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Nominated Trustees

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## **Response by the Association of Member Nominated Trustees to the Trust-based pension schemes: Trustees and governance, building a stronger future consultation issued by The Department of Work & Pensions**

AMNT is pleased to be able to provide our response to the open consultation on Trust based pension schemes.

Thank you for a thoughtful and well researched document which covers a wide range of aspects of the trustee and governance topic.

This is therefore a longer and more detailed response than we would consider for most consultations. We have tried to ensure that key points are included wherever they are relevant, although this does mean a level of repetition.

**AMNT considers that trusteeship provides the best governance of pension schemes for member beneficiaries and that it should be protected and enhanced for the future of pensions.**

We believe that the inclusion of the member voice in governance is crucial as part of a well- balanced, diversified board of trustees. Member trustees are the only group with “skin in the game” in the decision making of the pension scheme and with no business interests in the process. There is no way in which this can be replicated. They also bring a level of cognitive diversity which is difficult to achieve in any other way in a small, concentrated pensions industry. In particular we are suggesting that the inclusion of member trustees in DC schemes of every size is even more vital as members are the only significant risk holder in this scheme structure.

However, for member trustees to be able to operate effectively they need to have their position better protected for the time and training all trustees need, and to prevent their erosion, along with the wider trustee board structure, purely for business interests of employers, or the professional trustee market. AMNT is therefore calling for strengthened backing for lay trustees.

Included within this we believe that the appointment and training of lay trustees should be the preserve of the pension scheme itself, and not the sponsor, and that

lay trustees should have legal rights to the appropriate time to complete their duties, and with commensurate adjustments to their workload.

And finally we do not consider that the transition from a trustee board to a PCST model should be allowed to happen without the considered and advised agreement of the existing board, with no coercion of employed trustees, and if not, by a formal consultation process of members. If this does not happen we consider it should be vital that TPR is notified by the board or the PCST where such an attempt at a forced transfer happens and for there to be enhanced scrutiny.

*As a formality we note that this consultation document only applies to Great Britain as pensions are a devolved matter for Northern Ireland. However AMNT has trustees with scheme membership throughout the UK and it would be helpful to know if similar discussions will happen with the Northern Ireland Assembly to ensure a coherent approach.*

## Chapter One – Good Governance

### Q1. What do you think works well in the current trusteeship and governance system?

We believe the following factors are working well although we highlight where there are areas for improvement in Question 2.

- a) **Regulatory Framework:** The Pensions Regulator’s General Code of Practice and trustee toolkit provide a strong baseline for governance, knowledge, and understanding.
- b) **Fiduciary Duty & Legal Foundation:** UK trustees are guided by fiduciary duty, ensuring decisions are made in the best interests of scheme members. This legal basis is essential for safeguarding members and should remain central in any future governance models.
- c) **Value of Member Nominated Trustees (MNTs):** MNTs bring member perspectives directly to decision-making, promoting diversity of thought and more rounded governance. Their inclusion should be preserved and strengthened in future models.
- d) **Member Voice & Diversity:** Having member trustees mitigates groupthink and increases board diversity.
- e) **Member Confidence:** Member representation in governance increases confidence that trustees act in members’ interests. (The role of member trustees in enabling the Royal Mail CDC to gain employee acceptance is a good example of this). While member panels and committees may be helpful, and can be good sources of two-way communication with members, they have no power and do not replicate the member voice fully included around the board table. Scheme members have the confidence to raise queries with them when they might be reluctant to contact a “faceless entity”. This is particularly true in smaller schemes as they have the advantage of being known to a large number of members.
- f) **Effective Board Practices:** Practices such as regular meetings, face-to-face debates, committee structures, detailed board papers, annual performance reviews, and clear roles contribute to good governance. The ESOG and ORA have helped to strengthen this.
- g) **Board Structure & Roles:** The best trustees and governance seem primarily to come from a diverse and regularly upskilled and assessed board with member, employer, professional, and independent trustees working well together. Whilst wholly lay trustee boards are reducing, this does not mean that the lay voice itself, particularly the member voice, should be lost but should be an integral part in a board alongside a wider membership. We are encouraged that the OECD report cited in paragraph 5 references a balanced

representation of stakeholders as the best model alongside increasing expertise and management of conflicts.

- h) **Skills Diversity:** Many lay trustees bring professional skills from other fields, contributing to board diversity and effectiveness. Skills audits help ensure boards have necessary expertise.
- i) **High Standards in Larger Schemes:** Larger pension schemes typically demonstrate robust governance due to greater resources, professionalism, and effective oversight.
- j) **Continuous Learning & Training:** Trusteeship demands ongoing learning. There is a need for more training opportunities, with sponsors expected to support trustees financially and with time.
- k) **Toolkit & Accreditation:** The trustee toolkit is valued (but needs regular updates). Accreditation and staged training are accessible to lay as well as professional trustees.
- l) **Industry Training Opportunities:** The pensions industry (PMI, Pensions UK and a wide range of actuaries, investment advisers and lawyers) offers excellent free training opportunities, (but lay trustees may face barriers if employers don't approve participation during work hours, or funding of costs).
- m) **Targeted Board Training:** Many Boards receive ongoing briefings and training from advisers on new regulations, legal developments, asset classes, and strategy options.
- n) **Sponsor/Employer Support:** Many Boards provide effective training for lay trustees, including varying levels of support depending on sponsors providing financial and time support.
- o) **Stakeholder Engagement:** Boards benefit from stakeholder engagement and independent oversight.
- p) **DB Pensions & Administration:** DB pensions have a strong record for timely payments, and administrators rigorously apply scheme rules.

That said, this is a good time to review the trusteeship consultation. There are a number of issues in various areas – but these are set alongside a model which has generally worked pretty well. However, with significant change happening and on the horizon, the new models of pension schemes (CDC), the increased pace of consolidation, and the many new regulations concerning good scheme governance and the primacy of member outcomes all serve to highlight that some inadequacies can be seen in the way trusteeship has evolved.

## Q2. What are the barriers to good trusteeship?

- a) **Regulatory Framework:** The main barrier to good trusteeship is the lack of support of lay trustees by government, the regulator and employers which has led to the formation of mastertrusts with no member nominated trustees and the removal of boards and imposition of sole trustees without adequate cause or safeguards for members. DC mastertrusts manage the savings of ordinary working people who bear full risk for the ultimate size of their pension and yet they have no voice in the governance of the schemes.
- b) Changes to trusteeship structures are inadequately covered in regulation with, in particular, no safeguards over who can be appointed as a sole trustee. We look forward to hearing more about the TPR review of professional trustees and particularly PCSTs, but also to some stronger protections for lay trustees. These are set out in succeeding question responses.
- c) **Fiduciary Duty & Legal Foundation:** With the huge rise in complicated systemic risks, geopolitical changes and the potential for investment mandation through the Pensions Bill, there is some ambiguity of the protection afforded by law to pension trustees who have acted responsibly and with due consideration to these difficult issues and on which there is not a clear answer. We hope that the proposed statutory guidance will give greater comfort to trustees.
- d) **Trustee Liability:** There has also been an additional barrier to recruiting trustees in the recent scaremongering about trustee liability which has made many lay people wary about finding out more about trusteeship. There needs to be a balanced statement understood and shared more widely and readily available to potential trustees that, whilst trustees have a serious responsibility to meet their fiduciary duties, this is exercised as a board, and with the advice of experts. Individuals should not be unduly scared that taking up a trustee role could leave them exposed to long-term legal sanction providing they exercise their duties responsibly and take expert advice.
- e) **Trustee Register & Reporting:** A basic register of trustees and their schemes is lacking. If we had a trustee register tracking toolkit and accreditation completion it would encourage training. Scheme annual returns should report on individual and board training, and a register could enable better communications between TPR and trustees.
- f) **Effective Board Practices:** The consultation draws out data which shows value for money metric scores may be linked to size of schemes, but that may reflect as much about the attitude of the sponsor to resourcing governance as it does to the trustees' skills. However, as in our answers to Chapter 3, we believe that trusteeship is a serious duty, and therefore in a changing

environment it demands the expectation of continuous learning. However, there can be a practical barrier. Our report “AMNT proposals on the future of pensions trusteeship 2023” shows that the demand for further training is there among member trustees, but is sometimes refused by employers on cost grounds. We therefore would like to recommend TPR issues a stronger statement of expectation for sponsors in these areas and greater oversight of schemes on the resourcing and training of trustees and that such costs should be met by the scheme rather than employers which would allow standardisation and oversight.

- g) **Board Structure & Roles:** Boards function well when advisers, executive and trustees can have good, challenging and constructive discussions to reach decisions. Board reviews, as well as individual reviews, help to achieve this but are not used in all schemes. Very large boards are often detrimental to everyone playing a part in good decision making.
- h) **Scheme Chairs.** Sometimes poor outcomes arise because of inexperienced or poorly trained chairs. Chairs should encourage wide-ranging debate and contributions from all trustees, avoiding passive participation and groupthink, and undergo annual performance reviews with trustees.
- i) **Other common governance issues include:** Over-reliance on a few individuals; Resistance to new ideas; Conflicts of interest; Inadequate risk management; Poor communication; Barriers to good trusteeship can apply to individuals but affect the effective working of a whole Board.
- j) **Confusion of Definitions:** The various categories of trustees (member, employer, professional and independent) work together well in a board structure. However, the terms can be confusing and perhaps need adjusting as they can be a barrier to understanding board relationships and roles, and to their regulation. As we understand it, any trustee who is not either a member or employer nominee on a scheme board is deemed by TPR to be “professional”, and yet that term is also used to describe a trustee employee or partner of a professional trustee firm and an independent or solo trustee; but none of these terms include any reference to whether the individual is an accredited pensions trustee and therefore what degree of formal training they have achieved.
- k) **Conflict Issues:** Ensuring a board works effectively relies on an experienced chair, and a good relationship between a board and its advisers, executive, administration and other support. Where these relationships are strained there is likely to be greater risk of conflicts and less regard for member outcomes. The rise of professional trustee firms and large consolidated schemes introduces numerous potential conflicts of interest, particularly when trustees and/or Chairs are appointed by sponsors or providers, thus challenging trustee independence.

