

Master trust authorisation

Supervision and enforcement policy

Consultation response

October 2018

The Pensions
Regulator

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Introduction

We consulted on the draft master trust supervision and enforcement policy between 26 July and 23 August 2018. This document summarises the feedback we received and provides our response, highlighting key changes we have made to the policy as a result.

We received 24 responses from master trusts schemes, representatives, professional bodies and advisers. We are grateful to everyone who responded to our consultation and to those who provided feedback during the industry event we organised.

Overall, feedback was very positive but also included a range of constructive comments, the key themes from which are discussed in further detail below.

The consultation

The Pension Schemes Act 2017 (the Act) and the Occupational Pension Schemes (Master Trusts) Regulations 2018 (the Regulations) aim to protect savers by regulating master trusts, which account for over 10 million pension scheme members.

The new legislation gives us the powers to authorise and supervise master trust schemes. The purpose of the master trust supervision and enforcement policy is to set out our significantly more proactive approach and covers the following areas:

- ▶ **Supervision of master trusts:** how we will engage with master trusts throughout supervision, including the key activities we expect trustees and others involved in running the master trust to carry out.
- ▶ **Enforcement against master trusts:** how we will proceed in cases of non-compliance, including where we may look to take enforcement action and may ultimately seek to withdraw authorisation from a master trust.

We asked respondents to complete a three part response form. Part 1 consisted of four questions relating to supervision, part 2 asked three questions about enforcement and we asked two questions about withdrawal of authorisation in part 3.

Summary of key topics and our response

We have grouped comments into themes for each of the three areas covered, and in addressing points made we have taken a number of approaches:

- ▶ We have made amendments to the master trust supervision and enforcement policy document.
- ▶ We have referred to existing guidance where helpful, and we have highlighted further guidance that will be issued in due course.

Key themes of the consultation responses have been grouped together in line with the questions under the topics of supervision, enforcement and withdrawal of authorisation:

▶ **Supervision**

- Intensity of supervision, risk assessment and supervisory judgement
- Information requests
- Timing of the supervisory return
- Keeping records of interactions between us and master trusts
- The Master Trust Assurance Framework (MTAF)
- Triggering event and significant event notification guidance
- Feedback to the industry and best practice examples
- Liaison with other regulators

▶ **Enforcement**

- The general enforcement process
- Pause orders
- Publishing regulatory information

▶ **Withdrawal**

- Tax implications of withdrawal of authorisation
- Clarification of withdrawal of authorisation process detail
- Clarification of the meaning of 'cease to operate'

Summary of key topics and our response continued...

A range of comments concerned more detailed operational issues. While we value feedback received on these matters and will consider the points raised, we do not intend to issue formal guidance on detailed operational processes. For those master trusts that are authorised, we will be communicating our specific plan for supervising them individually in due course.

Also, a number of comments related to the need for consistency and proportionality in our supervision and enforcement activities. As a public body set up by statute, we must act in accordance with our functions, taking into account our statutory objectives. We must abide by the public law principles and have regard to the statutory PACTT principles: proportional, accountable, consistent, targeted and transparent.

Detail of topics and our response

Part 1: Supervision

We asked:

1. The draft policy sets out our risk-based approach to supervision. Is this clear and proportionate and if not, why not?
2. Does the draft policy clearly set out that how a master trust conducts its activities may influence the way we deal with them?
3. Are there any additional matters we should consider including in this policy or future guidance?
4. Do you have any comments regarding the proposed routine and additional supervisory approaches and activities set out in the policy?

You said:

In relation to supervision, there were a number of themes and points that emerged.

- ▶ **Intensity of supervision, risk assessment and supervisory judgement:** Some respondents felt it was not clear what metrics we will use to determine which schemes will have more or less intensive supervision. They did not think the categorisation of firms should solely be driven by scale, even in the short term.

