

# **Trust-based pension schemes: Trustees and governance, building a stronger future: ABI Response**

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## Foreword

We believe it is right that DWP and TPR are exploring improving the standards and consistency of trusteeship in the pensions system. While the majority of trustees ensure value for their scheme members, we share the concern about some trustees of smaller schemes being unaware of their duties and obligations. Therefore, it is right that the Government takes action to ensure trustees have the skills and capability needed, and act in a way that befits their responsibility for people's pension savings.

We support the direction to which the questions allude: higher expectations of trustees, especially professional trustees, delivered by standards of accreditation, clarity on professionalism and qualifications relevant to the duties. In delivering this, some lessons can be drawn from other regulators, especially the FCA and PRA and we encourage the regulators to work increasingly closely together, including on cross-cutting themes like administration and governance.

There are legitimate exceptions, including the smallest schemes where it is impractical to impose additional obligations – in some cases this includes small schemes run by insurers, which have access to scale and expertise.

Additionally, we welcome the proactive step to identify and alleviate conflicts of interest for trustees and third-party service providers. These services are critical to the functioning of schemes, and it is essential that providers are selected based on best value.

## Table of Contents

<b>Foreword</b>	<b>2</b>
<b>About us</b>	<b>3</b>
<b>Consultation Questions</b>	<b>4</b>
<b>1. Chapter one: Good Governance (questions 1 – 9).....</b>	<b>4</b>
<b>2. Chapter Two: Trustees and their appointment (questions 10 - 15) .....</b>	<b>6</b>
<b>3. Chapter Three: Skills and knowledge (questions 16 - 19) .....</b>	<b>8</b>
<b>4. Chapter Four: Member voice (questions 20 &amp; 21) .....</b>	<b>9</b>
<b>5. Chapter Five: Administration (questions 22 – 27) .....</b>	<b>9</b>

## About us

The ABI is the definitive voice of the UK’s world-leading insurance and long-term savings industry, which is the largest sector in Europe and the third largest in the world.

We represent more than 300 firms within our membership including most household names and specialist providers, providing peace of mind to customers across the UK.

Our sector is productive, inclusive and essential to the UK economy and together, we are driving change to protect and build a thriving society.

Find out more at [abi.org.uk](https://abi.org.uk)

## Consultation Questions

### 1. Chapter one: Good Governance (questions 1 – 9)

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

A clear benefit of the trust-based pension system is the clear legal duty placed on trustees to act in the interest of scheme members. The liability that trustees face and the clear responsibilities they have provide scheme members with confidence that their savings are protected, which in turn enhances savers' trust in the pension system and long-term saving.

The growth of the professional trustee market is positive overall, though with challenges as outlined below; it has supported schemes to take vital decisions for the benefit of scheme members, such as securing benefits with an insurer in a DB scheme or consolidating a DC scheme, where appropriate.

A regulator willing and resourced to tackle multiple challenges it faces, working increasingly with other regulators is important, and that direction will need to continue.

#### **Question 2: What are the barriers to good trusteeship?**

In our members' experience, some trustees do not know what the expected standards of knowledge and understanding are; some do not always meet the knowledge and understanding requirements expected of them, and these requirements are not always clear.

In practice, trustees also face conflicts of interest, especially the emerging environment of commercial schemes operating at scale. TPR has guidance on this, but it is limited compared to FCA and PRA rules.

In our 2023 response to the Pension trustee skills, capability and culture consultation, the ABI advocated for DWP and the TPR to set a higher bar for professional trustees that is tailored to their specific duties, whether it is running a DC, DB, or master trust scheme. This should be accompanied by more proactively communicating information to trustees when new requirements are introduced, for example, via an emailed newsletter.

A significant barrier to good governance is the amount of regulatory change trustees must take account of, especially considering the introduction of the Pension Schemes Bill. The forthcoming statutory guidance clarifying trustees' fiduciary duty, is welcomed by the ABI. The most widespread view amongst our members is that there is no need to alter itself fiduciary duty (in primary legislation) as that could create additional complexity. Providers are able to invest in the long-term interests of their members, while climate risks and ESG more widely can pass the materiality test. Firms regulated by the FCA or PRA will also take systemic risk into account as a matter of course.

The above examples point to the confused regulatory landscape as a further barrier to good trusteeship; although trustees are not regulated by the FCA or PRA, they will almost certainly interact with firms which are, which often creates a mismatch of standards and expectations.

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

Considering the changes to be ushered in by the Pension Schemes Bill and in particular default pension benefit solutions / guided retirement, there should be additional guidance for trustees so that they can operate in the best interests of members when partnering with a provider. The expectations for trustees should be clear, with many of our members advocating for greater certainty for providers where they know they have acted in the best interests of a disengaged customer. For example, this could be a clear redress mechanism including detail about where it does not apply.

