

Summary

- The use of professional trustees has grown considerably, driven in part by the DWP and TPR.
- Currently anyone can become a professional trustee. Efforts are being taken to regulate standards of professional trusteeship.
- Professional trustees are facing increasing workload pressures.
- Potential conflicts of interest for professional trustees include trustee firms providing a range of services, sitting on boards for employers within the same industry and personal conflicts.
- These risks are managed by processes such as internal registers.

The difficulties of going pro

Experts may not have been wanted in the run up to the Brexit referendum, but in contrast, the pensions industry can't get enough of them.

Popularity

In particular, the popularity of professional trustees on pension trustee boards has grown considerably in recent years, with both the Department for Work and Pensions (DWP) and The Pensions Regulator (TPR) advocating the need for increasing professionalism within pension trustee boards.

“One of the growing trends in pensions governance has been the use of professional trustees,” Pensions Management Institute technical consultant Tim Middleton stated to *Pensions Age* last year. “Professional trustees bring expertise and independence to the role, which can be particularly beneficial for schemes with complicated funding issues, or a history of compliance problems.”

But as the use of professional trustees grows, so does the scrutiny they receive. As TPR's head of policy Fiona Frobisher noted at the Pensions Age 2017 Spring Conference, not all professional trustees are of the same standard.

This can be attributed to a lack of a formal regulatory structure for professional trustees, which has been an area of concern. As a result, anyone – bar the odd exception, such as those declared bankrupt – can be a professional trustee.

“There are currently no real barriers

to entry to the professional trusteeship market. More or less anyone can set themselves up as a trustee, as there is no qualifications or experience necessary to put yourself forward as a trustee,” Dalriada Trustees trustee representative Greig McGuinness says.

➤ The popularity of professional trustees on pension boards has undoubtedly provided a number of benefits. However, the growing use of these trustees comes with its own set of challenges, Laura Blows finds

to entry to the professional trusteeship market. More or less anyone can set themselves up as a trustee, as there is no qualifications or experience necessary to put yourself forward as a trustee,” Dalriada Trustees trustee representative Greig McGuinness says.

Standards

In 2016, the PMI and the Association of Professional Pension Trustees tried to address this by proposing a formal qualification. However, industry feedback stated it was not the right time for this and that a qualification may not necessarily provide an appropriate measure of all the skills required for the role. The idea of professional trustees having to be registered was favourable, but opinion was divided as to who should oversee this.

So those suggestions may have fallen by the wayside, but the idea of maintaining standards for professional trustees has not.

Last year, TPR set out its revised description of a professional trustee, following concern in its 21st century trusteeship and governance discussion paper that a ‘professional trustee’ was defined as merely someone who was paid, considering the growing practice of

remunerating lay trustees.

It now describes a professional trustee as someone who has “represented themselves to one or more party unrelated schemes as having expertise in trustee matters generally”. Professional trustees are also likely to be fined higher penalties by TPR compared to lay trustees, it added.

Therefore, as part of its 21st century trusteeship initiative, TPR encouraged the formation of a working group to set the expected standards of a professional trustee.

Formed of representatives from APPT, PLSA, TACT, PMI and TPR, the Professional Trustee Standards Working Group (PTSWG) has proposed minimum standards for professional trustees regarding fitness and propriety, integrity, expertise and care, impartiality and conflicts of interest, professional behaviour, and systems and controls.

The consultation ran until March this year, and from the results, finalised standards and an accreditation framework will be formed.

Workloads

But meeting these standards once formed may be challenging, as professional trustees deal with the dual blades of being

in increasing demand, stretching their available time, and having increasingly-stringent requirements placed upon them.

“I think it is reasonable to say that the typical workload on schemes is higher than five years ago thanks to regulatory developments, changes in custom and practice, emerging issues, extra disclosure (eg chair’s statements for DC), focus on integrated risk management and more emphasis on the granular detail of scheme management,” Pan Governance managing director Steve Delo says.

“Hence, any professional trustee is likely to be much busier, even with an unchanged portfolio of clients. At a guess, certainly 25 per cent busier. Also, the time scales for dealing with matters are shortening, partly a function of modern life and communications technology, partly a function of increased trustee nimbleness and speed of reaction.”

There is a risk that the growing demands for, and of, trustees, combined with the limited pool of professional trustees available, could result in a capacity crunch. Ensuring that standards are maintained is therefore vital, Capital Cranfield managing director Neil McPherson says.

The hiring of new professional

trustees to mitigate this risk also needs consideration. For instance, Shoosmiths partner Lynette Lewis expresses concern at some professional trustee companies’

remuneration model of offering a low base salary, topped up with a share of the fees from the trustee’s appointments.

