

# B&CE response: Future of Trusteeship and Governance Consultation

## About us

**B&CE is the provider of the People's Pension, a not-for-profit master trust which delivers a workplace pension to more than 4 million mostly low and medium income savers. B&CE is a not-for-profit provider of straightforward financial products, founded by construction industry employers and trade unions in 1942. We have recently completed the transfer of nearly half a million customers from our legacy contract based DC arrangement to The People's Pension master trust because of the higher governance standards and lower charges of the latter.**

## Introduction

TPR is right to consult on the future of governance in the occupational sector and also right to link the issue to consolidation. There is a clear link between scale, value for money and quality of governance. Larger schemes can more easily afford the governance overhead required to deliver value for members. TPR is right to begin to encourage consolidation in the sector if schemes cannot raise the governance of their scheme to the required level.

In that context, we support measures to improve trusteeship in UK occupational pensions. The consultation document puts forward reasonable proposals that we feel could improve the standard of trusteeship in UK occupational pensions. Where there is a choice to be made between raising standards and another potentially competing objective, we are minded to encourage TPR to raise standards. We also feel that this should be the beginning of a longer process, something we expand on below.

TPR is right that there is a need to improve trustees' knowledge and skills across the sector. We support new mandatory TKU requirements for trustees and also a CPD requirement. We acknowledge that there is the potential for this to reduce the pool of lay trustees active in the sector and also reduce the number of trustees from non-traditional backgrounds. TPR should work with the sector to encourage greater diversity in trusteeship in order to offset this possibility.

We also advocate increasing the requirements on professional trustees and see the current registration system as a good start. We see the end point as the professionalisation of professional trusteeship with a higher level of assessed skills and knowledge than is currently the case. This is partly because the skills and knowledge required to run a major pension scheme like the People's Pension are in excess of those required by current proposals for the registration of professional trustees. The current proposals are also much lower than the qualification and skill requirements for many professionals within the FCA's regulatory purview.

There is need for further discussion about how this further professionalisation might be achieved. We have three considerations here: the first is that there are multiple routes into trusteeship and that it is often desirable for trustees to specialise: for example in investment, legal or actuarial expertise. Further professionalisation needs to make space for this. Second, many of the skills required are not easily assessable: for example, skills in chairing, leading and planning, and more widely the ability to effectively participate in a board meeting environment. Third, there is the risk that further professionalisation could inadvertently set the skills and knowledge bar lower than it currently is for trustees of large schemes. We should be alert to potential unintended consequences.

We believe, though, that TPR is on the right track with these proposals and we look forward to seeing how they evolve and are brought into practice.

**Question 1: Do you agree that the expectations set out in the 21st century trusteeship campaign (Annex 1) is a good starting point for defining a minimum standard for trustee knowledge in the code? Is there anything else that should be added that would be necessary for all trustees to know?**

We agree that the 21<sup>st</sup> century trusteeship expectations are a good starting point for the definition of minimum trustee knowledge. We are concerned, however, that too much bureaucracy associated with evidencing trustee standards could stifle good trusteeship – on the lay trustee side, particularly for single trusts, a good supply of willing, capable and motivated MNTs and ENTS is important if ongoing, consistent governance standards are to be achieved. It will be important to monitor the impact of any minimum standard in order to ensure that any adverse impact on the target group is well understood.

**Question 2: Should there be legislative change for trustees to demonstrate how they have acquired a minimum level of TKU, for example through training or qualifications?**

Schedule 1 of the Occupational Pension Schemes (Master Trusts) Regulations 2018 (henceforth, the Master Trust Regulations) requires:

3. For the purposes of section 7(4)(a) of the Act, the Regulator must take into account—

*(a) the knowledge and skills gained from a person's significant experience as a trustee, in assessing whether the person is fit and proper to act in that capacity;*

*(b) whether a person has successfully completed the Regulator's on-line learning program known as the Toolkit, or an equivalent learning program, in assessing whether the person is fit and proper to act in the capacity of a trustee of the scheme;*

*(c) the collective expertise and experience of persons acting together in the capacity of trustees, in assessing whether they are fit and proper to act in that capacity;*

*(d) a person's relevant experience and professional competence, in assessing whether the person is fit and proper to act in the capacity of a scheme strategist;*

*(e) the collective expertise and experience of persons acting together in the capacity of a scheme strategist, in assessing whether they are fit and proper to act in that capacity.*

This formulation establishes a low bar for knowledge and understanding and a higher bar for the collective competence of the board. Para 3(b) is interpreted by schemes as requiring the toolkit to have been completed or equivalent experience to have been gained before an application for authorisation to the regulator is viable. The toolkit takes some 16 hours to complete, which is in our view, not excessive given the responsibilities of trustees in managing other people's money. We would have no objection to the toolkit or the acquisition of similar knowledge becoming compulsory for trustees and this being a legislative requirement.

