

**RESPONSE OF THE ASSOCIATION OF MEMBER NOMINATED TRUSTEES  
TO THE PENSIONS REGULATOR'S INDUSTRY CONSULTATION ON  
"FUTURE OF TRUSTEESHIP AND GOVERNANCE"**

The Association of Member Nominated Trustees ("AMNT") is grateful for the opportunity to respond to the industry consultation document issued by the Pensions Regulator in July 2019 and entitled *Future of Trusteeship and Governance* ("the Consultation"). AMNT was established in 2010 as an organisation run by and for member-nominated trustees, directors and representatives of private sector and public sector pension schemes. We now have ~600 members from over 450 pension schemes that have collective assets of more than £800 billion, which is approximately one-third of the UK's pension scheme assets.

We shall respond by reference to the numbered questions posed in the Consultation, noting first that all our references to "trustees" should be taken to include directors of corporate trustee bodies, and those to "MNTs" should be taken to include member-nominated directors, unless in either case the context requires otherwise.

**Q1** The central issue seems to AMNT to be not so much the proposition that trustees should be achieving the desirable outcomes set out in Annex 1 to the Consultation, but rather what concretely they need to know or understand in order to do so. The outcomes are so broadly drawn that it would be hard to find any desideratum that would not fall within them.

We are somewhat nervous of your proposal "to move away from a broad TKU syllabus as currently reflected in our TKU code and guidance". Certainly it would be helpful if these were "simpler, clearer and easier for trustees to translate into good governance behaviours", so it is not surprising that tPR has received broad support for the project of making them so. It would be difficult, though, to strike a wholly positive note without more indication of what is to be removed from or de-emphasised in the toolkit and other guidance.

**Q2** AMNT members are generally of the view that individuals could sensibly be required to complete the tPR Trustee Toolkit within a reasonable period before or after assuming a trusteeship role in a pension scheme – six months perhaps – and that they should complete it afresh at intervals (maybe a two-year maximum). We are not wholly convinced that legislation is required to achieve this. The Pensions Regulator could, if you devoted resource to checking that these requirements were being met, lean pretty effectively on schemes where there were defaulters. If you are not prepared to devote such resource, legislation in this area would remain unenforced – in the same way as trustees are currently allowed to neglect their duty to do what is reasonable to secure appointments to MNT vacancies.

**Q3** Maintaining up-to-date familiarity with the Trustee Toolkit is desirable and, as mentioned above, could sensibly be required by tPR. Other CPD-type training should be encouraged too. We are, however, concerned that laying down specific standards or minimum hours of training, especially by law, would be liable either to engender bureaucracy out of proportion to the benefits, or to result in widespread unpunished non-compliance. At tPR you can yourselves gather data on individuals' completion of your own Toolkit, but would find it much more difficult to check information from trustees about other CPD.

**Q4** AMNT does not favour statutory formalisation of a cadre of professional trustees beyond that already provided for "independent trustees" in sections 7(6) and 23(4) of the Pensions Act 1995. Where tPR makes an appointment under either of those sections, we should expect, especially in the latter case, a higher standard of trustee knowledge and understanding to be required of candidates than would be the minimum expectation of pension scheme trustees generally. Indeed, where a trustee body exercises a power to co-opt, and thinks it appropriate to appoint an outside pensions professional, one would expect deeper pre-existing knowledge and understanding to be

sought than is usual for trustees generally. One would hope that similar considerations would apply to other routes into such appointments.

**Q5** As indicated above, we favour the use of the Trustee Toolkit (as from time to time polished and updated) to be the basic measure of TKU adequacy. That is not to say, though, that the industry should not be encouraged to engage as many trustees as practicable in continuing education for their role. In relation to MNTs of course, that is a central objective of our Association, and the fact that this is so undoubtedly represents a major stimulus for industry participants to sponsor us.

**Q6** We recognise your finding that the scale of the Toolkit may be “demotivating time-poor trustees to engage”. It is no doubt possible to provide the information it contains in such a way that an equally useful learning outcome arises from a smaller input of time; that improvement should clearly be sought. Yet we are not sure that there is all that great deal of headroom; and it is no solution to the problem to dumb down the trusteeship role. Unless a trustee body has the requisite skill and will properly to oversee the functioning of the scheme, the members are at the mercy of the service providers and do not even benefit from the tighter regulatory framework of a contract-based pension arrangement. For the incorrigibly deficient trustee body, therefore, quite drastic regulatory intervention from tPR may be needed, *e.g.* a trustee appointment under section 7(3)(a) of the Pensions Act 1995.