A theme in responses was that master trusts wanted further clarification, particularly about the operational detail of supervision. More specifically, some asked for further clarification on how we would make judgements about whether a master trust meets its obligations, including the authorisation criteria.

Some respondents asked for clarification on how schemes under common control, or master trusts operated by the same organisation under substantially similar management, systems and processes, would be supervised.

- ▶ **Information requests:** Some schemes said we should clearly articulate the purpose of any information request made to a master trust.

One respondent requested we articulate the extent to which “reasonable excuse” would be considered if a master trust fails to provide a document when required to do so under section 72.

- ▶ **Timing of the supervisory return:** Several respondents provided comments regarding the potential timing of the supervisory return, suggesting that:
 - it should be aligned with the timing of the scheme report and accounts, which must be produced within seven months of scheme year end
 - the first returns should not be requested too soon after authorisation in 2019
 - the frequency should be considered, as some information may be more useful on a quarterly basis, and
 - it may be beneficial to have supervisory returns independently validated

- ▶ **Keeping records of interactions between us and master trusts:** Some master trusts raised concerns around the need for a written outline of material points to be produced by us and circulated as soon as possible after meetings and calls to ensure clarity and alignment.

Some master trusts suggest that their compliance or legal advisers (or equivalents) should be allowed on all calls or in meetings with us.

- ▶ **Master Trust Assurance Framework (MTAF):** Several respondents requested clarity on the continued role of the MTAF and its interaction with the policy.

One respondent commented on the absence of reference to ICAEW's materials on assurance reporting around internal controls of service organisations.

- ▶ **Triggering event and significant event notification guidance:** Three key points relating to the obligations to submit notifications were raised by separate master trusts. They asked the following questions:
 - Will TPR hold schemes liable for 'past mistakes' in relation to the schemes they acquired?
 - What is the definition for 'significant' or 'materiality' for significant events?
 - Is requiring all persons involved in running a master trust to report a significant event productive from a resourcing perspective?

- ▶ **Feedback to industry and best practice examples:** Some respondents requested that we provide examples of best practice to help master trusts understand and meet our expectations.

- ▶ **Liaison with other regulators:** One respondent sought clarity on the liaison we would have with other regulators and the impact this information might have on our judgements and decisions around risks for master trusts, including the potential for enforcement action.

Another respondent highlighted that for master trusts operated by insurance companies (as well as potentially other regulated companies), there is potentially some duplication of regulatory focus.

Our response:

In relation to the supervision topics and points summarised above, our response is set out below.

- ▶ **Intensity of supervision, risk assessment and supervisory judgement:** To aid clarity, we have simplified our explanation of supervision. We have removed the reference to routine and additional supervision, combining under the term 'supervision'. There will be a spectrum of supervisory intensity, as set out in the policy.

Generally speaking, master trusts with the most members can expect to receive a higher intensity of supervision from us. We believe that the concentration of a large part of the market within a relatively small number of master trusts by members makes it appropriate and proportionate to maintain a robust ongoing regulatory view of those master trusts.

Such scale, both actual and planned, is a significant determinant of the potential impact that any crystallised risks may have on individual members or wider market confidence. However, this does not mean that smaller master trusts are automatically excluded from higher intensity supervision.

Our assessment of the likelihood of risks crystallising will be developed as part of authorisation and will be updated and enhanced during supervision. Once supervision begins, we will take this information into account when determining the intensity of supervision for each master trust scheme. We will confirm to each master trust individually the intended level of supervisory intensity and our proposed work programme with the scheme over the forthcoming period. The risks we identify for each master trust will remain a confidential matter between us and each respective master trust. The precise level and form of interactions may change from year to year and is likely to be different between master trusts.

In section 2.3 of our policy, we outline the principles we will adopt when assessing the level of risk posed by a master trust and how this informs our decision-making about the intensity of supervision. However, as our decisions will be taken on a case-by-case basis and be complex, we cannot lay them out in advance with precise examples.