The formulation in the master trust regulations works, in our view, because it allows a low bar for lay trustees while judging competence in the round and, effectively, imposing higher TKU requirements on professionals. We think this approach is a potential template for regulation of OPS more generally as it allows both a high bar for board competence and a lower bar for lay trustees. As such, it is possible to achieve diversity of opinion and member representation on the board without compromising the overall quality of governance.

We would therefore support the transposition of something akin to this framework into the regulation of OPS more generally. It would make sense to start with larger schemes, who would have more capacity to adapt to changes.

**Question 3: Should there be a legislative change to introduce a minimum level of ongoing learning for all trustees, for example through CPD-type training? If so, how many hours a year would be suitable?**

Yes. We would support a minimum level of ongoing learning. It would make sense to look at the amount of information required to keep competence current and then figure out how long it will take to impart.

Pensions governance is challenging, highly technical and at times granular. Without some technical knowledge – or the aptitude and willingness to acquire it – the trustee role will be challenging (and probably frustrating and unsatisfying) for even capable lay people. Experience suggests that trustee boards can easily become dysfunctional when enough board members “don’t know what they don’t know” on the subject matter and wrongly believe they can transpose governance or management behaviours they have in their business lives to a pensions environment.

There is a tension to be managed here, though, between the rigour of any CPD requirement and its degree of prescriptiveness and the accessibility of trusteeship for lay trustees. It will be important to monitor the impact of any CPD requirement in order to understand its impact on the willingness of people to become lay trustees.

**Question 4: Do you agree that we should set higher expectations on levels of TKU held by professional trustees in the code, recognising that they typically act across multiple schemes of various types, size and complexity?**

Yes. We note that professional trustees are subject to less regulatory oversight than other comparable professions. Providing financial advice on investments in OPS is a regulated activity in practice requiring both qualifications and authorisation by the FCA. Individuals so authorised will have less scope for the exercise of discretionary power over other people’s money than professional trustees of occupational pension schemes, for whom there is no qualification or authorisation requirement.

The APPT is bringing forward an accreditation package for professional trustees, with the main elements shown in box 1. Professional trustees will be encouraged to seek accreditation by the regulator.

*Box 1: APPT Accreditation Framework*

1. Comply with a ‘fit and proper’ requirement modelled closely on that required for trustees of master trusts
2. Provide references from two reputable figures within the industry, such as an existing accredited professional trustee, a pensions lawyer or a scheme actuary
3. Have successfully completed the latest Pension Regulator’s Toolkit
4. Have passed the Pensions Management Institute’s (PMI) Level 3 Award in Pension Trusteeship
5. Complete an online soft skills test designed to assess the ‘other Professional Trustee skills and behaviours’ associated with professional trusteeship (to be developed).

Source: APPT<sup>1</sup>

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<sup>1</sup> <https://appt.co.uk/wp-content/uploads/2019/06/20190225-PTSWG-Accreditation-FINAL2.pdf>

We agree that professional trustees should be strongly encouraged to seek accreditation, at the minimum. It is difficult to make a case against such an accreditation system being mandatory for professional trustees. We see the above as a good start in a longer journey regarding the professionalisation of trusteeship.

The total study time associated with accreditation is 66 hours. This is split between 60 hours for the PMI trusteeship award and 16 hours for the trustee toolkit. We would make two observations about the accreditation framework. The first is that 66 hours is a relatively light amount of training time for a professional qualification, although we recognise that the syllabus for the PMI qualification is sound and provides a good introduction to trusteeship.

The second is that the amount of knowledge and experience required to govern a scheme such as TPP is vastly in excess of the knowledge that might be imparted through accreditation. In the authors' experience, it takes about two years full time work in a pensions environment to understand pensions to an acceptable degree. It takes closer to a decade to approach competence over the main issues in the running of a pension scheme.

The endpoint for the accreditation of professional trustees should be an accreditation system that acknowledges that there are multiple routes into pension trusteeship (e.g. actuarial, legal, investment management and consultancy, scheme operations experience) but that accreditation be a demanding process commensurate with the responsibilities of a professional trustee. That would imply a standard of TKU closer to a higher level PMI qualification and/or a professional certification such as CFA, or equivalent experience working in a pensions environment.

There would be potential pitfalls to further professionalisation. At the moment, there is a very wide spread of experience and qualifications in the professional trustee marketplace. Many have skills and substantially in excess of any future professional trustee qualification. While setting a new higher bar for professional trusteeship might improve the pool of professional trustees overall, it would be important to ensure that further professionalisation provides a route to retaining these individuals within the pensions sector as professional trustees.