“My concern is about the people



they would be able to recruit with this system. For example non-experienced may people go for it as the base salary is acceptable to them, as may people who are retiring. But younger people with families may find this remuneration model risky," she explains.

How professional trustee workloads are managed depends on the company.

"A proper professional will limit the number of appointments they take to ensure client service," McGuinness states.

While each trustee sits on around 8-12 boards at Capital Cranfield, "there is no 'right' metric for the target loading of trustees", McPherson says, as "two or three challenging schemes can take as much time as 10 simpler boards".

According to McPherson, at Capital Cranfield, each individual alone works on their trustee boards. However, other firms take a 'paralegal-style' approach, with background people doing work and one person in front of the board, he says.

At BESTrustees, a careful eye is kept on people's workloads, with back up available if help is needed, its director Zahir Fazal says.

While professional trustees may be able to rely on the support of their companies when their individual work piles up, their company's own activities may cause a different set of problems.

Conflicts

Some trustee firms providing a bundled solution – either explicitly or through project management – could be a conflict of interest, McPherson warns. "Conflict of interest within a trustee firm providing a range of services is largely uncharted territory, so will need careful management and oversight."

As well as mitigating any potential issues that may arise from the services it provides, professional trustee companies may also have to navigate the minefield of the many clients they work for generating conflicts of interest.

However, it is "rare that a professional trustee finds themselves on two trustee boards where the sponsoring employers

are in direct competition i.e. where information that trustees are privy to (eg on covenant analysis) could present clear conflict issues", Delo says. "On the whole, professional trustee selection processes tend to filter that out when an appointment is made and any new such potential conflict would need to be disclosed and discussed."

One such area for this potential conflict is in the master trust space, where the schemes themselves are in competition with one another.

For DC master trusts, multiple independent trustees are required and terms of office tend to be fixed, so that can also present supply side challenges, Delo explains.

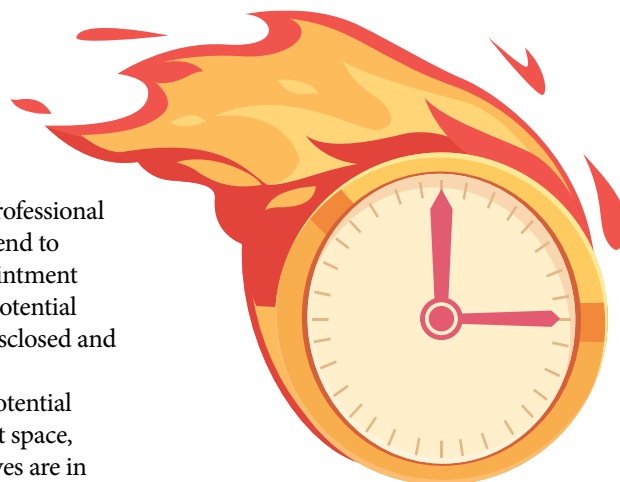
Generally though, "knowledge gained from running one pension scheme can only help with the running of another; the schemes themselves are not competing", McGuinness says. "More often, by having a number of clients in the same sector, a trustee can better understand and empathise with the issues facing employers and how best to build scheme/sponsor synergies."

Instead, maybe the biggest conflicts for professional trustees are personal ones. As McGuinness says, there is always the age old conflict of he who pays the piper calling the tune.

"One unavoidable conflict is if the party appointing the professional trustee is also the party paying them – and that party, if it is the employer, may actually be challenged by decisions that are taken by the very party they are appointing and paying," Delo explains.

"Of course, independent trustees have to do their job and if that means they have to butt up against the employer on issues – and thus potentially jeopardise their continued appointment – that is all part of the job (and the fun of the role)," he adds.

Consolidation could also throw up some potential conflicts. For instance if a professional trustee must decide on



whether their scheme should be consolidated into a larger vehicle, they could find themselves in 'turkeys for Christmas' territory.

"However, independent trustees will be alert to these situations and should be looking to make or inform decisions that are right for the scheme/members, not themselves," Delo says.

Management

Frobisher noted last year that dealing with conflicts of interest among trustees was essential, as most of the problems the regulator sees are due to conflicts of interest and how they are managed.

"As long as any potential conflict of interest is transparent to all stakeholders, they can be addressed. It is a factor though for the industry that needs sunlight and good governance to manage," McPherson says.

To mitigate this risk, 'Chinese walls' are often put in place by trustee firms, along with internal registers to declare any conflicts of interest.

While awareness of potential conflicts is vital for good governance, McGuinness is not too concerned about their impact.

"For all these potential conflicts, contractual requirements, professional standards, not to mention commercial reputation, will provide the safeguards," he says.

Written by Laura Blows