- l) **Lay trustees support:** A particular barrier for some lay trustees is the lack of support, from their sponsor/employer to be able to carry out their trusteeship responsibilities well. Lay trustees who are employed need to receive sufficient and remunerated time away from their duties, not just for meetings, but also for meeting preparation and training, which, with board packs often running to 200 or more pages of material can take almost the same time again. There needs to be much stronger protection of time for preparation and training, as well as for meetings. Are union or health and safety representatives a helpful analogy?
- m) Alongside this, and intrinsically linked, is that the exercise of lay trusteeship needs to be respected and seen as a valuable contribution to the workplace, and possibly the source of additional transferable skills. Lay trustees who feel that their meeting time is begrudged by their employer are unlikely to give of their best.
- n) A particularly concerning legal ruling from an employment tribunal in 2022 (Folarin v Transport for London) shows the weakness of the lay trustee position in law. Whilst it was confirmed that there is a right to reasonable time to be allowed by the employer for attending meetings and training, it was ruled the complainant had no legal or contractual right to a commensurate reduction in workload and should therefore have completed her workload in her own time. This situation is clearly detrimental to well-trained and prepared trustees on a board.
- o) **Professional trustee conflicts:** For professional trustees, the time issue as a barrier to good trusteeship applies in a different way. They too need sufficient time to prepare for the meetings since each topic has a different outworking in each scheme. Where they hold a significant number of appointments there is a risk of not allowing enough time for each scheme and therefore a much higher chance of “house views” or group think being brought to the board rather than a concern for the specific beneficiaries. In the PCST model there is usually a wider pool of people behind the named trustee, but the trustee themselves does still need personal preparation time and not just a briefing folder.
- p) Professional trustees also need to be very aware of any conflicts between their multiple roles, and potentially with any advisers linked to the Professional trustee company, or in common with other scheme appointments which could impact on their ability to serve their board.
- q) **Employer conflict issues:** Effective board trusteeship operates best with a balanced group of interests around the table. Employers must not try to apply pressure to (their) trustees. Where employers feel they can have increased control, either over employer nominated trustees or through appointing PCST, this makes the operation of good trusteeship much harder to achieve. Similarly, where connected advisers and services are appointed alongside professional trustees this makes conflicts and supplier scrutiny much harder to manage.

- r) **Skills Diversity:** It should also be noted that, whilst they are referred to as lay trustees (in contrast to professional trustees), many lay trustees are “lay” only to the pensions industry; many come with significant or professional skills in other areas, such as finance, HR, communications etc. and these are skills required by a well-diversified board. The best performing boards conduct formal or informal skills audits to ensure they have the expertise they need on their board and this needs to happen more widely. Employers should be required to provide high-quality trustee candidates, not just reappoint existing trustees on the basis of their employed role.
- s) **Maintaining the Value of Member-Nominated Trustees (MNTs):** Even well-qualified new trustees need time to learn about the scheme to be fully effective. New trustees should be paired with experienced trustees (“buddy up”) rather than relying solely on induction training, though well-constructed induction is still vital. There are limited succession pipelines for future trustees, and consolidation is reducing lay trustee numbers, creating risks for continuity in scheme governance.
- t) **Continuous Learning & Training:** Although excellent training opportunities exist, for these opportunities to work best for lay trustees presupposes that the sponsor/employer provides appropriate financial and time support to achieve such training. It would help greatly if the responsibility for a continually developed, well-trained board was expressly required of a scheme/sponsor.
- u) **Toolkit** The trustee toolkit is the foundation of trustee knowledge and understanding and is highly valued. It is accessible and covers detailed and relevant material as a starting point for new trustees. However TPR has not kept it sufficiently up to date with many changes in pension law and practice and there have been very limited additions to it so that it is missing material on stewardship, new asset classes, surplus and end game choices etc.. This creates a barrier to good trusteeship in that statutory requirements for trustee knowledge and understanding are inconsistently met, especially in smaller schemes, which often lack expertise in complex areas like investment strategy and risk assessment. It could be even more effective if there was new material on the toolkit each year, even just an annual update module that requires trustees to refresh their certification.
- v) Whilst the majority of trustees do complete their toolkit certification within the recommended time from appointment, there is currently no way for the Regulator to ascertain that they have done so .If there was a trustee register pension schemes could be required to certify that they had done so (or there could be a direct link between the toolkit and register).
- w) **Accreditation:** Further training is available to trustees through accreditation, with the PMI’s lay and professional trustee exams, including a soft skills component, being the same. Whilst professional trustees need to apply to sit

on a board based on their existing knowledge (and in our view should be accredited), lay trustees should be able to undertake a staged programme of training after appointment – beginning with the trustee toolkit and then potentially progressing to accreditation. However, this level of training comes at a cost, including continuing annual membership of the sponsoring training body. The overall cost is around £1000 and we are aware of members whose employers have refused to pay for it. We believe that the responsibility for providing training for trustees should be paid for by the scheme.

- x) We consider that a trustee register which includes a record (or link) of Toolkit and accreditation completion would help to encourage this greater level of training. Scheme annual returns should also report on other training (eg. industry conferences or separate study) for individuals and training done as a board. What is reported on and measured is more likely to happen.
- y) **Industry and Advisers:** The advice of advisers and the support of suppliers is crucial to the role and decision making of trustees. However, their appointment or review is one area in which there is little training for trustees and this needs to be addressed for the future as the trustee role becomes more complicated. Professional advice on these processes can be bought in by boards. The introduction of new regulation or reporting often results in the rapid development of “new products” by advisers, adding to scheme costs. We believe trustees should challenge advisers and utilize their own skills to save costs, and/or consider entering separate contracts for specialist advice.
- z) We consider there is a weakness to good governance in the lack of regulation of investment consultants. A number of crucial areas where they interact with trustee boards—advice on investment strategy, asset allocation and manager selection, and suitability of fiduciary managers—are all unregulated, but crucial, governance issues. The AMNT developed the “Red Line Voting” policy as a free-to-use ESG policy resource for schemes. This has proved very valuable to the schemes who have adopted it and and/or used it as a way to hold their managers to account even if they would not adopt the voting policy itself. However it became clear some fund managers were not even informing their clients of its existence, or of Pensions UK’s free policy, but instead offered fee-earning bespoke policies when trustees requested help.
- aa) There can be conflicts of interest when investment consultants are both assessors of investment managers and seeking to provide services as a fiduciary manager.
- bb) It has also been reported by the Work and Pensions Select Committee that in some cases investment consultants have given standardised advice to schemes, rather than thinking through specific scheme requirements. Ensuring that their advice is of excellent quality is crucial to member outcomes and trustees have limited resources to assess the quality of the advice they are receiving. We therefore signed the Share Action letter of 15 August 2024 to HM Treasury urging their regulation.

### **Q3. Looking ahead to 2030 and beyond, what further support will trustees need to ensure effective scheme governance?**

To begin this answer, it is necessary to repeat a small part of our answer to question two. A particularly concerning legal ruling from an employment tribunal in 2022 (*Folarin v Transport for London*) shows the weakness of the lay trustee position in law. Whilst it was confirmed that there is a right to reasonable time to be allowed by the employer for attending meetings and training, it was ruled the complainant had no legal or contractual right to a commensurate reduction in workload and should therefore have completed her workload in her own time. This situation is clearly detrimental to well-trained and prepared trustees on a board. Obviously in 2026 we would expect this real contradiction between being a member nominated trustee and their own workload back in the sponsors' workplace to be sorted through modern day HR practice but backed up with legal force if necessary. Then we can move on.

Looking forward to 2030 and beyond the basics of good trusteeship do not change. However, the day-to-day experience will be of increasing change which will need to be managed. Above all the government and regulator must act to defend proper recognition of the interests of beneficiaries by requiring member nominated trustees on all boards, including DC schemes of all sizes. The current structure of IGCs can be used to bring the member voice but they do not have the power or influence of having MNTs on the board. And, other than in certain limited circumstances, we do not believe that PCSTs are in the beneficiaries' best interests, especially when they have aggressively replaced functioning boards with lay trustees.

A particular concern we have currently and looking to the future for pension schemes is about powers. Many employers have powers to block trustee proposals, created presumably so that employers could reasonably protect themselves from increases in costs, eg regarding proposed discretionary increases. Now, applied in a time of surplus rather than deficit, these employer powers seem to be a potential source of inequity and the balance between employer and member interests skewed. This is particularly seen in pre 97 disputes. This therefore is a very difficult and frustrating situation for trustees as it appears employers can easily ignore the beneficiaries' interests, presumably for the sole benefit of the employer. The issue seems mainly to apply to single employer schemes, as multi-employer schemes normally have different ways to reflect the views and interests of multiple employers with powers more likely to lie with trustees after employer consultation.

