

24 September 2019

Mark Potter,
Regulatory Policy Directorate,
The Pensions Regulator,
Napier House,
Trafalgar Place,
Brighton.
BN1 4DW

By Email to: futuretrusteeship@tpr.gov.uk

Dear Mr. Potter,

Response to The Pensions Regulator's Consultation on the Future of Trusteeship and Governance (the "Consultation")

The CFA Society of the UK (CFA UK) is pleased to take this opportunity to respond to the Consultation. Our Pensions Expert Panel – comprised of professionals working across the pensions industry – has reviewed the Consultation and has responded to certain of the questions raised below.

About CFA UK and CFA Institute

CFA UK is the professional body for the UK investment sector and is a member society of CFA Institute, the world's largest association of investment professionals. CFA UK's mission is to educate investment professionals, to promote high ethical and professional standards and to explain the profession to our stakeholders. It aims to do this through the promotion of the highest standards of ethics, education and professional excellence. Our members can be found working in both the investment consultancy and fiduciary management sectors.

As professional bodies working in the investment management sector, CFA UK and CFA Institute share a mission to promote the highest standards of ethics, education and professional excellence for the ultimate benefit of society. Our focus has been on educating those working in investment management, but we also have a strong interest in ensuring that our clients (such as trustees) have the skills and experience to hold us to account. We are pleased that TPR has undertaken this consultation as we believe that the quality of trusteeship and governance can be improved to ensure the best possible outcomes for pension scheme members. We draw your attention to CFA UK's previous response to the TPR's Discussion Paper on 21st Century Trusteeship & Governance in 2016¹.

¹ CFA UK Response to TPR's Discussion Paper on 21st Century Trusteeship: <https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cfa-uk-response-to-tpr-consultation-final.pdf?la=en&hash=EEF172C5165BE21769270D4EF32B4ABC28D35824>

Further highlights of CFA UK and our global umbrella organisation, CFA Institute, are provided in Appendix 1.

Overview of our response

The publication of the Consultation is timely. Pension schemes are increasingly challenged to deliver investment returns and both DB and DC trustees are faced with an array of difficult choices and tasks. It is important that they are equipped with the requisite skills and knowledge. Furthermore, they need to operate within governance structures that allow them to do so effectively.

We broadly welcome the suggestions made in the Consultation (notably in respect of the need to evidence the capabilities of trustees as a way to ensure that they are being met) but caution that there is a trade-off between increasing the time and skill requirements of trustees and the diversity that will be found on trustee boards.

We set out responses to those of your specific questions (questions 1-9) which relate most to CFA UK's mission below.

Responses to specific questions

- 1. Do you agree that the expectations set out in the 21st century trusteeship campaign (set out in Annex 1 of the Consultation) is a good starting point for defining a minimum standard for trustee knowledge in the code? Is there anything else that should be added that would be necessary for all trustees to know?**

We believe that the areas set out in Annex 1 of the Consultation are a good starting point, but believe it is difficult to be prescriptive given the complexity of pension trusteeship and the variety of issues that trustees can be faced with (both on investment and non-investment matters). Identifying and including all of the areas that trustees could be faced with is unlikely to be practical.

Perhaps, what is of greater importance is ensuring that trustees understand what is expected of them and their colleagues in their role, their responsibility to recognise shortfalls in their skills or knowledge when they arise, and what steps they should take to address them.

- 2. Should there be legislative change for trustees to demonstrate how they have acquired a minimum level of TKU, for example through training or qualification?**

As noted on The Pensions Regulator's website, the law already requires that all trustees have knowledge and understanding of, among other things, the law relating to pensions and trusts, as well as the principles relating to the funding of pension schemes and the investment of scheme assets. We therefore believe it is reasonable to ask all trustees to attest that they at least meet these requirements, as a condition of their appointment or reappointment.

Whilst qualifications are clearly a good way to verify an individual's knowledge, we believe it is important to have a blend of skills on a board and that this cannot be achieved by requiring all trustees to have a certain (or one of a choice of several)

qualification alone. In addition, a requirement that all trustees have a professional qualification may hinder efforts to improve the diversity of trustee boards (see further below). Therefore, we do not believe it should be mandatory for the trustees to have a professional qualification (but see also our comments in relation to professional trustees set out below).

However, all trustees should be required to be able to demonstrate how they have acquired sufficient TKU, including through completion of relevant training sessions. This should include a requirement that all trustees complete TPR's trustee toolkit within a short period after taking up their role. A six-month deadline to complete the trustee toolkit (or equivalent programme) seems reasonable, but it might also be helpful to encourage individuals standing for election as a trustee to complete the trustee toolkit (and might also help to ensure that they fully comprehend what the role includes).

