Draft standards for professional trustees of occupational pension schemes
December 2017
**About the authors**
These standards for professional trustees of occupational pension schemes have been produced by the Professional Trustee Standards Working Group (PTSWG) after consultation with the pensions industry.

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Introduction

Professional trustees

Professional trustees play an important role in the UK pensions system and should be able to demonstrate that they have sufficient expertise, knowledge and skills to perform the role. The Pensions Regulator (TPR) and the pensions industry wants to see good quality professional trustees who will help to improve the governance of occupational pension schemes. Well-governed pension schemes can achieve good outcomes for members, benefiting, sponsoring employers and the economy as a whole.

The PTSWG has developed a series of standards that are intended to improve the quality of professional trustees and eliminate poor practices from the market. The group is also developing an accreditation framework which professional trustees will be expected to achieve, details of which will be published in 2018.

Scope

The standards apply to anyone falling within TPR’s description of a professional trustee as set out in its August 2017 policy document (including any subsequent amendments). The policy describes a professional trustee as:

“...any person, whether or not incorporated, who acts as a trustee of the scheme in the course of the business of being a trustee.

(TPR) would not normally consider a remunerated trustee to be acting as a trustee of the scheme in the course of the business of being a trustee if:

a) they are or have been:

• a member of the pension scheme or a related pension scheme (ie a scheme with a sponsoring employer in the same corporate group); or

• employed by, or a director of, a participating employer in the pension scheme (or an employer in the same corporate group); and

b) they do not act, or offer to act, as a trustee in relation to any unrelated scheme.

Where an individual represents or promotes themselves to the trustees or sponsors of one or more unrelated schemes (ie schemes in relation to which the individual does not meet either of the descriptions in (a) above) as having expertise in trustee matters generally (rather than just in certain areas), whether for remuneration or otherwise, (TPR) would normally consider them to be acting in the course of the business of being a trustee.”

The standards do not apply to trustees of Small Self Administered Schemes2 (SSAS) unless they have non-SSAS appointments.

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1 http://tpr.gov.uk/docs/professional-trustee-description-policy.pdf
2 Small Self Administered Schemes have between 2 and 11 members, all members are trustees and all decisions are made unanimously by the trustee board.
Compliance with the standards

Comply or explain
The standards will be applied on a ‘comply or explain’ basis. Professional trustees will be expected to:

- describe how they meet each of the standards, or
- if one or more of the standards have not been met, explain why the professional trustee has not met those Standards.

Disclosures against the standards should improve the functioning of the market for professional trustees, who should expect to be asked to provide this disclosure to employers and / or existing trustees when seeking appointments.

Professional trustees who do not to comply with one or more of the standards are expected to set out meaningful explanations and a clear rationale that enable the reader to understand their approach.

Employers and / or trustees who are selecting a professional trustee for appointment to their board are advised to request to view this disclosure. If evidence cannot be provided to the satisfaction of the employer and / or trustees that the applicant meets the standards, they should consider whether the appointment is appropriate and be mindful that it may not represent good value for scheme members.

Professional trustees need to update their disclosure annually and as necessary to reflect any changes in their practices.

TPR supports the standards and will consider compliance with these them as an indicator of fitness and propriety.

The standards will apply from the date of their publication, which is expected to be in April/May 2018.

Schedule 1 - standards for professional trustees
The standards set out in schedule 1 cover the following areas:

- Fitness and propriety
- Integrity
- Expertise and care
- Impartiality and conflicts of interest
- Professional behaviour
- Systems and controls
Schedule 2 - additional standards for professional trustees who act as chairs

Many schemes have a professional trustee appointed as the chair and TPR research\(^3\) shows many professional trustees have chair appointments. TPR says chairs of pension schemes:

“...should be prepared to assume similar governance responsibilities to those expected of a chair of any corporate board but adapted to suit the needs of their scheme.

They need to be an effective leader, with an independent viewpoint and capable of setting high standards for the board as a whole. They should be able to recognise each individual trustee’s potential and ensure their knowledge and skills are used effectively.

Trustee boards need to look strategically across all of the issues that affect their scheme. A chair who can remind trustees to take the broad, long-term view, and can help achieve compromise and consensus, is an asset. They should also involve and encourage participation from all board members, particularly new trustees.

When appointing a chair, the skills and experience of candidates should be considered.”\(^4\)

Schedule 2 sets out additional standards for professional trustees who act as chairs covering the following areas:

- Board leadership
- Board and chair quality

Schedule 3 – additional standards for professional trustees who act as sole trustee

Schedule 3 sets out additional standards for professional trustees with sole trustee appointments.