At its extreme, we are concerned that employers whose existing powers include an option to take all surplus on wind up may choose to block all surplus sharing discussions and as a result could eventually be taking back from surplus not only their own deficit contributions to the scheme, but also increased member contributions and reduced accrual savings too. We have suggested that we think there needs to be a mechanism (arbiter) that ensures that both parties at least have to come to the table to have reasonable discussions on difficult issues like these. The "right" answer to respective shares of surplus will be different for each scheme, and in some it might be right that it all goes to the sponsor, but evidence of full discussion should be required, not only to support distribution, but also to support where surplus is not planned to be distributed before wind up.

We have been aware in recent years that some marketing to employers has been suggesting that they will have greater control over pension assets if they move to PCST. We note that professional trustees we talk to are similarly concerned about the wrong expectations from some employers in moving to this trustee model. This creates a difficult situation for PCSTs because, although the APPT code for PCSTs says they cannot accept employer proposals not in the beneficiaries interests, all they can do in this situation is not to respond to the RFP, or if the issue arises after appointment and they reach an impasse, their only recourse is to resign, leaving the employer to find a different PCST. This may be excellent in theory but it still leaves the members in the oversight of an employer looking for a compliant PCST.

We propose that no existing board should be permitted to be removed without its uncoerced, considered and advised agreement or by a formal consultation process of members.

If a board is to be replaced by a PCST there should be a more formal process of oversight by TPR in order to keep beneficiaries' interests paramount and support trustee decision making. If employers can just keep looking for a sole trustee who will do their bidding it weakens trusteeship overall. We are therefore particularly concerned that there appear to be no restrictions on who can be appointed as a sole trustee so that the APPT code itself cannot provide the guardrails intended.

As an example of this in practice we are concerned that, perfectly legitimately, a number of PCST appointments have been made by employers despite there being a functioning trustee board in place which is simply dismissed. Sometimes these boards have been unaware of the change until the PCST is in place. Sometimes employee trustees have been coerced into signing a resignation. This is another example of unintended consequences of a power. A power intended for the situation where trustees cannot be found to make up a board, is being used for a different purpose in a different funding situation.

This is why we argue that if a move to PCST is not made with trustee board consent, or because a trustee board cannot be found, that it should be subject to enhanced TPR oversight and approval. Fellow professional trustees point out that the transfer process in such situations, without a "handover" from the previous board, are much more difficult since knowledge of the scheme and beneficiaries becomes lost, which cannot be optimal for members. These situations can also leave a distrust of the scheme for members who see their representatives being removed.

In the proper exploration of the roles of trusteeship and marketing as new forms of pensions emerge it would be helpful and supportive to trustees, and to the wider pension market, if new developments, such as CDC, were not only a training topic for trustees in toolkits/TPR website etc. but also introduced widely to potential members at a simple level from an independent source such as MAPS. This would mean that the explanation of new forms of pension accrual and decumulation was clearly separated from specific scheme marketing and trustees could concentrate on developing guided retirement and other beneficiary information targeted on their membership. With the emphasis on innovation it will be important that all savers know more about pension issues which affect their decisions on saving. Otherwise

there is a real danger that trustees will feel unsupported to do this but it could emerge from commercial schemes able to apply large marketing budgets with all the ensuing conflicts, and to the detriment of beneficiaries.

Trustees will require the support for initial training on appointment and continuing training about the changes to the pensions' environment in areas such as the enhanced investment challenges, but also on their new responsibilities regarding VFM, end game, management of surpluses, new forms of pension provision and industry consolidation. For the initial training this could be part of an updated toolkit. Ensuring there is good guidance on new topics on the TPR website is a clear way to set expectations of trustees. But, in essence, these changes are more about ensuring a greater focus on strategic issues and less on routine matters. This therefore means that, for trustees, reliance on their executive, advisers and suppliers is likely to be greater and they will need robust ways to manage these relationships and ensure they are of high quality.

The new TPR code structure on the website is a much improved document format for trustees to search and navigate. Recent helpful guidance documents are also good support. However there are a number of key topics which don't feature within the toolkit yet for new trustee training. New or important material from TPR could be much better disseminated by a direct relationship from TPR to trustees, via a register, enabling new material or material on a current issue to be highlighted by individual messaging. This would enable individuals or boards to ensure they arranged appropriate training. Trustees would also be more likely to read the TPR guidance itself rather than rely on secondary information sharing from advisers.

#### **Q4. Does effective scheme governance in a Megafund require additional support or any specific changes in regulatory approach?**

The increasing size of schemes as we progress with greater consolidation has the potential to benefit members by increased value for money. However, part of that value comes from good governance and the management of conflicts.

Size in itself, whether large or small, is not a barrier to building a diverse trustee board which balances stakeholder interests, as the consultation reference to schemes in other nations shows but it is now not the norm in the UK. There are mastertrusts and multi-employer schemes which appoint both member and employer nominated trustees alongside other professional or independent trustees, (and a management board in some cases) so this is not about the lack of possibility. It is due to the failure of previous governments to legislate to make member nominated trustees a requirement. We call that it should be a requirement for megafunds to have MNTs.

The process for lay appointments in larger schemes may differ from that of smaller schemes, and possibly include a higher required level of relevant skills or

experience. These skills and experience can easily come from other areas than the small pensions' world. However the fact of being a member brings a distinct stakeholder difference.

In practical terms, for multi-employer schemes, employer trustees can be appointed on the basis that all employers in the scheme agree that appointed trustees receive the appropriate support, whichever employer they come from and that any conflicts will be carefully managed. A similar process can apply for member trustees. The greater the number of members in a megafund/mastertrust the greater the number of nominations from talented individuals they are likely to see.

We think that an approach in line with the governance of schemes in Canada and Australia, which include member trustees would be a good development in the UK. Bringing the voice of members to key decisions ensures the beneficiaries interests remain at the centre. Finding candidates with an appropriate level of skills and experience for such appointments, either from a wider business/governance background or more specifically from pensions should not be too difficult given the numbers of members in such large schemes and the potential conflicts are manageable.

We also agree with the proposals in the international case studies in paragraph 76 in general for megafunds. Ensuring a wider balance of voices in megafund governance should help to reduce the potential group think and conflicts of a limited pool of professionals. In commercial master trusts there needs to be clear separation and documentation of the pension trusteeship and the commercial interest. In particular it should be for the trustee board to oversee the process and decision making for appointing trustees to avoid commercial conflicts.

Megafunds are likely to have to work much harder to achieve any member engagement. There is a danger that, in the future, with just a few funds and little employer connection to the outcomes, that a DC pension will become simply like a tax deduction from pay and a "bank account" whose value is occasionally checked. The difference for UK potential megafunds compared to Australian anecdotes of pub discussions about "supers" is that the choice of scheme in the UK is governed by the employer for each job. In Australia, apart from the first entry to the job market, employees can choose to take their pension provider with them to a new employer, in the same way as their bank account. Also the supers themselves provide additional services like insurance and discount packages which therefore create an individual "persona" and loyalty in the members' mind.

Looking ahead we think there should be a member voice in all DC schemes since all the financial risk lies with the members and thus they need to influence the strategy, but especially in CDC/R-CDC schemes of whatever size since the member experience is directly related to the design inherent in the actuarial balancing decisions each year as well as the investment strategy.

AMNT has looked at the governance structure of the 31 authorised mastertrusts and how these are shown online.

Eight master trusts, more than one quarter, have member representation on their boards with equal numbers of member and employer nominated directors.

In the absence of member representation the independent governance committee has an important role to play. Unfortunately we could not find the IGC details on the websites of 12 of the mastertrusts so we cannot assess their independence.

However on those we could see we felt the following issues were cause for concern and negated the “independence” of IGCs as well as creating conflicts of interest.

- The same firm of professional trustees was on the board and IGC
- The same person was on both board and IGC
- Members of the IGC ( the majority in one case) worked for the company owning the mastertrust
- Members of boards and IGCs were also members of another or multiple boards or IGCs

The addition of member nominated trustees/directors to mastertrust boards may be much more effective in bringing diverse and challenging voices to their governance, and in particular to keep members’ interest to the fore.

**Q5. Can you describe any potential or actual conflicts of interest that stem from the provision of further services within professional trustee firms and other third-party providers? How are these conflicts managed now? What is the scale of the residual risk in the market?**

As the number of pension schemes contracts some professional trustee companies' business model includes offering wider services, in addition to trusteeship. Whilst these might be of excellent quality, there is an obvious and insurmountable conflict of interest.

The key role of a trustee board is to hold the service providers to account. If service providers are linked to the trustees this puts them in the position of marking their own homework. This is particularly so for PCSTs. Would a PCST hold a beauty parade of advisers including their own product? If it did how confident would any other provider feel if they realised they were competing/negotiating against the owner of a competitor? How could a PCST negotiate with the linked supplier over price, and above all, if the service supplied was not of the highest standard, would it sack itself? If it had made a serious error would it sue itself?

This is the essence of a conflict that should not be allowed to exist. And yet these conflicts are likely to increase in coming years if professional trustees are in greater competition for fewer scheme appointments and there is no regulatory change.

