



An own goal?

Summary

- TPR recently stated there was a strong case for considering an authorisation regime for professional trustees.
- The current accreditation regime, which is voluntary, has seen solid take-up, yet some argue there is room for improvement.
- Potential dangers of over-regulating professional trustees include forcing good individuals out of the market.
- Protecting savers must remain front and foremost in any discussion around increasing regulation, says TPR.

Calls for tighter controls around professional trusteeship have resurfaced in recent months, but could further regulation create a new set of problems for the sector?

Francesca Fabrizi explores

The liability-driven investment (LDI) turmoil of last year created huge waves across the industry, with fingers being pointed at anyone and anything with any part to play in the running of defined benefit (DB) pensions.

Professional trustees, whose role has become evermore essential, did not escape scrutiny, with a spotlight being shone on whether there should be tighter controls on those who carry this title.

Speaking in December at a session of the Work and Pensions Committee on DB schemes with LDI, The Pensions Regulator (TPR) chief executive, Charles Counsell, stated that TPR, for some time, has not only believed that all pension schemes should have a professional trustee sitting on the board, but argued that there was a strong case for the authorisation of professional trustees in order to increase governance. This

would be a significant step further than the voluntary accreditation schemes on offer today from the Association of Professional Pension Trustees (APPT) and the Pensions Management Institute (PMI).

Counsell commented: “We have said for some time that we believe that schemes should have a professional trustee sitting on their board, but the reality is that the capacity of the professional trustee market does not match the number of schemes, so you cannot get there immediately.”

He went on to add that there was also an “open question” that needed to be considered on the matter. “There is no authorisation regime or regulation around professional trustees, and there is the question of whether there should be. To be fair, there is an accreditation process. Professional trustees can undertake that accreditation process, but

we cannot force trustees to do it.”

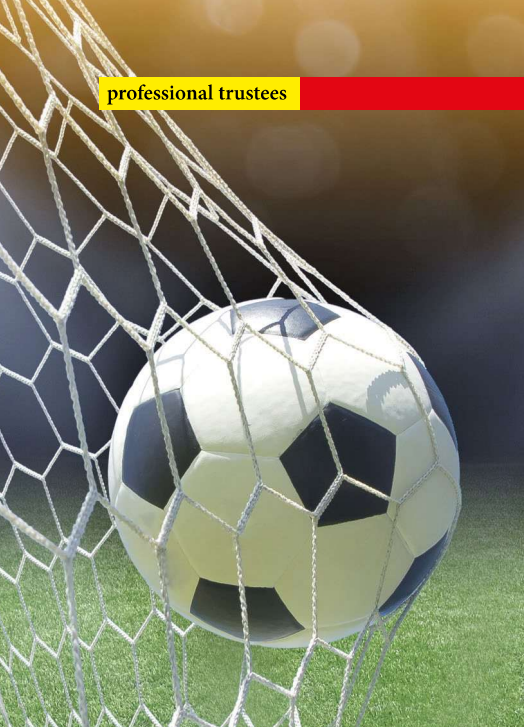
PMI director of policy and external affairs, Tim Middleton, was quick to respond, suggesting that formal authorisation would represent a “sea-change in managing scheme governance standards”, in that it would in effect constitute a ‘licence to practice’ for professional trustees.

He went on, however, to say that the PMI would “fully support TPR in whatever regulatory model it ultimately chooses to adopt”.

Similarly, APPT chair and Capital Cranfield managing director, Harus Rai, offered support on the basis that any new regime was in the interests of members: “The view across the APPT, and I would hope across the professional trustee market, is that no one wants regulation for regulation’s sake, but it’s difficult to argue against anything that is going to raise scheme governance, that is going to achieve better member outcomes.

“So if the DWP ever does decide to go down this route, I imagine there would be an initial consultation, which we would look at and comment on. If it adds value, we will say it adds value. If it doesn’t, we’ll call it out, and outline the reasons why and potential changes to it.”

So was it an aspirational comment from Counsell, or are there any concrete plans behind the words?



Speaking to *Pensions Age*, Counsell re-affirmed that TPR believes there are important questions to ask about how to best ensure that professional trustees meet stringent standards.

“An authorisation regime might well help to achieve this, but more work needs to be done to understand the challenges that exist.

“These include how authorisation would change governance and the make-up of trustees; the impact on member-nominated trustees; and improvements in equality and diversity; as well as how we define what a professional trustee is and what role sole professional trustees play.”

Ultimately, he adds, any authorisation regime would require new legislation, which is a matter for government.

In response, a DWP spokesperson concurs that improving trusteeship will be a continuing area of focus for them going forward: “As part of our ongoing efforts to support and improve trustees’ knowledge and understanding, the DWP is working with TPR and others to refresh the definition of what a professional trustee is; looking into the possibility of a formal professional trustee accreditation; and considering further ways to both support trustees and ensure fairness to members by making sure they are getting the best returns possible.

Current regime

In 2017, the Professional Trustee Standards Working Group (PTSWG) was established following TPR’s 21st century trusteeship and governance discussion paper. The PTSWG’s remit was to establish a set of standards for professional trustees and to put forward a system by which professional trustees could be accredited to demonstrate their ongoing adoption of, and continuing assessment against, the standards. In March 2019, those standards were published and, in 2020, both PMI and APPT launched their accreditation programmes.

Two key points about the current accreditation regime and standards are important to stress, argues Rai. First, that they are not set in stone, and second, that accreditation is voluntary, although this has not meant low take up.

“When the standards were put in place, the intention was always that they would evolve over time. They need to evolve according to how the market moves,” says Rai.

