

UK Pensions Briefing

New Code of Practice for sole corporate trustees

November 2020

Introduction

In our [February 2020 briefing](#), we looked at the advantages and disadvantages for pension schemes of replacing a trustee board of individuals with a corporate trustee. In this briefing, we consider further a particular type of corporate trustee, namely the professional corporate sole trustee (PCSTs), in the context of the new [Code of Practice](#) which has been published by the Association of Professional Pension Trustees (APPT). The new Code of Practice will take effect from January 1, 2021.

The Code of Practice is in addition to the [APPT Code of Conduct](#), which took effect from May 15, 2013, and the [APPT standards for professional trustees of occupational pension schemes](#), which was introduced in March 2019.

What is a professional corporate trustee?

A trust-based pension scheme can either have individual trustees or a corporate trustee (or a combination of both). Where a corporate trustee is used, instead of the individuals each being a trustee, they are appointed as directors of the trustee company.

A corporate trustee can simply be an incorporated version of the previous trustee board of individuals; this is likely to have been done for ease of administration and to provide better protection for the trustees in terms of liability. There are also professional corporate trustees who specialise in administering pension schemes. Professional corporate trustees can either be one of a number of trustees (alongside other individual trustees) or the sole corporate trustee of a pension scheme.

Whether to appoint a professional corporate trustee

There are a number of factors to be weighed up when deciding whether or not to appoint a professional corporate trustee. One advantage is the experience which a professional trustee will bring to the scheme. A professional trustee may have experience of the wider pensions industry and is also likely to be involved in the management of other pension schemes, so will have familiarity with different approaches and what is likely to work in a given situation.

Professional trustees may also be able to help manage conflicts of interests, either generally or in relation to a specific project. Appointing a PCST will remove the risk of a conflict of interest arising between the employer and/or members and the pension scheme. Professional trustees may also have wider experience of dealing with advisers and service providers.

However, there are potential disadvantages which need to be considered. The cost of a professional corporate trustee should be weighed against other benefits which the appointment is expected to bring; whether or not the appointment is in the best interests of members may depend on the size of the scheme and the expected savings on advice and other third party services. There may also be concern among members who feel they have lost touch with the trustee board, particularly the member-nominated trustees. One way of alleviating members' concerns is to put in place a consultative committee which includes the former trustees, who can provide valuable insights to the new professional corporate trustee in relation to

the scheme's history and background. This committee can remain in place for a time-limited period or indefinitely.

The new Code of Practice

The new APPT Code of Practice is voluntary and applies to professional trustee firms who are acting as the sole corporate trustee of an occupational pension scheme in the UK. It is not intended to apply to master trusts or "captive" corporate trustees which have been set up for the sole purpose of running one or more pension schemes associated with a single employer or group of employers.

Although the Code of Practice only applies from January 1, 2021, it states that *"it is expected that members will endeavour to bring appointments made prior to this date up to the standards set out in the Code, as far as practicable"*.

Although currently there are no mandatory requirements in respect of the appointment and review of PCSTs, it is good practice to ensure that the appointment process of a PCST is transparent, competitive and well documented and that regular reviews of the PCST are undertaken to ensure that the appointment is meeting the scheme's goals and remains good value for money and in the interests of members.

The new Code of Practice sets out good practice for how PCST firms should operate and covers the following areas:

1. Appointment
2. Working with the sponsoring employer
3. Decision making
4. Diversity and inclusion
5. Appointment and review of advisers and service providers
6. Assurance reporting

Below is a high-level summary of the key points covered by each section in the Code of Practice.

Appointment

The PCST firm should have due diligence procedures in place and ensure that it documents the process (i) by which the sponsoring employer decides to appoint a sole trustee and why it is appointing the chosen firm and (ii) why it decides to accept or not accept the appointment as PCST.

Working with the sponsoring employer

The PCST firm should maintain a policy which ensures that the PCST representing the firm is independent of the sponsoring employer. PCST firms should also have procedures in place to ensure that they document that any negotiations with the sponsoring employer have been conducted properly. Although the sponsoring employer can provide input on the appointment of advisers, PCST firms should ensure that they have an unrestricted ability to appoint and remove advisers and to commission advice where necessary.

Decision making

PCST firms should ensure they have processes in place which set out how decisions are to be taken and recorded and to ensure that there is no undue influence by outside interests. Any decision which is considered material in relation to a trustee discretion or power should involve at least two accredited professional trustees.

Diversity and Inclusion

PCST firms should have written policies on diversity and inclusion.

Appointment and review of Advisers and Service Providers

PCST firms should ensure they can evidence that the appointment of advisers and service providers has been based on the needs of the scheme and that they have processes in place for the review of advisers and service providers at least once every three years and to manage conflicts of interest.

Assurance reporting

PCST firms must provide assurance reporting on internal controls and in respect of administration, accounting or payroll services where applicable.

Considerations for PCSTs

PCSTs should ensure that they have processes in place to ensure that they comply with the requirements of the Code of Practice and can demonstrate this to prospective clients. Consideration should also be given as to how PCSTs can demonstrate that they will provide good value for pension schemes and their stakeholders.

Considerations for employers

Where an employer of a pension scheme is considering changing the trustee board and appointing a PCST, the employer should ensure that the PCST in question can demonstrate that it has robust processes in place to meet the requirements of the Code of Practice. It should also ensure that the appointment process for the PCST is transparent and competitive and that reasons for decisions are well-documented.

Considerations for trustees

While the appointment and make-up of the trustee board is generally a matter for the employer, we would usually expect this to be a collaborative process between the employer and current trustee (particularly given that where it is proposed that a member-nominated trustee will be removed, this requires the consent of all the other trustees). It is advisable for the current trustees to ensure that the employer is carrying out appropriate due diligence on a proposed PCST and that the PCST can demonstrate that it is complying with the requirements of the Code of Practice.

Conclusion

While the new Code of Practice does not have statutory force, it sets out guidelines for good practice for professional trustee firms which are acting as sole corporate trustees. Ever more schemes are considering how the engagement of professional trustees in some capacity can help improve the governance and efficiency of scheme operation. As such, the Code is welcome in setting a high quality mark of industry expectation where a sole professional trustee is being considered so that this can be compared against other options available.

Contacts



Lesley Browning
Partner

Tel +44 20 7444 2448
lesley.browning
@nortonrosefulbright.com



Peter Ford
Partner

Tel +44 20 7444 2711
peter.ford
@nortonrosefulbright.com



Shane O'Reilly
Partner

Tel +44 20 7444 3896
shane.o'reilly
@nortonrosefulbright.com