We agree with the consultation paragraph 32 that risks of conflict in trusteeship in general become even more pronounced in a PCST because, by its nature the reduction in decision makers creates a reduction in diversity of thought and to the checks and balances that come from wider discussion of complicated issues, including considering subtle and not so subtle conflicts. Member views, which may bring an external perspective about industry conflicts, are no longer available to ameliorate the situation.

**Q6. Are additional safeguards needed to effectively manage these risks, given the need to balance members' interests with effective scheme management?**

As set out in the preceding paragraphs we think the following are needed. We emphasise that there should be a requirement for member nominated trustees on the scheme board.

- a) Additional guidance from TPR is needed regarding regulatory expectations and conflict management for professional trustees.
- b) Professional trustee companies should not be permitted to offer any other services to a scheme where they hold trusteeship.
- c) Safeguards to ensure independence should not prevent access to necessary governance expertise
- d) Additional guidance and an effective supervision regime from The Pensions Regulator (TPR) is needed and to ensure that scheme members' interests are protected.
- e) TPR should implement an effective supervision regime regarding regulatory expectations and conflict management for professional trustee to ensure that scheme members' interests are protected.
- f) The supervision regime may begin from the current ORA (Own Risk Assessment) and ESOG (Effective System of Governance) structures but is likely to go beyond them.
- g) Other Key mechanisms to support good governance include :
  - o Robust procurement processes
  - o Independent oversight and review
  - o Disclosure of fees and relationships

**Q7. Should there be restrictions on individuals acting as professional trustees, such as the number of trustee appointments they can hold, to ensure individuals have the appropriate capacity to manage schemes?**

It is obvious that professional trustees have a finite capacity and therefore it is necessary to impose a limit on the number of appointments they are permitted to hold. We therefore propose that a limit should be introduced with further consultation as to what that limit should be.

Full time Professional trustees can manage a significant workload, but they need to allow time for preparation for each board meeting as well as the attendance time. Whilst they may be very familiar with the wider context, if they are to give scheme specific consideration to the matters in the meeting rather than a text book generic view, they need preparation time to ensure they consider their contribution to discussion in the context of each specific scheme and its vagaries. It would seem to be temptingly easy to shortcut this in the pressure to add “just one more” to the portfolio by individual or trustee company. The demands on the trustee will be affected by the complexity of the schemes held as well as the number. But it would be good to have clearer sight of what is happening in the trustee market because trustees who take short cuts and offer “house view” solutions are not acting in the best interest of scheme members.

It is important schemes are encouraged to apply individual trustee review to their professional trustees and to challenge/ reappoint if they feel this may be happening.

The other area where closer attention to the number of trustee and similar appointments would be beneficial concerns the possibility of a pensions’ industry wide crisis, eg. in recent years with LDI. Professional trustees market themselves as being able to respond swiftly when required and when convening a full board may be difficult. However if the crisis involves all of their portfolio they will not be able to give every scheme the support they may expect.

We indicate in our response to Q15 that a trustee register may be the best way to expose the number of appointments held by individuals, and that if this is available to those who are appointing trustees it will help to drive change, as well as to make it easy to spot potential conflicts between schemes/employers before appointment.

**Q8. Are there situations where a PCST model is more or less appropriate and why? Should there be any suitability guidelines on PCST appointments?**

AMNT is extremely concerned about the rapid growth in PCST governance of schemes. There can be good reasons to move to this model. Where a scheme has been closed for some time and is unable to find the appropriate trustees, for example as members get older, this can be a way forward.

But other than these limited circumstances the gradual removal of diverse scheme boards by sole trustees is not in the best interest of beneficiaries

In itself we believe the definition of a sole trustee has slipped through all the regulatory nets. At its extreme there is no requirement for sole trustees to meet any skill or fit and proper person tests. Those who belong to professional firms will be subject to the rules of their firm. There has been a notorious example of an inappropriate appointment as a sole trustee in the case of Norton, but we are unaware that there have been any practical regulatory steps to prevent its reoccurrence.

Many schemes manage greater financial assets than most of the FTSE 250. The UK Corporate Governance Code sets out the requirements of the board of directors of these companies and it would be unthinkable for a PCST model to meet requirements.

Also, if a small, lay led pension scheme needs experience of processes such as more complicated end game governance, and/or an agile team to eg negotiate a buy in, this can be, and has been, provided by adding one or more professional trustees to an existing board, perhaps with some delegation, rather than removing a functioning board to transfer to PCST.

We believe no existing board should be able to be removed without its considered and advised agreement, free from coercion, or by a formal consultation process of members. If this does not happen it is vital that TPR should be notified by Boards, and PCSTs where an employer is attempting such a transfer and for there to be enhanced scrutiny by TPR which may decline to approve the arrangement.

The reason, apart from the considerations of good governance in itself arises from what is currently happening. We are aware that there has been “marketing” to employers of PCST as a cost saving model and a way to achieve greater control over the pension assets. In a time where pension surpluses rather than deficits are more common we have major concern that this situation is, in some cases, driving the attempt to introduce PCST against the interest of members. This is often entirely at the instigation of the employer, often without any discussion with the trustee board, who are simply required to resign.

Our professional trustee colleagues have also expressed concern about this – where they have no contact with the previous trustee board the transition is inevitably a difficult one for the scheme and not in members’ best interests. Some ask in the recruitment process about this and the employers’ reason for the change – and refuse to compete if it appears the employer is seeking greater control.

However, even for changes to PCST with board approval we think more safeguards are needed. We consider it vital that sole trustees must be subject to fit and proper person scrutiny, a detailed examination of conflicts of interest and be accredited, possibly at an enhanced level. We do not think that it is appropriate for independent trustees, or indeed anyone not accredited nor attached to a professional trustee company, to be appointed.

However beyond the initial appointment we see continuing problems in the PCST world. If, during their appointment, a PCST finds that they have reached an impasse with the sponsor over what they consider is in members' best interests, their only recourse is to resign. This also should be reported to TPR and the appointment of their successor scrutinised, especially since there currently exist no legal safeguards on who can be appointed as a sole trustee.

As we look forwards we think it is likely that employers will put increased pressure on PCSTs about the surplus sharing issue, as well as potential discretionary increases. This is a difficult conflict for the professional trustees whose appointment depends on the employer but whose fiduciary duty is to the member, and as well as the APPT code, they need greater regulatory support.

For PCST appointment, as for other suppliers, there should be a transparent process. Anecdotally we have heard that some appointed individual professional trustees have been tasked with persuading the sponsor to move to PCST. Good governance should require a transparent appointment process even if the trustee company has previously held an individual professional trusteeship, and that any appointments without some form of market testing should be subject to enhanced scrutiny.

As is highlighted in Question 5 we consider the additional conflicts of the professional trustee company business interests including offering additional services where they already hold trusteeships is an unacceptable conflict and should not be allowed.

Looking ahead to 2030 we see the PCST model increasing as members of closed schemes get older and more small DB schemes reach their final stage, but after that we expect (and hope) it will decrease. We do not think that PCST is an appropriate model for anything in the DC world. Since the financial risk in DC and CDC is entirely with the member we do not think it appropriate that the employer should have the right to appoint the total process of governance. If there is no member voice in governance, as in many schemes at the moment, then at a minimum the governance must be clearly independent of the employer/sponsor, and ideally have a clear route of accountability and transparency to the members. The PCST model cannot provide this.

One of the reasons for the PSCT model is where small closed schemes cannot attract member trustees. The current definition of member trustees is linked to the particular scheme. However, it has crossed our minds to think, albeit only vaguely, whether a way forward here might be for an experienced member trustee from another scheme to be "seconded" for a limited term appointment to assist. At the moment such an appointment would be defined by TPR as a professional trustee, whether or not paid, which is a significant barrier – and there are some practical issues, eg this would not be a possibility for MNTs still in full time employment. Does this offer an additional option moving forward?

**Q9. If the Government introduced an enhanced code of practice for sole trustees what specifically would you like to see included? Do you think existing codes of practice (Code of practice) already cover some or all of this?**

We respect the APPT code, but it is not binding on trustee companies and not all are signed up. We therefore support an enhanced government code. We consider it should include:

- a) All sole trustees should be subject to fit and proper person scrutiny, be required to be accredited, and on a public register showing their other appointments.
- b) Appointments should be subject to transparent processes including when there has previously been an individual professional trustee on the board.
- c) There should be a clear process to identify and disclose conflicts of interest, with other appointments, linked advisers etc.
- d) There should be a clear requirement to report to TPR if they are put under any pressure to give pre-appointment guarantees on decisions etc.
- e) All occasions on which they are put under pressure to make decisions that they do not consider are in members interests should be reported to TPR, including if they feel it necessary to resign.
- f) All occasions in which a PCST feels forced to resign should be communicated to their replacement before the reappointment is confirmed. ( we see this as analogous to the process of auditor hand over)
- g) Appointments to PCST should be subject to term limits and then a new appointee sought, (unless during a buy in/out a short extension would see completion of the transaction)
- h) Additional services should not be provided by the same trustee company to a scheme in which they have a PCST appointment.

## Chapter Two: Trustees and Their Appointment

### **Q10. Given the future landscape for pensions, are any further controls or safeguards needed on the appointment of trustees to ensure that decisions are made in members' interests?**

The knowledge required by a trustee board is extensive and unlikely to be found in any one individual. Rather the skills should be found among the mix of people forming the board. Therefore before beginning any appointment it is appropriate that an assessment of the skills gap should be carried out to inform the process.