Where multiple master trusts are operated by the same trustee under substantially similar management, systems and processes, these will generally be supervised collectively as a group. We understand the concern about schemes being regulated in different ways but we aim to use our resources efficiently and minimise potential burden on schemes. The circumstances of each case will be considered on their merits and the approach communicated to schemes. In relation to mixed benefit schemes, we will also be conscious of potential consequences of supervisory action taken in each section of the scheme.

- ▶ **Information requests:** When we request information, we will state the purpose and explain why we believe the information requested is relevant.

We expect those running master trusts to be open, honest and proactive in their dealings with us and we will generally request information without exercising our powers. Where appropriate, we may issue a section 72 notice to require information.

If a person fails to comply with a section 72 notice, we have the discretion to issue a penalty notice. In deciding whether to impose a penalty, we will factor in all relevant considerations and circumstances of the case, including any reasons that the person has put forward for not complying with it.

- ▶ **Timing of the supervisory return:** We are grateful for respondents' comments and will provide separate guidance on the supervisory return in due course. This guidance will be uploaded to our website shortly.

Supervision will be a continual process that seeks to identify and respond to risks as they emerge. Therefore, our high level objective for supervisory data is to receive data promptly so we are able to update our assessment of master trusts' risks and intervene on a timely basis.

This means that some data may also be requested outside the supervisory return and on a more frequent basis during supervision, eg quarterly trustee board minutes or the annual report and accounts.

- ▶ **Keeping records of interactions between us and master trusts:** We agree that it is important for us to be clear about our views of master trusts and the issues that concern us.

Our periodic scheme evaluations will be followed up with a letter to the trustees of the master trust that communicates our view of the master trust, the key risks from a regulatory perspective, our expectations and the proposed interactions with master trusts for the next regulatory period.

Any material changes or additions to our thinking will be communicated separately, eg material changes in our view of the master trust, new risks or issues, action plans and changes to the engagement timetable.

Information gathered via meetings with master trusts will feed into the periodic scheme evaluations, and any action plans we request master trusts to develop. We do not propose to provide a written record of each supervisory interaction.

Master trusts are free to engage their own note-taker or advisers as they deem appropriate. Any material decisions or actions agreed as a result of the information gathered will be communicated to master trusts in writing.

- ▶ **Master Trust Assurance Framework (MTAF):** The MTAF was voluntary and designed to help trustees assess whether their scheme meets certain standards of governance and administration. By comparison, the new authorisation and supervision regime is mandatory for master trusts entering or continuing to operate in the market; much broader, and takes into account a range of matters, including those in relation to individuals and the financial sustainability of the scheme. MTAF or other quality standards (eg ISO/AAF) may go some way to demonstrating that they meet our authorisation criteria and other regulatory requirements, they will not guarantee continued authorisation. That said, we have found – and have stated in guidance – that those master trusts which have been through the master trust assurance process tend to be better placed to successfully evidence that they meet the relevant authorisation criteria. We also understand that the ICAEW are considering updating the control objectives assessed in a Master Trust Assurance assessment to more closely reflect the systems and processes requirements related to authorisation.

Once the new authorisation and supervision regime comes into force, we will publish and maintain a list of authorised schemes and will cease to publish details of the schemes that have met the MTAF standards. The current MTAF list will not be updated from 1 October 2018 and will be taken down at the end of the authorisation window.

- ▶ **Triggering event and significant event notification guidance:** The responsibility for addressing any issues affecting a master trust resides with the current trustees.

We will be issuing separate guidance on notifying triggering events and significant events in due course, including the type and severity of events that should be notified. We'll upload this guidance on our website shortly.

- ▶ **Feedback to industry and best practice examples:** We received 33 draft authorisation applications as part of our 'readiness review' process. We have provided feedback directly to all schemes that applied and published details of the lessons learned. Additionally, we offered meetings with schemes to further discuss our feedback. We will consider the need for further guidance as the supervisory regime evolves.
- ▶ **Liaison with other regulators:** We will seek and share information to help carry out our functions as lawful and appropriate with other regulators and public bodies such as the Department for Work and Pensions, the Pension Protection Fund, the Pensions Ombudsman, Financial Conduct Authority, the Bank of England (including the Bank's Prudential Regulation Authority), HMRC and other law enforcement agencies, eg the Serious Fraud Office.