To demonstrate that trustees have achieved sufficient TKU, Chairs of trustee boards should be required to confirm that each trustee has an appropriate level of knowledge and understanding, and that the board collectively has the required range and depth of knowledge and understanding. This confirmation could be made to TPR and members annually and published (for instance in the schemes' annual accounts).

On this topic, we believe that there are some areas where the Trustee Toolkit could be improved with regards to investment matters. We would be pleased to talk to The Pensions Regulator about potential approaches to bridging the knowledge gaps with regard to investments.

3. *Should there be a legislative change to introduce a minimum level of ongoing learning for all trustees, for example through CPD-type training? If so, how many hours a year would be suitable?*

A CPD framework is a good way of encouraging trustees and boards to keep their knowledge up-to-date. Pension law and regulation as well as the investment management industry are fast-moving and so knowledge needs to be updated constantly. In time, we would recommend standardisation of a CPD requirement, but we believe that, initially at least, it is more important to ensure that all trustees attain the appropriate base level of knowledge and understanding.

We believe that setting a minimum CPD time requirement initially may not be sensible for two reasons:

- i. Trustees have varying backgrounds and their ability to commit further time to their role (in addition to existing requirements) is likely to differ widely. For instance, pensioner trustees are likely to have more time available than non-pensioners who may well be employed. In addition, as stated above, increasing the minimum CPD time requirement of trustees may dissuade some otherwise strong candidates from taking up the role, depending on their other commitments. We feel that it is not the time to introduce any requirements that may hinder efforts to improve the diversity of trustee boards; and
- ii. Whilst some advisors provide courses which provide CPD credits, we believe that not all of these are necessarily beneficial or will cover all the areas that trustees should understand. Therefore, we are concerned that even meeting a

minimum CPD time requirement may not mean that sufficient learning has been achieved in important areas.

As such, we recommend that, as a minimum, TPR should confirm on a regular basis specific items of CPD that trustees should complete (for instance, through new/revised modules to the Trustee Toolkit).

4. Do you agree that we should set higher expectations on levels of TKU held by professional trustees in the code, recognising that they typically act across multiple schemes of various types, size and complexity?

We believe it is reasonable to expect professional trustees (i.e. those remunerated for their role) to be a member of a professional body and, in fact, it is clear from previous research that many professional trustees already hold qualifications.

The advantages of such membership are that there would be an independent verification of trustees' knowledge and skills. In addition, membership of a professional body will support continuing professional development, and will require members to adhere to suitable ethical and professional standards.

We recommend that the CFA Charter would be one example of a relevant qualification, particularly with respect to investment matters.

5. Should we focus more on establishing and setting standards and ensuring all trustees are aware of them, while relying more on industry to have the main role in educating trustees in ways more tailored to their individual needs?

Our experience is that the industry has a mixed track record when it comes to educating trustees, and that a conflict of interest can be created when education is provided by someone acting in an advisory capacity. Therefore, we do not believe that education should solely or primarily be the responsibility of the industry.

The aim of these proposals is to improve governance by trustees; one significant aspect that CFA UK believes should be emphasised is the need to encourage trustees to take responsibility themselves for improving governance, both at their individual pension fund and more widely across the entire industry. While new rules and regulation may be inevitable, the possibility of a drift towards a "tick box" culture should be monitored and avoided. Instead trustees should be incentivised to exercise proactive responsibility and judgement, particularly as the industry evolves and new challenges arrive.

We believe the TPR should seek to broaden the regulatory guidance and training (for instance through the trustee toolkit) that it provides to cover a broader range of core areas.

However, we also accept that the wide range and complexity of pension issues means that it is unlikely to be practical for TPR to provide guidance in all areas, and there will inevitably be some issues which are specific to certain schemes are not to others. Whilst this will likely require industry (in particular, a scheme's professional advisors) to play some role in educating trustees, we believe it is essential that TPR also provides clear guidance to trustees on how best to engage with their advisors to ensure that, as part of providing services to trustees, advisors

provide unbiased education to their clients allowing them to make considered decisions (as opposed to 'rubber-stamping' decisions made by their advisors).

6. We would also welcome any thoughts or ideas that you might have more generally about how we can have greater confidence that trustees have the necessary basic knowledge and understanding to carry out their role.

We recommend that TPR continues to emphasize the value of trustee training – both in relation to general and specific duties – and investigate working with potential providers to consider how levels of knowledge and understanding might be acknowledged and celebrated.

In addition, we note that the Trustee Toolkit does not currently cover ethics. Ethics has been a core component of the CFA Program since it was first launched more than 60 years ago. Given the challenging ethical and legal issues that trustees have to tackle and the critical importance of the trustee's role, we recommend that TPR considers the addition of a module on ethics or the encouragement of some other form of study specific to ethics.