In common with charities and company directorships, it seems that a simple “fit and proper person” declaration should be a first prerequisite for any trustee appointment.

It is valid to expect trustees to be able to offer transferable skills, which may simply be the ability to constructively challenge a proposition, and to demonstrate -for example by completion of introductory toolkit modules—that they are able to engage with the type of material they will encounter. While lay trustees often start out with having had little contact with the pensions' world, this can be valuable in itself as it helps to keep groupthink and stale discussions at bay. However, it means they need an easy and supported training process, potentially towards accreditation, and for this to be continually refreshed each year.

We think that professional trustees should be accredited before appointment.

The appointment process of trustees (nominated by members or employers as appropriate) and chairs of trustees should lie with the trustee board or an agreed appointment committee answering to the board, rather than create potential employer conflicts in the process.

The existence of trustee vacancies should be required to be well communicated to all potential applicants to avoid manipulation of the process, in a similar vein to open advertising of employment opportunities.

If we had a trustee register, it could be monitored that all lay (member and employer) trustees completed the basic toolkit training soon after appointment. We think that beyond this there needs to be a simple pathway towards accreditation, achievable without cost to the individual and with time support, for all lay trustees to encourage them to achieve accreditation, as some schemes already do.

With regard specifically to employer trustees, we believe there needs to be closer attention to conflicts in the appointment process, which could be mitigated if the trustee board controlled it. At the moment employers can and some do insist that they not only nominate but also select the employer trustees and also the chair. This can lead to pressure on employer trustees to do the employer's bidding at the board which is in breach of their fiduciary duty.

It should go without saying that it is a requirement that employer-nominated trustees also complete training, are given time both for meetings and meeting preparation, are advised about how to manage any conflict of their trustee role with their relationship to the employer, and given sources of help if this is a problem.

Some schemes are moving to an appointment process, but even when a member election is the preferred method, it seems that some degree of pre-election suitability check—even if only to ensure candidates understand what will be required of them—is likely to be increasingly needed.

The appointment of professional trustees should, as a minimum, be based on a skills audit by the Board, and by consideration of the trustee company and the specific trustee, ideally with the board included in the selection process.

Diversity on a board comes not from visible diversity but from the diversity of thought that comes from different life experience, which may result from a visibly diverse characteristic. Although welcome visibly diverse characteristics can be brought by professional trustees, when the membership of an individual scheme (by reason of its membership profile) cannot supply this, they will nevertheless have been trained for their role in a “pensions industry” environment and may thus have less thought diversity than lay members.

A regular process of reviewing the diversity of scheme boards and their advisers should take place. This should then inform attempts to increase diversity, including among member trustees if it is possible given the diversity of the members.

We believe that the transition from a board to a sole trustee arrangement has slipped through all the regulatory nets. At its extreme, there is currently no requirement for sole trustees to meet any skill or fit and proper person tests, although those who belong to professional firms will be subject to the rules of their firm. There has been a notorious, and hopefully rare, sole trustee example of potential harm to member benefits in the case of Norton, but we don't believe that there have been any practical regulatory steps taken to prevent a similar occurrence.

It appears to us that the skills and concerns of individual Professional Trustees who operate in the PCST space, and who have their own code of conduct, are generally keenly exercised for the benefit of members. However, the structure in itself is conflicted and unbalanced as the employer not only has its own interest in the scheme but also employs the PCST. If there is a difference of views over their fiduciary duty, the PCST is forced to step away, which is of no support to the members.

It is this imbalance, and particularly the imbalance that can occur in the transition from a board to a PCST (entirely at the decision of the employer), that concerns AMNT. Perfectly well-functioning boards have been summarily stood down, sometimes following a difficult conversation with the employer about contributions or contingent assets. Members have no rights to be consulted nor any other say in the process although it is their member voice in governance that is being removed. In other, better, cases trustee boards and MNTs have been involved in the handover

process to the PCST and sometimes even kept for a period as a consultative committee. However this is still not compensation for losing the member voice.

Professional trustees have been heard to suggest that a forced handover to PCST makes the process of learning about the scheme difficult, and some trustee companies ask in the appointment process about this and the employers' reason for the change—and refuse to apply if it appears the employer is seeking unreasonable control. However, we have never heard of an employer being unable to find a firm willing to be appointed as PCST so presumably the same stance is not taken by all firms.

AMNT therefore proposes that no existing board should be permitted to be removed without its considered and advised agreement, or by formal consultation of its members. Also there needs to be a more formal process of oversight by TPR to ensure members interest remain paramount.

Moving to a future with fewer larger schemes, there is the possibility that many members will be in commercially run schemes in which there is no member voice. We strongly urge the government to legislate to ensure every board includes member nominated trustees just as in many other countries including the Australian pension system, and indeed is the case with several UK master trusts already.

In a DC (or CDC/R-CDC scheme) the risk lies entirely with members. It should not be just their choices and preferences that need to be heard but also their voice in governance and oversight of the scheme.

We also note that at the moment there seems to be a small pool of people involved across the largest schemes which creates limits independence of boards and IGCs and thus may be detrimental to member interests.

#### **Q11. What role can government and regulators play in helping schemes to attract a diverse and talented pool of individuals to trusteeship?**

The world of pensions is not regarded as an exciting one by the wider world until it becomes a financial issue for them near retirement. It appears charity trusteeship is facing a similar problem and there has been an attempt to advertise widely for charity trustees in general.

We need pension trusteeship to be seen more widely as an interesting career, or equally as a valuable and respected lay position. Achieving this is outside the capability of individual schemes, but needs to come from the regulator and/or other national/industry body.

We are aware the PMI has recently introduced a new training scheme, the Trustee Accelerator Programme, which provides training and mentoring for potential trustees. AMNT are currently exploring whether this offers options for lay trusteeship.

To raise the profile of trusteeship and support CPD TPR could consider holding an annual trustee conference (with an industry partner) to include such topics as toolkit revision. There is a precedent in that the information commissioner does this for data protection professionals.

Individual schemes can increase their chances of recruiting lay trustees by ensuring the role is treated as a respected position in the workplace; career enhancing rather than destroying, and that it is seen to be supported with adequate time and financial support for meetings, meeting preparation, and training,

Individual schemes could provide information on becoming a member trustee to all new members on joining.

Employers should be encouraged to allow employees considering trusteeship paid time to observe a meeting.

Government and regulator could help by ensuring greater and clearly defined protection for trustees. As well as a clear statement about providing funding, appropriate time needs to be protected to ensure that lay trustees are able to give of their best by preparing well and ensuring their skills and knowledge are kept up to date. Trustees also need to be assured that, with due diligence and process, they should not fear personal litigation and penalty.

That this full protection does not currently exist can be seen from an employment tribunal case in 2022 referenced in our answer to Q2 [Folarin v Transport for London] which shows that there is a weakness of the lay trustee position in law. Whilst meeting and training time is protected, it was ruled that there is no legal right to a commensurate reduction in workload to match the time taken. This situation is therefore a risk to the reputation of trusteeship should an employer choose to treat trustees in this way.

It is clear that there is a very positive role for trade unions in finding and recruiting lay trustees for pension schemes. Some trade unions have the right to nominate MNTs but more widely they assist in finding and encouraging diverse members to come forwards. With the passage of the government's Employment Rights Act it is likely that pension schemes could utilise the greater presence of trades unions to good effect.

AMNT has previously considered whether it could help to encourage potential trustees by producing materials/webinars etc. to support those considering member trusteeship but foundered on the issue of how to reach the intended audience. We would be willing to return to this if there was a way to link it to other appropriate advertising materials for the intended group.

**Q12. Should there be any limits on length of trustee appointment, or should they be limited in number of repeat appointments to the same trust?**

This is an issue which divides opinion. On balance, and in line with the direction of the Corporate Governance Code, we think that clear maximum appointment periods to the same scheme for all classes of trustee are a good idea. Where they do not exist we consider that the first priority should be to apply term limits to professional trustees (and their companies). Where schemes are operating well with their sitting lay trustees, we see no urgency to mandate them. The governance code is based on "comply or explain" and schemes should be able to explain why this is not their model. We would not like to see effective sitting lay trustees prevented from continuing further, especially if there are genuinely no others willing to take up the role. Introducing maximum terms within a scheme takes a number of years to introduce so that terms are staggered for the sake of the continuity in governance, and thus not applied to the whole board at once. Any change would take a considerable number of years to come into full operation. (In particular since terms of three years are unhelpful alongside triennial valuations, the Corporate Governance Code's recommendation of 9-year maxima is not helpful for pension schemes - so that a scheme is more likely to opt for 10 or 12-year maxima over two or three individual terms.)

The primary reason not to have maximum terms is to give continuity and stability to scheme boards for effective governance. Any term length, and maximum appointment lengths, therefore need to be carefully designed to allow for this scheme by scheme, and any regulation must allow for variation to cover specific scheme needs at points, eg. complicated transactions, where stability and background knowledge are material to the outcome.

However, in the longer-term view, we think that where there are clear trustee appointment terms set out—with a maximum number of consecutive terms—it encourages the regular introduction of fresh ideas and perspectives to the board whilst also keeping members who have had the time to develop detailed knowledge as they progress through their allotted term.