Appendix: Trustee Duties and Conflicts of interest

An appendix to the standards sets out the trustees' fiduciary duties, how trustees might carry out those duties or delegate those to a third party and provides examples of what might be regarded as acceptable practice by professional trustees when managing conflicts of interest.


Schedule 1 - standards for all professional trustees

Fitness and propriety
Is a fit and proper person. Any assessment should take into account similar matters to those set out in Reg 5 and schedule 1 of the Occupational Pension Schemes (Master Trusts) Regulations 2018 (excluding (i)). Consultation on these regulations is being conducted by DWP from 30 November 2017 to 12 January 2018).

Integrity
1. Acts honestly and with integrity.

Expertise and care
2. Carries out work competently and with care.
3. Has the relevant experience, skills, knowledge and capacity to be able to discharge their fiduciary duties as a professional trustee.
4. Takes steps to understand their fiduciary duties as a professional trustee, including familiarising themselves with the scheme’s governing documentation, other governance documents, codes of practice and TPR’s guidance.
5. Understands the complexities and challenges of the particular scheme.
6. Continues to develop their knowledge and skills and undertakes annually a minimum of 25 hours relevant learning and development.

Impartiality and conflicts of interest
7. Ensures professional judgement is not compromised, or seen to be compromised, by bias, conflict of interest or undue influence of others.
8. Identifies, assesses and manages any actual, perceived or likely conflicts of interest. Avoids where possible any actual conflicts of interest. Provision of advisory services by associated companies, firms or other arrangements to schemes where acting as professional trustee should be explained as part of ‘comply or explain.’

Professional behaviour
9. Acts in the best interests of the members and beneficiaries of the scheme to which they are appointed.
10. Complies with all relevant laws and regulations.
11. Respects the confidentiality of information.
12. Speaks up if they believe, or have reasonable cause to believe, that a course of action may be unethical or unlawful.

Systems and controls
13. Ensures that there are robust control and governance structures in place for the scheme.
14. Maintains adequate professional indemnity insurance.
15. Has terms of business in place that clearly set out the basis of the relationship between the professional trustee and those engaging the professional trustee.

16. Has processes in place to ensure that, where fees are being paid out of scheme assets, these are transparent with appropriate risk controls in place.

17. Has in place appropriate fraud prevention measures.

18. Has in place processes to maintain continuity of service and ensure peer review of key decisions where necessary.

Schedule 2 - additional standards for professional trustees who act as chairs

These standards are expected to be followed as far as possible unless particular points are not within the control of the chair. A professional trustee who is not chair is expected to assist the chair as far as possible to meet these guidelines.

Board leadership
1. Has the necessary skills to be a chair including the ability to lead, negotiate and achieve a consensus.

2. Sets the tone and provides strategic direction for the trustee board as a whole.

3. Ensures that strategic issues and those matters with a high risk rating facing the scheme are given appropriate attention and focus by the trustee board.

4. Looks to ensure full participation and open discussions at trustee meetings.

5. Is available between trustee meetings to address any individual trustee concerns.

6. Acts as the key interface with the employer sponsor and manages that relationship on behalf of the trustee board, or ensures this is otherwise done.

7. Seeks to ensure that any advice received by the trustee board is clear, objective, informed and provides value for money.

8. Actively challenges advice.

9. Ensures processes are in place to assess the appropriateness of advisers, seeking to avoid where possible potential conflicts and manage those conflicts which are unavoidable.

10. Has up to date and relevant knowledge of the adviser market to be in a position to contribute to the adviser selection process where necessary.

11. Seeks to ensure there is oversight over the effectiveness of internal controls to comply with legal, regulatory and other requirements.
Board and chair quality
12. Takes into account the resource constraints of different trustee board members when assessing the types of activities that are planned or may occur over a particular period.

13. Reviews, monitors and takes action in the event of absences and underperforming individual trustees.

14. Implements a performance review process for the chair, individual trustee board members and the trustee board as a collective.

15. Promotes and seeks to ensure trustee board diversity and succession planning.

16. Monitors the Trustee Knowledge and Understanding of the trustee board and promotes a training plan.

17. Applies a conflicts of interest policy.

Schedule 3 - additional standards for professional trustees who act as sole trustee

1. Ensures that the governance arrangements in place within their business are appropriate to mitigate the additional risks and responsibilities associated with sole trusteeship.

2. Ensures that formal written procedures are in place for fraud prevention, maintenance of continuity of service and peer review of key decisions.