Last, we should acknowledge that there are skills that cannot be taught and assessed through professional qualifications. And, that some of these skills are highly desirable for pension schemes. These include the soft skills required to be effective on a board and also commercial skills that may be of particular value to master trusts, such as project planning. It will be important for both the regulator and schemes to see any future further professionalisation of trusteeship as a part of the governance jigsaw and not the sole answer to the policy problem.

Regarding CDP, we note that there are different approaches in different professional contexts. It requires 35 hours of CPD (of which 21 hours must be structured) to maintain a statement of professional standing, required to carry on business as a retail investment adviser. Conversely, there is no hours based CPD requirement for solicitors. Solicitors must undertake sufficient training in order to meet continued competence requirements but there is no formal requirement for hours based CPD monitoring. We note, though, that law firms have not always fully embraced the new framework and may mandate CPD hours for their lawyers over and above the formal competence requirement.

We suggest that TPR evaluate the different available approaches. 25-35 hours seems a reasonable figure for annual CPD but we are curious as to the impact changing CPD has had on the legal profession and whether there is anything to be learned.

Ultimately, though, the answer is that the "right" number of CPD hours is the number required to ensure that professional trustees continue to be bona fide professionals who are fit and proper, who have genuine experience they can bring to bear on scheme governance and who are looking to continue to keep their knowledge up to date.

**Question 5: Should we focus more on establishing and setting standards and ensuring all trustees are aware of them, while relying more on industry to have the main role in educating trustees in ways more tailored to their individual needs?**

We think that approach makes sense. Industry bodies, including the PMI and PLSA, offer a range of high quality training courses and qualifications for trustees. We do not see an issue with the quality of supply of trustee education and qualifications.

**Question 6: We would also welcome any thoughts or ideas that you might have more generally about how we can have greater confidence that trustees have the necessary basic knowledge and understanding to carry out their role.**

No response.

**Question 7: Should there be a requirement for UK pension schemes to report to the regulator on what actions they are taking to ensure diversity on their boards? Should such a requirement be limited to schemes above a certain size? How should such a report be made to us?**

The case for diversity from an equalities perspective is unanswerably strong and the sector has to do more in order to improve access to trusteeship for all. Both schemes and the regulator need to recognise the potential tension between the drive for diversity and the perceived need to improve the skills of the trustee base. Raising the bar for trusteeship will make it harder for people to become trustees and, potentially further reduce the pool of candidates from non-traditional backgrounds. We see this as a tension to be managed more than a barrier.

**Question 8: Should industry play a role in creating tools, guidance and case studies that can help pension schemes attract a more diverse pipeline of lay trustees? How would that work and who should take a lead in making it happen?**

The industry is already working hard on this. But, as mentioned above, the role is often not attractive. The sheer time demands and risk of the role is becoming a deterrent to good applications. The prominent automatic fines for inadequate chair's statements, the strong TPR tone on late valuations and corporate dividend payments on DB scheme situations. Last, the volume of work on trustee meeting agendas (with agenda packs often now hundreds of pages) has created an environment that can hardly be described as attractive. The role of a trustee is now harder, more onerous, more risky, more challenging, more time consuming and more real time than it was just a decade ago – and possibly compared to four or five years ago.

**Question 9: Should it be mandatory, in due course, for each pension scheme board to engage a professional trustee? If not, what reasons (other than current capacity) would make such a move undesirable?**

In our view, there are few good reasons not to employ a professional trustee. TPR should strongly consider making employment of a professional trustee mandatory.

**Question 10: Do you share our concerns in this area? Do you have any real case examples where you see these conflicts are not managed effectively in the case of sole corporate trustees?**

No response.

**Question 11: Should the governance standards for sole trustees be strengthened, for example by requiring two or more trustees to attend relevant meetings? Are there any circumstances where this would not be appropriate or necessary?**

This should be strongly considered but with due consideration to the potential downsides. There is a risk that if employing trustees becomes too expensive then exactly the schemes that would benefit from the employer paying for a sole independent trustee will not get one. In that instance, the scheme could end up continuing to run with a weak, conflicted, lay board with a poor supply of new MNTs/ENTS.

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

We understand that the independent trustee community is small one and failure to manage conflicts would be a disaster for an independent trustee business and would become visible in the industry quite quickly. We believe that independent trustee appointments now go through tender or interview processes with a number of firms and/or candidates assessed. TPR may wish to examine tender processes further.

**Question 13: How do sole professional trustee organisations with preferred suppliers ensure that pension schemes get value for savers? Do they run competitive tenders for services? Are regular performance reviews conducted?**

No response.

**Question 14: What are the pros and cons of the different types of corporate trustee model that currently operate in the occupational pensions landscape? Are there certain circumstances where a particular model would not be appropriate?**

No response