Maximum terms and regular changes also enable lay trustee "recruitment campaigns" on a regular basis to enhance engagement, and potentially departing trustees could be involved as mentors for new trustees. The term limit in itself may encourage some people to stand as trustees since they have a potential end point and not "a job for life".

Where schemes have no provision for regular trustee change/maximum terms, it is possible for a few individuals to remain long-term, making it difficult for them to be challenged by anyone else even in an election, and leading to poor governance because discussions are stale and/or other trustees feel they have to defer to such long-standing members. A group of such trustees on a board will have a high

tendency to groupthink and resistance to change which could be detrimental to members.

Similar provisions for regular turnover of individuals, even if not of company, should be applied to professional trustees, including PCSTs. Alternatively, or in addition, there should be a supplier review of the trustee company, following a similar pattern to individual trustee terms.

**Q13. Would it be appropriate to introduce a new public trustee who could be appointed by the Pensions Regulator? If so, in what circumstances would a public trustee appointment be preferable to a professional trustee from TPR's independent trustee register? And why?**

Yes, in the same way as the Court of Protection can appoint Deputies to act in the best interest of an individual who lacks mental capacity. This model could be developed to place a public trustee alongside a professional trustee where there was concern that members' interest were not being best served. This could be for example as a result of a clear conflict of interest within the PCST or a triennial valuation indicating a sudden change in financial circumstances of the scheme. In addition when certain events occur such as the decision to consolidate the scheme within a mega fund or restructuring to become a CDC. Just as the independent trustee register is there to supplement professional trustees where a trustee needs to be replaced, the public trustee would be there specifically to represent members where a specific set of circumstances have occurred, or are likely to occur, in the near future.

Of course there could be a difference of approach where it is concern about the board rather than an individual, or just a gap. Gaps could be filled by a wider list of people to step in—eg other MNTs with available time—perhaps temporarily while exploration of ways to find a “real member trustee” or appointment of a professional occurs.

**Q14. Are there any reasons why TPR's powers of intervention regarding trustees should be modified and if so in what way should they be modified?**

We welcome the more prudential approach of TPR, and, as has happened with this consultation their more consultative approach. Documents intended to offer trustees useful guidance in difficult or new decision areas are supportive of a learning trusteeship mode seeking to improve.

There are a number of topics in this consultation where we write about TPR using clear statements and expectations to help drive quality improvements and change. Alongside this it would be helpful to see an approach more akin to a system of comply or explain, unless the issue is one concerning the safety and security of members' funds. For example a system of fines for minor report infractions neither make a difference to members' outcomes nor improve the industry wide relationship between regulator and trustees.

We wrote in Question 2 about the perceived difficulty of the potential legal sanctions concerning trustee decisions and we hope that clearer guidance can be given about the procedures of legal support and careful recording of discussion and decisions which should mean this is less of concern on a day to day basis. The suggestion that statutory guidance about fiduciary duty could embody some of this is a welcome step.

**Q15. How can TPR ensure it has the information it needs for the directory without creating greater administrative requirements for schemes?**

We strongly support the introduction of a trustee register and included it in our 2023 proposals.

The level of technology for the format of a register is not our skill. However, analogies to such a register can be found in other similar trustee/director registers. We note the company directors' register now requires an ID code obtained privately through gov.uk by the individual and required to be submitted on returns by the company secretary. This is a unique identifier which could be a helpful model, especially if it could be aligned to Companies House so a simple identifier would cover the TPR register as well for trustees whose schemes have dual formats.

We think the register details about the individual should include the date of their first appointment to the scheme and cross-reference other appointments. Ideally, it should also hold past appointments too to give the full picture of experience, although this may be hard to include at the beginning. In a similar way to other registers, we think the names of trustees and their scheme appointments and scheme contact information should be publicly available, but not their private contact details or the majority of other information we suggest below.

We have written elsewhere about the confusion in labels for different types of trustees. This will be exacerbated in populating a register since, for example, it is possible to be a lay trustee on one scheme and, by the TPR definition, a professional on another. However, we believe that if this can be overcome the status of each appointment should be included on the register, perhaps with some indication of whether individuals who are professional trustees by employment have been appointed in a personal, lay, or trustee firm paid capacity, and in the latter case, the name of the firm.

It could be helpful to know generally across the industry whether trustees are remunerated or not.

A key part of the register will be the training and accreditation record. We believe it will improve adherence to the requirement to complete the toolkit if either certification, or a direct link from the toolkit, establishes completion for every trustee on an annual basis. (Elsewhere we have suggested that annual updates to the toolkit would ensure this was a live requirement.) Similarly, accreditation and any other certification should be recorded. This data should be used, alongside annual return information on continuing training of trustees and the whole board, for interaction between TPR and the scheme alongside a clear TPR statement of expectation for what is the minimum necessary requirement and what constitutes good practice for effective governance.

The register should collate information about the number of trusteeships held by an individual. As covered elsewhere, we believe that some trustees may have unsustainable levels of appointment consistent with good governance, especially were there to be an industry-wide event requiring urgent action. However, a specific limit is difficult to assess given the differences in time required depending on the size and complexity of schemes included. A register will enable monitoring by TPR of those with the largest numbers, and a public register would enable recruiters to take into account knowledge of other appointments in their decisions. Similarly, public listing of the schemes pertaining to an individual would be helpful in avoiding and managing conflicts.

## Chapter Three: Skills and Knowledge

**Q16. What skills will trustees of trust-based pension schemes need in order to be an effective and efficient trustee board? For example, areas such as leadership experience, negotiation skills, investment management (including sustainability-related investment management), communications, financial planning? What other areas should trustees have proficiency in?**

We agree there are a host of skills required between all the board members which include, in addition to the above:

- a) **Procurement skills and contract management** (of advisers, administrators, suppliers, and professional trustees).
- b) **Risk management skills.** One of our committee explained the enormous benefit brought to them from a trustee who was an audit professional and has been able to assist in the development of their risk framework and moving towards ESG/ORA. The management of data/cyber risks is now a major issue for boards.
- c) **HR experience** Skills brought to the board in this area will assist with assessing skill needs, assisting with recruitment, and being able to support board, or individual trustee reviews. This aspect of governance, including forward looking competency reviews matched to recruitment will increasingly become necessary for good governance.
- d) **Overview knowledge of IT and AI developments** is becoming the new skill that trustee boards need, both to increase efficiency in their operations, but also so that these can be used to best advantage by the scheme in communication and planning tools for members.

Schemes should regularly carry out a competency review so that they can source appropriate support. A forward-looking strategic review could ensure that these skills can be developed or recruited for the board.

Strategic leadership is now increasingly important with so many new areas of direction to be set for a scheme as well as maintaining business as usual. This is in addition to a host of other projects such as data cleansing and management for GMP, dashboard and potentially buy out. Much more strategic action may also be required within the executive of the scheme as well if these essential reassessments of “journey” result in different skillsets and structures of support becoming required.

We have not specifically listed investment skills. As with all the above skills, a board needs trustees to have good level of understanding of the underlying issues to be able to engage in constructive discussion and decision-making, but not necessarily any “expert” status. For investment topics, as with actuarial and legal advice, the onus is for trustees to understand the wider perspective and strategy for their

scheme and use this to challenge and discuss detailed investment advice rather than to be the expert themselves. This applies both to investment vehicles and to wider systemic risk issues, and these areas should be part of the training of the board as a whole before making decisions on new issues.

Larger or more complicated schemes often bring in additional expertise through investment and other sub-committees, although the trustee board remains responsible for the strategy and for managing what it delegates. Smaller schemes may bring in an OCIO on a similar basis.

However we believe the key skill for all trustees is the soft skill of listening to and constructively challenging advice, and the mentality of continual learning. With such a long list of skills, it is virtually impossible for each trustee to bring all of them as well as to be knowledgeable about the scheme structures themselves. Boards should complete skill audits to identify the skills their trustees bring and to identify gaps they need to fill by training or a targeted appointment. The aim is to have a well-trained and qualified board, once all the individuals are seated together.

The trustee toolkit, potentially updated and boosted by accreditation and accompanied by both individual and board-level training, provides a good basis for these technical skills. Acquiring and examining soft skills is more difficult, and therefore identifying these skills is key in the appointment process. However, they can be developed and expanded by training workshops individually or for the whole board together. The Pensions Management Institute's examinations leading to accreditation does cover soft skills in addition to the technical skill requirements.

There is a potential issue that professional trustees (or indeed any trustee) can consider they bring sufficient "expert" knowledge in a particular topic that formal advice is not needed. This is to step outside the trustee role and brings dangers for the scheme should a decision subsequently be challenged. It is therefore not helpful to stress individual trustee expertise, except as a part of constructing a board which covers the wide variety of knowledge and experience required alongside its professional advisers.

**Q17. Would it be appropriate for TPR to set statutory higher standards for professional trustees? What should these standards look like?**

Whilst lay trustees should be encouraged towards achieving accreditation, with the appropriate time and financial support, we consider professional trustees should be required to be accredited before taking up future new appointments. This should be a minimum given that such a level of accreditation is also open to lay trustees. In addition it should be required that all trustees should be assessed in an annual board review process.

Professional trustees are in effect third party suppliers to the board in the same way as many others engaged by trustees. Trustee companies and the individual should demonstrate competency before appointment (including independent assurance) and should be expected to provide evidence of continuing CPD alongside being involved in board effectiveness reviews.