3. Professional trustees who are sole traders (or who provide professional trustee services via firms which are not sufficiently resourced to mitigate these additional risks and responsibilities) should not accept appointments to act as sole trustee.
Appendix: Trustee Duties and Conflicts of interest examples

Pension scheme trustees have a number of fiduciary duties to fulfil. These include for example administering the fund, paying benefits to beneficiaries, collecting contributions, investing the assets, keeping records of meetings, preparing accounts and taking advice.

Most trustees will delegate some duties to one or more appropriately experienced third parties e.g. an in-house investment team supported by the employer or a third party administrator.

A professional trustee may have the resources and skills to perform a number of relevant duties, for example acting as scheme secretary and maintaining minutes of meetings.

A distinction needs to be made however between performing the duties of a trustee and acting as an adviser to the Scheme.

The decision to delegate a duty for which the trustee is paid or to appoint an advisor may potentially result in a conflict of interest that would require to be managed. Some roles (e.g. Scheme Actuary) may not lawfully be filled by a Trustee or a director of the Trustee.

The following are examples of how professional trustees might look to meet the Standards by managing any perceived or actual conflicts of interest.

Extent of trustee duties performed by the Professional Trustee (larger scheme)

Arthur is a professional trustee from a firm called Good Trustee Services. He chairs the trustee board of the ABC Pension Scheme. The scheme has a number of sub-committees including a governance sub-committee (GSC). Arthur is not a member of the GSC.

Good Trustee Services also provide secretarial support to the trustee board. In this way, the Trustees are providing their own secretarial services rather than outsourcing to a third party. They were appointed after a tendering process led by the GSC with support from the pension manager, with the appointment considered and approved by the trustee board.

The GSC has in place a standard process for evaluating the scheme’s various service providers. At least every three years, each service provider is evaluated to ensure that they continue to provide a high quality service and value for money. The GSC, supported by the pensions manager, undertakes an evaluation of the secretarial services provided to the scheme, including assessing value for money and benchmarking the cost of secretarial services with reference to the market. The GSC concludes that Good Trustees Limited continue to provide high quality secretarial services and value for money. The trustee board considers the GSC’s recommendation and approves their continuing appointment.

Whilst there is no conflict of interest in this example, the process outlined here highlights how good service level monitoring processes will lead to a better outcome for the scheme even in the case where the Trustees are providing the service themselves.
Extent of trustee duties performed by the Professional Trustee (smaller scheme)

Zuzanna is the client manager employed by XYZ Governance LLP to act as sole trustee of the UVW Limited pension scheme which is sponsored by UVW Limited.

Commercial terms are in place between XYZ Governance LLP and UVW Limited setting out which trustee duties are to be performed by XYZ Governance LLP and which duties are to be delegated to a third party). The fee is substantially fixed but from time to time additional tasks occur (for example the implementation of new data protection legislation) which are paid for on the basis of time spent.

The commercial terms and service levels are subject to review every three years and may be terminated by UVW Limited at shorter notice in certain circumstances (for example poor performance by XYZ Governance LLP).

There is an allowance for XYZ Governance LLP’s fee in the contributions made by UVW Limited to the Scheme but the commercial terms stipulate that in almost all circumstances XYZ Governance LLP’s fee needs to be approved by UVW Limited prior to payment from the fund.

Professional trustees associated with firms providing advice

Germaine is a professional trustee who sits on the board of the ABC Pension Scheme. She is also senior partner with a law firm, Top Law LLP. Following an open tendering process during which Germaine declared a conflict of interest, TopLaw LLP are appointed legal advisers to the ABC Pension Scheme. The Open Pension Scheme is a relatively small scheme and does not operate a sub-committee structure.

Germaine and the chair of the board want to avoid any conflict of interest. They recommend a mechanism adopted by the trustee board where another member of the board approves the bills and assesses the quality of advice. Julie, another trustee on the board, is given this responsibility. She is also tasked with reviewing the value for money of the legal advice services.

The scheme has in place a standard process for evaluating the scheme’s various service providers. At least every three years, each service provider is evaluated to ensure that they continue to provide a high quality service and value for money. Germaine would normally be involved with this process for all the service providers but decides that it would not be appropriate for her to do so in the case of Top Law LLP. Julie is therefore asked to evaluate Top Law LLP’s performance and make a recommendation to the trustee board. Julie’s evaluation is considered by the trustee board, who decide that Top Law LLP should be retained as they provide high quality legal advice and value for money. Germaine does not take part in the decision to retain Top Law LLP.