) felt that the costs of winding up a scheme with guarantees would be affordable for small and micro schemes, particularly those with an insolvent employer. The majority felt that assignment would be the most affordable option but had concerns that it was not always available. As already mentioned, others felt that the standardisation of assignment policy terms would help, along with improvements in service standards from providers of legacy schemes. Some suggested we could take a pragmatic view regarding compliance with governance requirements such as the chair's statement, audited accounts and SIP review for schemes in the process of winding up, as long as this was completed within a reasonable timeframe.

### Our response:

We appreciate that winding up a scheme with guarantees and moving members to a non-guaranteed alternative would be unaffordable for most small and micro schemes, and assignment might be the only way to secure the best outcome for members.

Regarding service standards for legacy schemes, this is not the first time we have received feedback that some insurers could do better. We would encourage trustees of all DC schemes to utilise the template developed by the Cost Transparency Initiative<sup>16</sup> (CTI) to request costs and charges information when carrying out their annual value for members' assessment. This should focus insurers' minds on the need to respond in a timely fashion with accurate information, which will assist trustees when considering whether or not they should wind up, or make improvements to, their scheme.

With regards to the question of imposing penalties for failing to meet certain governance requirements during wind-up, we always aim to take a pragmatic approach when considering enforcement action. If it was clear to us that a DC scheme was close to wind-up, we would take a pragmatic approach to the question of whether imposing a discretionary penalty would be in the best interests of savers. However, it should be noted that a mandatory penalty would have to be applied where the legislation at the time requires it to be.

16 <https://www.plsa.co.uk/Policy-and-Research-Investment-Cost-Transparency-Initiative>

## Loss of trustee oversight on assignment to individual savers (Question 19)

### You said:

Most respondents (to Question 19) felt that loss of trustee oversight was not an issue. Those that did have concerns generally accepted that it was an inevitable consequence of assignment to individual members.

The specific concerns raised were regarding the lack of engagement and understanding by individual savers. Some thought this may result in individuals being trapped in a poorly performing fund or having to make complex decisions around guarantees unless they were willing to seek out, and pay for, financial advice. Some thought this could be mitigated to an extent by effective communication at the time of transfer and an extension of the remit of IGCs.

### Our response:

We do have some concerns over the loss of trustee oversight when assigning benefits to individual savers, particularly where the individuals themselves may be unengaged and/or do not understand the value of the guarantees. As a result, they may take action, which means that these benefits will be lost (such as taking a transfer before normal retirement age).

For this reason, our preference would be assignment to another trustee while retaining the guarantees. We appreciate that the above risks would not disappear completely but as trustee oversight would be retained in this scenario, this should afford more protection for the members than transfer to the individual. We would expect the new trustees to ensure that these members have bespoke communications to help them understand the value of the guarantees. For example, if the member is considering a particular action, we would expect the trustees to set out the consequences clearly and recommend that the member take advice if it would be appropriate to do so. In this way, guarantees can be retained, and members can benefit from a high standard of trustee governance.

## Next steps

We intend to plan and begin the preparatory work to implement our proposals set out in this document over the coming year and have summarised our key priorities below.

### 1. Trustee knowledge and understanding:

- To review and update TKU expectations in the code and related guidance.
- To review the Trustee toolkit and identify areas of improvement, subject to budget and resource constraints.
- We plan to consult on changes to TKU code content and provide an update on our Trustee toolkit to reflect that content review in the early part of 2021.

### 2. Scheme governance structures:

- To establish and lead an industry working group to develop guidance and practical tools, amongst other things, to support schemes in taking steps to improve diversity and inclusion on boards.
- Support the APPT in the development of an industry code for sole trusteeship.
- Commission further research to identify drivers for seeking, and the risks of, a sole trustee on schemes.

### 3. DC consolidation:

- We will continue to monitor DC consolidation activity and work with both industry and the DWP to find solutions to overcome barriers to consolidation.