An exception to accreditation (but not the toolkit) could be made for “independent” trustees appointed because they bring a different professional skill specifically required at that time by the board (but these trustees will still be classified as professional pension trustees by TPR).

We think it is more important that there is evidence and oversight of continuing CPD post-accreditation rather than adding another static level of qualification to the requirements for professional trustees.

If a board does not have an accredited professional trustee, it would be appropriate for TPR to have higher expectations of the other trustees and to look for accreditation (or similar) of at least one trustee, including lay trustees.

## **Support for Lay Trustees Section**

### **Areas not included in questions**

#### **Para 73**

We note in para 73 a reference to lay trustees as “generally non-professional individuals.” There is considerable ambiguity in the words used to describe different groups of trustees.

Lay pension trustees are often “lay” only to the pensions industry. Many come with significant or professional skills in other areas, such as finance, law, HR, negotiation, communications, etc., and these are skills required by a well-diversified board. They are however often “non-professional” in common parlance in that this is not their employment, although there is an increase in those now paid a fee by the scheme.

On the other hand, there are also “professional” trustees taking on paid or unpaid trusteeships in a personal capacity outside their trustee company and those operating as “solo” trustees—those with considerable pensions experience who do not wish to be part of a professional pension company.

Some independent or company-employed professional trustees are not accredited, whilst some lay trustees are.

The current TPR definition for a lay member or employer trustee is the direct connection to the scheme. Any other is treated as professional – whether or not accredited or employed by a trustee company. Someone who is a “career” trustee

could therefore become “lay” in these terms if appointed to a scheme of which they were a member, whilst a lay trustee who is appointed to another scheme outside their personal scheme with no other change in circumstances is called professional.

In addition the terms professional and lay seem sometimes to be used with an overtone relating to expertise or experience, i.e. as expert and amateur, but, as described above, this is not an accurate division and becomes unhelpful in looking to the future when it is the skills required of trustees, rather than their financial or employment arrangements, which is what matters to the good outcomes of a scheme.

Small schemes with all lay trustees can either acquire skills by training existing trustees or by buying in a trustee with that qualification/experience. Since accreditation training and qualification is available equally to lay trustees just as professionals, there is no reason not to move to requiring at least one accredited trustee (professional or lay) on a scheme—given a reasonable time to achieve it and with full financial and time support for lay trustees. Notably, the cost of training a lay trustee is more likely to be within the financial capability of a small scheme. We are delighted that when we consulted AMNT members on this point there was overwhelming support for the proposal that at least one board member should be accredited.

### **Paras 75-76**

A new website as a one-stop for lay trustees would be helpful if there were not to be a trustee register. However, a register which enables TPR to communicate directly with all trustees could be even more effective in disseminating appropriate information, including links to other relevant sources. It would enable trustees to receive important information directly (such as new guidance) and could be used to actively contact all those in appropriate segments whenever there was a need or opportunity. For example – all new appointments each year (or on appointment if updating was more than annual) could be sent appropriate signposts to training and support material. Notices of new or updated toolkit modules could be circulated to all trustees. AMNT would be very happy to be linked to and to help with such training and support materials for new and continuing member trustees in whatever way we can (within our limited resources).

**Q18. We are moving towards models of trusteeship that do not include as many lay trustees as now, what important benefits or skills of lay trustees should we try to replicate in consolidated structures? And how should it be achieved?**

The real distinguishing factor of member trustees (and to some extent also employer trustees) is that they were created to deal with a situation where an employer had improperly used trust assets because they were not subject to sufficient scrutiny.

They therefore are intended primarily to fill the role of providing a balance of interests to all board discussions. Their role in providing increased cognitive diversity and also a better knowledge of members is a by-product of this and not their essential purpose. To use an industry phrase, member trustees have a distinctive role because they have “skin in the game.” Such a fact can fit alongside also being well-trained and acquiring significant skills and knowledge but cannot be replicated in any other way.

Lay trustees bring cognitive diversity to a small industry that can get tied up in groupthink on the most recent topic rather than a consideration of the details and differences of each scheme.

The traditional construction of a board with member and employer representatives is designed to create a balance of interest, and of course the introduction of member trustees post-Maxwell illustrates just why the need for that balance of interests exists.

It is essential that there is member representation voice on the boards of consolidated schemes. It has been shown to work in other countries. MNTs are already present in multi- employer schemes in the UK, and the fact of being a scheme member does not mean that they cannot also be required to be a well-qualified candidate. Many lay trustees bring the variety of skills that a board requires beyond the pension basics. (Some master trusts have shown how this can successfully be achieved in a multi-employer model, with a condition for employers on joining that they will support a trustee from their company if appointed to either the member or employer nominated role. We understand that NEST currently has a director appointed on the basis of skills and experience who also happens to be a member.)

Member trustee involvement can provide a balance against the danger of commercial conflicts of interest. While it is right that the member bearing the risk should have a voice in DC governance, we consider it absolutely essential there should be a member representation in any CDC/R-CDC governance since the decisions on design and the annual actuarial balancing decisions will be crucial to member outcomes whilst the sponsor’s risk is considerably reduced.

The cited difficulty of conflicts of interest for lay trustees between multiple employers in consolidated schemes seems to be overstated given that in a large scheme the commercial detail of individual employers is rarely seen at board level since detailed covenant assessments are likely to be carried out by advisers who provide a scheme overview. Therefore, whilst always being aware of potential commercial conflicts, this is unlikely to be a material problem in bringing in member trustees.

We consider it would be appropriate, like in Australia and elsewhere, for all the trustees of these large consolidated schemes to be subject to higher skill and conflict management requirements. However, this does not mean that member trustees could not already have, or achieve, this skill level, possibly with some transitional support.

The complexities of commercial provision is challenging for the introduction of a different form of governance, but such schemes might find fresh challenge to their VfM and innovation if they were required to include member representation on their boards.

The seeking of member views through focus groups and advisory committees is better than nothing, but it does not address the core member scrutiny in governance. However something akin to a member forum for large schemes analogous to EU European Works Councils for enterprises of over 100 employees would be a demonstration of commitment to hear member views.

We have also seen suggestions that pension scheme members should be treated like company shareholders and have the right to a public meeting and governance challenge annually.

However in the UK we are a long way from this member representation, and whilst it could be introduced for new CDC schemes and encouraged in others, it is likely to take some time to implement. We would therefore like to see much more attention now paid to the current potential conflicts of a small pool of people being involved in different roles across a number of large schemes. Member nominated trustees drawn from the membership of these schemes is the best safeguard against this.

**Q19. What support/continuing professional development (CPD) would you like to see put in place for lay trustees? Should all trustees be accredited? Would it lead to a trustee shortage? Who would pay for it including time as well as any L&D costs?**

AMNT supports increasing the oversight and expectation of the training of all trustees. If the register was implemented it would mean that, not only would TPR know how many trustees had completed the toolkit or accreditation, it would enable them to send information to all trustees on what was expected of them. This information to TPR could easily be achieved by including a section for annual training received on the annual return/register and would help to make continuous training the norm. There could perhaps be a direct link between toolkit and register.

On entering the register, trustees could receive information about how to access training and information providers, including the pension's press which provides a good source of information.

The toolkit could include annual update modules, which would therefore have to be completed each year to keep certification up to date. Alternatively, or in addition, a formal CPD requirement could be introduced and a more complete CPD award scheme apply to industry webinars/conferences.

We consider it could be off-putting for potential new lay trustees to schemes to create a requirement for immediate accreditation, especially in comparison to the lack of requirements in recent years for professional trustees. It may be many years

since these potential lay trustees faced an exam. However, a staged approach, towards this, with a clear pathway to completing the toolkit and then moving towards accreditation, with training and exam fees and time supported by the scheme as routine, is likely to lead to significant numbers of accreditations over time. Much can be achieved by the expectations of the regulator in such issues in their regular interactions with schemes. At the moment we do not feel it would be helpful to make accreditation within a set period a formal requirement for all trustees in all schemes, although more complex schemes could choose to increase their requirements and some already look to achieving accreditation by all trustees as the norm.

We believe it could be appropriate for TPR to look for at least one accredited trustee on each scheme, whether lay or professional.

Some schemes require completion of some modules of the toolkit before applying to become a trustee, which enables both the candidate and the scheme to feel confidence that the further study is achievable

When consulted in the last few years our members have reported refusal by some schemes/employers to requests to fund accreditation study or exams, leaving them with the option to pay from their own resources or to give up. There is also the issue of study, or even exam time, often being assumed to be in unpaid time. The current number of accredited lay members is therefore not an accurate reflection of the level of interest. Those who put themselves forward to represent their colleagues wish to perform that role to the highest level of competency.

We reiterate the need to provide clear support for the time and workload adjustment for trustees for training, preparation and attendance at board and committee meetings. Whilst all trustees are entitled to paid time off for their duties, including training and exams etc, the on the ground reality can be very different, and, as shown in the Folarin vs Transport for London ruling, does not cover a right to adjustment of workload.

The current situation with regard to meeting preparation is also clearly subject to very different interpretations by employers and our survey of members showed that nearly all had to prepare for meetings in their own time. This in itself works against the diversity of trustees as it discriminates against those who need to balance their job with caring responsibilities and acts as a barrier preventing women in particular with caring responsibilities from considering becoming, or remaining, a trustee.