Another key area where the Pension Schemes Bill may present governance challenges for trustees, are the surplus extraction measures. The current writing of the Bill provisions puts significant responsibility on the trustee, with surplus extraction being able to be triggered at trustees' discretion and subsequent actuarial sign-off. Any future accreditation or guidance should give great attention to fully explaining the risks and opportunities of different end-game options and how surplus extraction can impact these. This should form a central part of skills/knowledge learning for new DB trustees in a future accreditation.

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

Yes, as the Pension Scheme Bill will mandate a minimum assets under management (AUM) of £25 billion for master trusts, these schemes should have trustees who meet higher standards of governance, skills, and knowledge. They will almost certainly be run commercially and are likely to face increased conflicts that they need to manage. As set out under question 2, trustees should meet requirements tailored to the type of scheme they manage, and scale is a relevant characteristic. However, in considering the regulatory approach, all relevant regulators need to consider how they work together in supervising megafunds that straddle regulatory boundaries.

Trustees managing a Megafund require a strong understanding of investment principles and financial management, especially because they are more likely to manage investments in-house in the future. This is compounded by the fact that these larger funds are increasing their asset allocation to private markets; therefore, trustees should have a strong knowledge of the distinct risk/return profiles of these assets as well as their associated fees and valuation practices which are distinct from public markets.

A further change in regulatory approach is to work more closely with the FCA and PRA and increasingly adopt similar approaches to Supervision. This is particularly important where the Megafunds are dual-regulated by FCA/PRA and TPR, but also because the scale of investment means Megafunds will play an increasing role in the integrity of the financial system, with potential impacts on financial stability.

**Question 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?**

Our members have raised that professional trustees face a conflict of interests in deciding on DB scheme endgames, as there is an economic incentive for these trustees to opt for a scheme to run-on instead of pursuing a buyout. The code of practice could be updated for schemes outlining how to manage this particular conflict. Lessons could be drawn from the retail market, where financial advisers face the same incentive to keep clients in drawdown.

Additionally, there is an inherent conflict of interest when professional trustees decide which third-parties should provide services to a scheme. Where a third-party is required, professional trustees have an economic incentive to advocate for their respective firm to provide these services, as these firms often offer multiple products to pension schemes. The VFM framework is unlikely to alleviate the existing conflict here, as professional trustees will conduct the assessment for the value of services provided by third parties. This likely does not add to the deterrent of personal liability that trustees already face.

It should be considered that for smaller single employer schemes, having trustee firms provide multiple services can often be the most cost-effective and efficient provision of essential services for a scheme with limited resources.

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

Yes, DWP and TPR could review the conflicts of interest guidance, learning from the FCA's and PRA's work in this area, ensuring it is proportionate to the nature, scale and complexity of the scheme and the third-party providers. This could span the wider market, including the role of employee benefit consultants.

**Question 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?**

For Master Trust pension schemes it is already a market norm for providers to only appoint trustees that are not sat on the trustee board of another commercial Master Trust. Subsequently, new regulations here would not be overly burdensome. Some providers also only opt for appointing trustees on an individual basis rather than using trustee firms.

As stated in response to question 2, our members support DWP and TPR in setting a higher bar for professional trustees that is tailored to their specific duties, whether running a DC, DB, or master trust scheme. Alongside setting an acceptable skill level for trustees, it must be ensured that a trustee has the capacity to fully exercise those skills to the benefit of a scheme's members.

## **2. Chapter Two: Trustees and their appointment (questions 10 - 15)**

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

Our members believe that the industry has a role in creating a more diverse supply of trustees. For example, our response to question 19 highlights the Trustee Accelerator Programme (TAP) which was an industry led initiative launched by the PMI and Standard Life. The programme is a structured, inclusive pathway into pensions and trusteeship for individuals outside the traditional pensions industry. Due to the success of the pilot programme, it is now being rolled out as an industry-wide initiative.

**Question 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?**

Many schemes have already determined that term limits enable them to meet the fit and proper checks within The Occupational Pension Schemes (Master Trusts) Regulations 2018 and the TPR codes and guidance, which emphasise board refreshment, diversity, and effective challenge.

From our members' experiences it is common for Master Trusts to already have self-imposed governance procedures which impose term limits on trustees. One example structure which is used would be a single term of five years with a limit of two total terms.

**Question 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?**

Our members agree that there is scope for a public trustee to be introduced. The fees associated with professional trustees appointed from the independent register can be a barrier for smaller orphan schemes. This is a gap that a public trustee could bridge. Additionally, where the role for a public trustee is clear, they could be appointed more quickly than a professional trustee going through the tender process.

The public trustee could apply a model similar to that of the Pension Scam Redress model wherein a public trustee is put in place to consolidate orphaned small to medium sized single employer trusts into a Master Trust; which the consultation paper acknowledges would have better governance standards.

In 2020, the TPR proposed a simplified method for winding up schemes wherein providers became "implied trustees", without the need for the appointment of a professional (or public) trustee. For EPPs where there is risk of harm to scheme members due to trustee disengagement, providers could act to reassign scheme benefits to individual members, which could be into a personal pension.

**Question 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?**

Yes, we believe these could be modified to look at cases where governance standards are shown to be poor. Our response to Q13 could apply here too, therein a similar model to the Pension Scam Redress model be utilised with a public trustee in place with the aim of moving members of schemes with disengaged trustees.