Throughout the development of this work, we will continue to operate according to PACTT<sup>17</sup> principles and our Public Sector Equality Duty.

17 The Pensions Regulator has regard to the Regulators' Code and the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006. That is to be: proportionate, accountable, consistent, transparent and targeted (PACTT). We track and evaluate our performance against these principles.

## Appendix 1: List of respondents to the consultation

We received 114 responses in total. 99 of the respondents gave consent to be listed, with 15 either requesting confidentiality or not specifying consent at all. **Please note:** The list below was updated on 11 March 2020 to reflect respondents that gave consent to be listed after our initial publication on 10 February 2020.

- 20-20 Trustees
- 100 Group Pension Committee
- AAA Trustee Limited
- ACMCA Limited
- Airbus UK Pension Scheme
- Allen & Overy
- Aon
- ARC Benefits Limited
- ARC Pensions Law LLP
- Association of British Insurers (ABI)
- Association of Electricity Supply Pensions
- Association of Pension Lawyers (APL)
- Association of Professional Pension Trustees
- Atkin Trustees Ltd
- Avida International
- Aviva
- Baker Mackenzie
- Barnett Waddingham LLP
- BCF PENSION TRUST
- Belfield Capital, LLP
- BESTrustees Limited
- British Airways Pensions
- BT Pension Scheme
- Buck Consultants
- Capital Cranfield Holdings Limited
- Cardiff University
- CFA Society of the United Kingdom
- CM Pensions Limited
- CMS Cameron McKenna Nabarro Olswang LLP
- Dalriada Trustees Limited
- Dentons Pension Management Limited
- DLA Piper UK LLP
- EY
- Fieldfisher
- First Actuarial LLP
- Frank Purdy
- George Kirrin
- Gowling WLG (UK) LLP
- Henry Diaper & Co Ltd Retirement Benefit Scheme
- Hymans Robertson LLP
- ICAS Pensions Panel
- ICSA: The Chartered Governance Institute
- Independent Trustee Services Limited
- Inside Pensions
- Institute and Faculty of Actuaries (IFoA)
- Institute for Family Business

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- Institute of Chartered Accountants for England and Wales (ICAEW)
- Investment and Life Assurance Group (ILAG)
- Jaguar Land Rover Pension Trustees Limited
- Jane Marshall Consulting LLP
- KGC associates Ltd
- KNOWA
- Lane Clark & Peacock LLP
- Law Debenture
- Lincoln Pensions
- Linklaters LLP
- Martin Kellaway
- Mercer
- Meredith Gibson Advisory Ltd
- MNOPF/Ensign Retirement Plan
- Muse ADVISORY
- Nest Corporation
- NextGen
- Open Trustees Limited
- Pension and Life Assurance Plan of the Royal Society
- Pensions and Lifetime Savings Association (PLSA)
- Pensions Management Institute (PMI)
- Pi Consulting (Trustee Services) Limited
- Principles for Responsible Investment (PRI)
- Prospect
- PTL
- Punter Southall Governance Services Limited
- RAF Benevolent Fund
- Railways Pension Trustee Company Limited
- ReAssure
- Redington
- RSM
- Sackers
- SAUL Trustee Company
- ShareAction
- Smart Pension
- SME DB Pensions Group
- Squire Patton Boggs (UK) LLP
- Stagecoachgroup.com
- Stephenson Harwood
- Stephen Rees (Independent actuary)
- Tesco Pension Trustees Limited
- The Institute of Chartered Accountants of Scotland Retirement Benefits Scheme
- The Society of Pension Professionals
- Tom Colraine and John Reeve
- Trustee of The Johnson Matthey Employees' Pension Scheme (JMEPS)
- Trustee of the Zurich Financial Services UK Pension Scheme
- UK Power Networks
- Unison Staff Pension Scheme
- University of Oxford
- Willis Towers Watson
- Winterbourne Trustee Services
- XPS Pensions
- Young Pension Trustee Network

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Consultation response

**Future of trusteeship and governance**

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