7. Should there be a requirement for UK pension schemes to report to the regulator on what actions they are taking to ensure diversity on their boards? Should such a requirement be limited to schemes above a certain size? How should such a report be made to us?

CFA UK believes that diversity in the broadest sense can help encourage good governance and reduce knowledge gaps on pension trustee boards. According to the findings of the CFA Society of the UK's second annual Gender Diversity Survey, professionals want more focus to be placed on socio-economic factors, mental well-being, and Black, Asian, and minority inclusion. They also wanted better support for people with physical disabilities. In fact, survey respondents felt that creating an inclusive culture was the most pressing issue for the industry, narrowly beating the gender pay gap. Seven in ten investment professionals want more emphasis to be placed on socio-economic inclusion in the investment profession².

We would welcome more transparency and disclosure by pension schemes on efforts undertaken to be more inclusive as this can help instil confidence in the scheme for members. We are however mindful of the burden, and inability to comply with any diversity requirements, that may be placed on smaller/micro schemes therefore we agree that quotas would not be practical. We would support the Pensions Regulator issuing guidance to schemes to create and disclose policies outlining steps taken to encourage diversity on trustee boards and reflect membership.

² <https://www.cfauk.org/pi-listing/the-investment-profession-needs-to-go-further-on-diversity-and-inclusion>

8. Should industry play a role in creating tools, guidance and case studies that can help pension schemes attract a more diverse pipeline of lay trustees? How would that work and who should take a lead in making it happen?

CFA UK believes the current lack of boardroom diversity in the investment management industry is an impediment to the development of a better society in the future. Some of the reasons for why this is the case are explored by one of our members, Ric van Weelden, recently as part of his EMCCC thesis at INSEAD³.

We believe that it would be helpful for industry to play a part in boosting diversity on trustee boards through education, however, we would encourage the Pensions Regulator to issue guidance on best practice in the first instance. This will encourage schemes of all sizes not to overlook this important task. Case studies are often a useful way for trustee boards to observe real world examples of how other well-run schemes foster diversity in practice and we would support the creation of an industry working group to issue guidance.

In response to the second half of this question, CFA UK would also be open to exploring with The Pension Regulator how CFA UK might be able to mobilise both the skills within its member base and resources within its organisation to help foster the relevant competencies of potential lay trustees.

9. Should it be mandatory, in due course, for each pension scheme board to engage a professional trustee? If not what reasons (other than current capacity) would make such a move undesirable?

Professional trustees can bring specific and incremental skills to the board, as well as significant experience taken from working across a number of schemes.

Whilst there will be valid concerns over the availability of sufficient professional trustees and, in some cases, their ability (noting our proposals set out above), we believe that all pension schemes should be encouraged to engage a professional trustee.

However, we do not believe it should become mandatory, other than in circumstances where the risks to members are heightened and where the benefits of suitable professional trustee would be most keenly felt. Examples of such situations may include where governance issues have been identified in the past, where there is a change in ownership/control, or where there is a material underfunding (for a defined benefit scheme).

This may be a material expense for some smaller schemes (both DB and DC). However, we note and hold in positive regard the now well-established, current trend of scheme consolidation recognised by the TPR in its consultation paper and we would therefore expect this will become less of a concern over time and be an important step in raising trustee standards across the pensions industry.

³ <https://www.cfauk.org/pi-listing/why-are-there-so-few-women-in-asset-management--and-why-does-it-matter>

We trust that these comments are useful and would be pleased to discuss them in person. We are also content for CFA UK's name to be included in the list of respondents. Our response is not confidential.

Yours sincerely,



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CFA Society of the UK



Andrew Burton
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With thanks to contributions from:

Natalie Winterfrost, CFA
Alexander Beecraft, CFA
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Jean-Pierre Charmille, CFA
Paul Evans, CFA
Sarah Matthews
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and for overview from the CFA UK Professionalism Steering Committee

Appendix 1: About CFA UK & the CFA Institute

CFA UK: serves nearly 12,000 leading members of the UK investment profession.

- The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.
- Founded in 1955, CFA UK is one of the largest member societies of CFA Institute (see below) and provides continuing education, advocacy, information and career support on behalf of its members.
- Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation, or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

CFA Institute: is the global association for investment professionals that sets the standard for professional excellence and credentials.

- The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.
- It awards the Chartered Financial Analyst® (CFA), and Certificate in Investment Performance Measurement® (CIPM) designations worldwide; publishes research; conducts professional development programs; and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.
- As of 1st September 2019, CFA Institute had members in 165 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 157 local member societies.
- For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAINstitute and on Facebook.com/CFAINstitute.