We suggest that each scheme should be responsible for the training costs of its trustees in the same way that it pays to bring in external expertise. Placing the costs on the scheme, overseen by TPR, rather than the employer, should help to remove differences in experience between schemes when requesting support but there should be an explicit requirement placed on schemes by TPR to support and encourage trustee training.

In addition, each scheme should be providing training for the whole board together on such matters as new investment classes under discussion, new regulation, or

new options coming into the strategic planning orbit of the particular scheme. Setting higher TPR expectations would be the first step in achieving this.

## Chapter Four: Member Voice

### **Q20. How can we ensure trustee boards take into account the perspectives of members in their decision making?**

The introduction of MNTs followed the Maxwell scandal. They were introduced, not to reflect member views, but to create a balance of interests in pension scheme governance to prevent reoccurrence and to ensure that member interests could not be overridden. Their knowledge of wider member views was a welcome by-product as well as the confidence this gives to members about their scheme because of the existence of member trustees.

Any or all of the trustees can bring consultation or communication skills to the board to survey and consult the whole membership. It is then the responsibility of the whole board to decide how to respond to that information. This will be a particular challenge going forward if the propensity of members to ask questions of AI and not their schemes is not to lead to sub-optimal decisions. However, AI also gives great opportunities for schemes to help their members.

Some schemes hold a member meeting/forum at least annually. Others run webinars or chat functions for contact through their websites. We think these should be added to regulatory expectations of good practice although we acknowledge that all these options have their difficulties and unless there is the opportunity to ask targeted questions at the right point of the governance process it is hard to have members' views on the current issue under discussion. Hopefully AI and the expansion of member portals and such like will enable schemes to understand their members better. It is then the responsibility of trustees to ensure they include this within their decision making.

The situation with a PCST can be more complicated. This can arise from the transition from a board to a PCST, especially when it occurs entirely at the decision of the employer, which is a situation of grave concern to AMNT and which we do not think should be allowed to happen. When a perfectly well-functioning board has been summarily stood down, sometimes following a difficult conversation with the employer about contributions or contingent assets, members have no rights to be consulted nor any other say in the process although it is their member voice in governance that is being removed. In other, better, transitions trustee boards and MNTs have been involved in the hand-over process to the PCST and sometimes even kept for a period as a consultative committee. However this is still not compensation for losing the member voice at the board table. In addition members who are presented with a fait accompli transition are more likely to lose confidence in the scheme governance, or even conclude that communications from a new PCST board are a scam.

Within the ESOG there are aspects directly related to seeking member feedback and understanding members' views and needs. This therefore provides a mechanism to bring this to the fore and for schemes to review their performance in this area.

The ESOG/ ORA should also provide evidence of providing accurate and timely information to members and for obtaining member feedback over the ORA reporting period. The requirements also include tailoring support for vulnerable members or those with different accessibility needs.

**Q21. Can you give any examples of best practice in the UK or internationally that demonstrate schemes taking appropriate account of their members' views?**

- a) **Nest (National Employment Savings Trust):** As a master trust, Nest is frequently noted for its focus on member outcomes and engagement, offering various channels for feedback and using member panels to shape its investment approach.
- b) **Brightwell** has a member forum.
- c) **The People's Pension:** A large not-for-profit master trust that reinvests in its members and maintains a strong focus on responsible investment and communication.
- d) **Smart Pension:** Highly rated for its digital interface and engagement, offering 18 investment funds and strong ESG options, with proactive member communication.
- e) **Royal London:** Recognized for strong customer service as a mutual provider, often highlighting high engagement levels.
- f) **Railways Pension Scheme (Industry-Wide DC Section):** Noted for its active member participation and consultation regarding its investment strategies.
- g) **PensionBee:** A modern, online-only provider that emphasizes transparency and simplified communication, allowing members to easily manage and review their investment options.
- h) **Local Government Pension Scheme (LGPS):** As a defined benefit scheme, the LGPS often involves members through member-nominated trustees on their pension committees.
- i) **University of Oxford Staff Pension Scheme:** Listed as a trusted, high-governance master trust with member engagement.
- j) **Church of England Pensions Scheme:** Has begun a major uprating of pensions to restore accrual lost in 2012 changes, as a result of clergy requests and a Church General Synod debate.

## Chapter Five: Administration

### **Q22. What benefits and challenges do you foresee if mandatory minimum standards were introduced for scheme administrators and/or wider administration services such as Integrated Service Providers?**

Firstly, not all scheme administration is outsourced to these large schemes. Whilst high standards should be required of all equally it is important that the monitoring of these standards is not burdensome without benefit to smaller, or in-house, scheme administrators.

Like VfM, not all good quality can easily be condensed to a simple measurement. Whilst measures such as speed of response can be calculated, the quality of that response in understanding scheme details and the needs of the membership cannot.

Care needs to be taken that “mandatory minimum standards” do not become the “acceptable” standards and that there exists sufficient of a market to encourage continuing improvement. The quality of administration may not be obvious to members for most of the time but it is very important for them to receive good support at times of changes in life events. For example, administration standards offered on buy out by insurers have been driven up by market competition for the business and the importance within that selection process attached by trustees to member experience. Notably there are initiatives to improve accessible services and support for vulnerable clients.

Where the traditional scheme administration market is only just meeting demand there will not be a market imperative to innovate and improve. Thus unless for convenience alongside insured scheme administration, improvements in quality without regulatory impetus, or new market entrants, is unlikely to happen.

However it is important to schemes and trustees to have confidence in their suppliers, whether in house or outsourced, and therefore some form of independent oversight would be beneficial to the industry. It seems right to begin this process with the largest administrators and thus where the most risk lies.

Good member data is a vital area to be monitored in every scheme and virtually all schemes, whether consolidating, transferring risk or rectifying GMP, will need to improve it in the near future.

**Q23. Should TPR have the same levels of regulatory oversight as the FCA regarding administrators and/or wider administration services, and why?**

Yes, TPR should have the same levels of regulatory oversight as the FCA regarding administrators and the wider administration services. This is because TPR needs to guard against and/or act in favour of:

- a) **Systemic Importance:** As pension funds and administrators grow to systemic sizes, the consequences of failure are massive, requiring tighter oversight similar to the FCA's.
- b) **Increased Risk & Complexity:** The need for better data, tackling legacy systems, and managing complex benefits necessitates sharper scrutiny of administrators.
- c) **Member Protection:** Enhanced oversight directly aligns with delivering better value and security for savers, addressing high-profile failures.
- d) **Consistency:** A unified approach, potentially using similar powers to the FCA, could ensure consistent standards across both trust-based (TPR) and contract-based (FCA) schemes.

**Q24. Should administrators have to be registered with TPR to be involved in administering a scheme? If so should TPR be able to deregister an administrator? (A model similar to that in Ireland)**

Yes and Yes

Provisions for administrator of last resort should be set up and overseen by the TPR in very similar terms and circumstances to the OFGEM set up of supplier of last resort. The current rush for so many schemes to buyout is starting to show the short comings in many administration firms. The more these firms have to deliver on projects like the dash boards, GMP equalisation, data quality, etc the more the cracks are showing in firms as they fail to deliver works on time.

**Q25. What risks if any, does increased levels of consolidation activity in the DC sector pose to administration service providers? How can these risks be mitigated to ensure an orderly transition to Megafunds?**

Due to the huge amounts of data being transferred there needs to be a national review of pension administration. There is a mix of large & small administrators in the market and due to issues like data security, members at risk of scams, and other potential systemic risk, the Government [via TPR] needs to ensure that all current administrators are fit for purpose. This is not an issue that can be put on the back burner until a problem/issue arises.

As we look towards megafunds, should there be regulation that prevents each megafund from just using one administrator thereby creating a risk? We believe that

some, if not all, insurers use multiple administrators which therefore spreads and reduces risk.

However none of this reduces the risk of a single administrator leaving the market or undergoing a catastrophic issue.

**Q26. What role should TPR take in reducing the risk and impact of a disorderly market exit by an administration provider?**

TPR is already taking an increasingly active role in reducing the risk and impact of a disorderly market exit by administration providers, shifting toward proactive market oversight rather than reactive intervention and the AMNT agrees with this approach. Recent initiatives, particularly following the December 2025 updated guidance, emphasize that administration is a critical driver of member outcomes, requiring high-level supervision and robust business continuity planning.

See also our answers to question 24 & 25. An administrator of last resort system needs to be introduced linked with a spreading of business across a panel of administrators to reduce future risk.

**Q27. To help us better understand the trustee landscape and the potential impacts of any changes emerging from the consultation, we would welcome some information regarding the scheme or provider you are answering on behalf of in the table below:**

The Association of Member Nominated Trustees was established in September 2010 to bring together member-nominated trustees, directors and representatives of public and private sector pension schemes to give trustees a collective voice, to provide mutual support and information exchange and to campaign on matters of concern.

In addition our membership is focused on speaking on behalf of pension scheme members, because being a scheme member is a requirement for becoming an MNT and has a particular part to play in scheme governance. Our members are from pension funds with collective assets of approximately £1-trillion.

It is a voluntary association with an unpaid governing committee made up of current trustees, with additional support from some ex trustees. Its administrative needs are financed through industry sponsorship.

The Association has a strong relationship with the industry press, providing regular articles for publication and commenting on the major issues of the day from a member's perspective. Additionally it maintains frequent contact with the Government and Regulator.