“Also, at the moment, the standards are voluntary. There are still however approximately 460 accredited trustees to date across both the APPT and the PMI – professional trustees who have voluntarily decided to take them up. That in itself shows they are a success. We would like to be in a situation where anyone who’s acting as a professional trustee, be it a sole trader or someone who represents a firm, meets those standards as the barest minimum.”

In order to further understand just how successful and indeed useful the current regime is, the APPT is currently involved in a workstream, alongside other bodies, looking at why a scheme should appoint an accredited professional trustee rather than a non-accredited one.

Rai explains: “We are in the very early stages, but we will be looking at the benefits of accreditation from four viewpoints: the member/saver; the employer; other trustees; and the adviser.

“We will be asking why anyone in any of these capacities should appoint an accredited professional trustee over a non-accredited professional trustee. We’re not saying that every scheme should have a professional trustee, because that’s an individual choice based on the needs of the scheme, but where they do decide they want one, why should they look at an accredited trustee over a non-accredited trustee?”

Dangers of over-regulation

Any arguments for tighter regulation are always rebutted with arguments against, and the pensions industry needs to ensure it only adds more regulation for the right reasons, says 20-20 Trustees trustee director, Stuart Walters.

“On the one hand, trustees hold the assets of the pension scheme for its beneficiaries, so it is a very important and trusting role that comes with big responsibilities. It goes without saying that trustees should be held accountable for their actions.”

But, he adds, it is also important to establish what we are trying to protect against. “Is it fraud, poor decision-making leading to poor member outcomes, lack of skills, knowledge etc.?”

“Accreditation proves that trustees meet a general standard of quality. We need to understand what authorisation is going to give the consumer beyond this?”

Is there a danger, also, that the professional trustee market becomes over-regulated, to the extent that we lose good people or prevent good candidates coming forward, at a time when having competent and experienced people in the role is more important than ever?

Walters fears this may be the case: “Inevitably, some professional trustees will leave the professional trustee industry. Smaller professional trustee firms and sole traders may struggle with the increased costs of extra regulation and authorisation. The key will be the barrier and costs to entry.”

BESTrustees president, Alan

Pickering, raises concerns about the potential impact on diversity: “I am a great believer in the advantages of having diverse trustee boards. Anyone who is interested in being appointed should explain why they are suitable based on experience and qualifications. In many instances, experience maybe more relevant than qualifications. As we move towards the DB endgame and DC empowerment, trustees will be able to leverage the experience of their day jobs even though technical pension qualifications may not be part of their portfolio. If someone puts themselves forward as a professional trustee, the potential client maybe influenced by their qualifications or authorisation. Neither of these attributes should be obligatory. The pursuit of diversity should not be undermined by prescriptive regulation.”

Rai agrees there’s always potential downsides to regulation, “because, like anything, when regulation is put in place, it becomes an issue of compliance and with that comes potential extra cost. Let’s take a sole trader as an example; if because of the extra regulation, the cost of operating becomes disproportionate to them, they could fall out of the market”.

However, he argues, if the regulations were to go even further and state that every single DB scheme had to have a professional trustee, then that would mean a lot of extra work to go around, explaining: “You could then see lots of firms trying to recruit trustees. You could also see a lot of new firms suddenly being established because there would be a potential source of new business.

“So the impact could be manifold. It could create opportunities, it could bring people into the market, it could lead to some people leaving the market, but ultimately it comes back to the most important question – how is it going to affect each individual scheme and, even more importantly, how is it going to affect the members underneath it? Again, if regulation is going to add value, then it’s difficult to argue against it.”

A different focus

Zedra Governance director, Colin Richardson, takes a different view on the regulation debate arguing that, while there may be room for improvement with the current accreditation regime, perhaps a greater focus should be on further developing existing accredited professional trustees to ensure they have

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the in-depth levels of knowledge they require for a role that is becoming more complex every year.

He states: “The accreditation options that exist via the PMI and APPT are a start, but they could arguably be more robust. The larger issue is the future training of the professional trustees who are already accredited. We have training through our professional trustee firms, and we gain experience through our work in all the situations we face.

“In addition, we get all sorts of information and guidance from TPR and other organisations. But the thing about professional trusteeship is it’s so wide-ranging. We’re dealing with funding, investments, administration, legal issues, negotiations with employers, corporate restructuring, buyouts, cybersecurity, GDPR and more.”

Most professional trustees, he adds, have come from one particular discipline, yet need to be knowledgeable in dealing with that breadth of issues “and sometimes all within the same meeting”.

“So it seems to me that an effective way to make professional trustees continually improve would be to refine the current Continuing Professional Development (CPD) requirement, to

make it more effective.”

Richardson suggests something akin to TPR’s current toolkit, but on a more enhanced level. Something, he says, that would ensure or assess how professional trustees are keeping up to date with everything and maintaining a certain level of knowledge. “This would be quite a project, but it could be addressed using an enhanced series of modules or toolkits – a real-time, evolving toolkit such that all trustees have to cover in some detail new emerging areas and revisit periodically existing areas.”

Looking ahead

However the professional trustee market evolves in the coming years, what’s key in all of this, stresses Counsell, is that any changes must benefit the saver: “Our focus is firmly on protecting savers by working with key partners and the industry to ensure savers get value for money from schemes, and that trustees meet our expectations around knowledge and understanding, and governance.

“We already hold professional trustees to a higher standard than other trustees, something that is recognised in our enforcement policy, and we support the existing trustee accreditation programme, which is a strong indicator of the knowledge and understanding we expect from any trustee.”

Written by Francesca Fabrizi