A very useful prior step, though, would be to reduce the extent to which trustees are “time-poor” by eliminating (or at least reducing) the extent to which trustees can be worse off in time and money for taking up the role. Legislation could – and conceivably official guidance would suffice - , by making more specific the effect of section 58(2) of the Employment Rights Act 1996, clarify and in practice enlarge the right of trustees of an occupational pension scheme to fully-paid time-off from the employment of any sponsor of that scheme.

**Q7** There should indeed be such a requirement. If there is to be an exemption for small schemes, it should have an upper limit of no more than 99 members. The report could sensibly be included in the Chair’s Annual Report (the requirement for which should be extended, *mutatis mutandis*, to DB schemes).

**Q8** It is certainly very desirable that such tools, guidance and case studies be produced. We at AMNT are looking to develop work in this area despite significant resource constraints. We are pleased that PLSA have also taken some steps, as reported in the Consultation. It is an area in which firms of professional trustees who support the continuation of lay trusteeship would be in a good position to give assistance. We would envisage that tPR might be best placed to take a lead in “making it happen”, by convening supportive parties, and without having to commit to expanding its own publication effort.

**Q9** AMNT does not favour the mandatory inclusion of a professional trustee on every occupational pension scheme trustee body. At present, as tPR acknowledges, this would be impracticable for want of personnel. That is not, however, our only ground of opposition.

There is also the issue of definition. It seems not to be envisaged that a “professional” trustee would have to be accredited as meeting the Professional Trustee Standards published in March 2019 (or indeed any other specific standard). We do not understand how, without a tight definition, a trustee board would know whether it was compliant with the proposed requirement. It would surely be unacceptable for compliance to be achieved by appointing “professionals” merely on the basis that they hold themselves out as such.

Then again, where a scheme is functioning adequately, the appointment of a “professional trustee” may have the principal effect of adding that person’s fees to the running costs of the scheme. It may introduce a risk of reinforcing conventional industry groupthink. It will also generally dilute the influence of those with skin in the game and/or closeness to the members.

Another disadvantage of a “professional trustee” may be that the lay trustees defer to that person’s enhanced status and reduce their own sense of responsibility for the well-being of the scheme.

Where those lay trustees had an inadequate or ineffectual commitment to the scheme beforehand, that might still result in a net advantage for the members. In such cases AMNT accepts that regulatory intervention might be necessary, and might involve tPR's exercise of the power of trustee appointment under section 7(3)(a) of the Pensions Act 1995. However, the exercise of such a power without the assent of the trustees should in our view be predicated on something having gone quite seriously wrong.

**Q10** AMNT does have concerns in this area.

We are surprised that the section of the Consultation on this topic seems not to regard a sole corporate trustee as a "sole trustee", or at least as being unproblematic so long as more than one individual concurs in each course of action on the corporate body's behalf. Where the sole corporate body is outside the scope of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 ("the Regulations"), it is generally insufficient to have two separate directors acting; a real risk remains of the sponsor that appointed the trustee being unduly favoured at the expense of the members.

In our view the Regulations should be amended to remove paragraph (k) of regulation 2 and paragraph (m) of regulation 3. If that cannot be achieved, it is particularly important in this context that tPR assures itself that, in any case where a scheme ceases to have any but "independent" trustees, the trustee body has up to that point properly discharged its statutory obligations in relation to the procedure for filling MNT vacancies; and that where this appears not to have been the case, tPR makes an additional appointment under section 7(3)(b) and/or (d) of the Pensions Act 1995.

**QQ11-14** We would not oppose the requirement given as an example in Q11 if we are right that "two or more trustees" must mean "two or more people" (or "two or more directors").

We have virtually no information on QQ12-14, but if the answers to QQ12&13 are not generally reassuring, the case is made for tougher standards, as adumbrated in Q11.

**Q15** No.

**Q16** Yes.

**Q17** It is very important that members get what they were promised, or that if it is absolutely inescapable to provide an actuarial equivalent, the assumptions underlying its calculation are subject to close scrutiny.

**Q18** We are inclined to doubt it.

**Q19** In principle the loss of trustee oversight is a detriment, but if the winding-up stems from the inadequacy of the trustees' stewardship, that detriment may be substantially offset.

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