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

A register of trustees is a straightforward step for most schemes. For master trusts, the TPR has a record of all master trust trustees as this is a requirement of the authorisation and supervision regime, including changes of trustees, who are subject to fitness and propriety checks. DB scheme returns also request the details of trustees. Individual trustees could therefore be identified with a company number which can be linked to a scheme return which already contains their details.

### 3. Chapter Three: Skills and knowledge (questions 16 - 19)

**Question 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?**

Our members believe that there is a general lack of support for DB scheme trustees assessing their endgame options, especially considering the widening options with differing levels of benefit coverage and risk that are now available, from different and not readily comparable regulatory regimes. The introduction of superfunds and other new models are now presenting trustees with new options. A new accreditation should provide training and guidance on all endgame options so that trustees fully understand the risks and benefits their scheme faces with all current endgame options. This is particularly important when we consider novel endgame solutions, where comparing the security of member benefits will pose more challenges than in ‘traditional’ endgame solutions.

Trustees will always attest that they make effective investment decisions in the long-term interests of scheme members, as their fiduciary duty requires. Considering that DC schemes are looking to increase their asset allocation to private markets, it is essential that trustees understand the range of assets that exist in private markets. These types of assets will also require trustees to more closely consider members’ best interests in the short- and long-term, especially where there are trade-offs between groups of savers created by performance fees crystallising and asset maturity.

Given the statutory guidance expected to come into force on fiduciary duty, some trustees may need to better understand systemic risk – lessons can be drawn here from firms regulated by the FCA and PRA, where it will be considered as a matter of course.

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

We support the introduction of mandatory accreditation for professional trustees to ensure consistent standards in trusteeship across schemes. The bar set by current accreditation frameworks, particularly for professional trustees, is not high or clear enough. Accreditation and qualifications should be raised overall and tailored to the duties of the trustee – especially whether they are running a DB scheme, DC scheme or master trust. One practical option learning from other sectors would be the delegated model used in the legal professions. Thereby, the Government sets a statutory requirement for accreditation, with oversight of training providers being conducted by the independent regulator. Subsequently, professional bodies would define training routes, examinations, CPD rules and fitness-to-practise standards.

Additionally, the Government should prioritise proportionality to ensure these measures enhance capability without creating significant barriers to entry for new trustees.

Consideration should be given to the application of any new requirements to the smallest occupational schemes, many of which have a sole corporate trustee, who is also the schemes’ Principal Employer.



Applying minimum standards to administrators would bring greater certainty, especially in relation to system-wide projects like pensions dashboards and small pots.

On the other hand, applying greater regulation to a sector can lead to some firms exiting the market. Care would need to be taken to ensure that such a process is well managed.

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

Our members believe that the regulatory regime for the scheme administration of insurers is held to high standards by the FCA via the Treating Customers Fairly and Consumer Duty frameworks, and therefore, it is a positive thing if TPR wants to match this level of oversight.

The TPR currently regulates scheme administrators indirectly via scheme trustees and managers whereas the FCA exercises firm-level regulation. Adopting such an approach in TPR regulations could shift a regulatory burden from trustees. The Consumer Duty and Principles for Business places the requirement directly on administrators to, for example, avoid foreseeable harm and demonstrate the delivery of good customer outcomes. Our members believe that customers with characteristics of vulnerability in particular would benefit from this shift. The FCA rules put heavy emphasis on Consumer Support and Consumer Understanding, including through quality communications, requiring information like transfer notices or death benefit letters to be clearly communicated and offered in alternative formats so that customers with additional needs do not miss out on key pension information. The FCA has published guidance on customer vulnerability and more recently reviewed firms' progress with it. Firms have proactively sought to maintain high standards for all customers, as this is a factor on which they compete – for example by meeting the BSI standard on inclusive service.

'Wider administration services' may not be that straightforward to define. Some outsources have been regulated by the FCA while others have not. Other services have become critical, such as Integration Service Providers for pensions dashboards (and likely for small pots in future).

**Question 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?**

The continuing trend of consolidation across the DC pension market will result in there being a smaller market for administration services with less demand for third-party administrators. Moreover, the increased scale of these funds may mean that many of these Megafunds can perform these duties in-house and do not require a third-party provider; or responsibility shifts from outsource service providers to take on some or all tasks. The implication is that firms cease offering pension administration services, and some firms will exit the market.

The consolidation of much of the pension administration market may harm smaller schemes that will continue to exist and rely heavily on the services these firms offer.

Administrators would also face incentives to promote their other services to schemes, involving some of the conflicts mentioned in response to previous questions.

Ongoing oversight of the relevant firms, and assessment of the market, is the main way to mitigate these risks, working closely with other regulators and with industry.

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

The TPR should work closely with regulators with experience of similar questions (including the new framework for Critical Third Parties) and consider the need for an administrator of last resort.

**Question 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:**

This question is not relevant to the ABI, as we are not a pension scheme.

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