We appreciate that some master trusts are concerned about multiple regulatory bodies requesting similar information. For example, individuals may fall within the scope of the senior managers and certifications regime as well as our master trust authorisation criteria, and scheme funders that are part of insurance groups may fall within the scope of PRA prudential oversight as well as master trust authorisation criteria. While this may be the case for some schemes, it will not be the case for all of them.

Where information is requested by multiple regulators, we expect master trusts will be able to re-use that information wherever possible, but there may be circumstances where schemes will need to adapt information to meet our specific supervision requirements.

Part 2: Enforcement

We asked:

1. Overall, is our approach to enforcing against master trusts clear and proportionate, and if not, why not?
2. Is the draft policy clear about what we will take into account when deciding on enforcement action?
3. Are there any additional matters we should consider when deciding on enforcement action in relation to master trusts?

You said:

In relation to enforcement, there were a number of themes and points that emerged.

- ▶ **General enforcement process:** A number of respondents commented on the general criteria for enforcement action being taken and asked when we would use 'the circumstances of the wider market as a whole' as a relevant aggravating and mitigating factor to lead to enforcement action.

One respondent proposed our judgement should be limited to objective and measurable indicators of intention and behaviour, eg whether information requests are completed on time.

A number of respondents suggested further additions to the policy around when we would pursue enforcement, including specific questions about submitting significant event and triggering event notifications.

Several respondents raised comments on the rationale for applying penalties in respect of chair's statement breaches.

- ▶ **Pause orders:** One master trust reflected on the potential commercial implications from making a pause order and raised the need for full consideration of the implications of this.
- ▶ **Publishing regulatory information:** One master trust said we should consider the impact negative publicity about enforcement action may have on an individual master trust, and the impact this may have on any new or existing business.

Our response:

In relation to the enforcement topics and points summarised above, our response is set out below.

- ▶ **General enforcement process:** Our TPR Future initiative is re-defining the approach to enforcement across our organisation, including for master trusts, please see our recent publication at: www.tpr.gov.uk/docs/tpr-future-making-workplace-pensions-work.pdf. Our existing compliance and enforcement policies on how we will deal with non-compliance with obligations under wider pensions legislation, including duties under AE, DC and DB, continue to apply.

We have set out at section 3.1 of the policy the types of aggravating and mitigating factors that may be taken into account when deciding whether to take enforcement action. In relation to the 'circumstance of the wider market' consideration in enforcement, we may consider where it is relevant and appropriate the prevailing context of market practice or deviation from market norms when considering enforcement action. However, we believe this is implicit in our duty to apply PACTT principles and have decided to simplify the policy by removing this specific wording.

Our decision to pursue enforcement action may differ according to the circumstances in each case. Use of our powers will be more likely if a master trust deliberately obstructs or refuses to provide information requested.

We periodically publish an enforcement bulletin, which may in due course provide examples of enforcement against master trusts under the new regime and lessons learned. This may or may not be anonymous in line with our publication policy.

We will issue penalties in line with our penalties policy. In respect of exercising our power to issue fixed penalty notices (FPNs) and escalating penalty notices (EPNs), we will consider all the circumstances of the case including any reasons given for a failure to provide information under s72 of the 2004 Act.

Our prosecution policy sets out how we will assess cases that should be subject to criminal prosecution under section 77 of the Pensions Act 2004. We do not propose to issue any further guidance specifically in relation to master trusts on this point.

We have no regulatory discretion around the application of penalties for chair's statement breaches, which are mandated by law. We see trustees' assessment of the governance structures operating within the scheme and value for members as a fundamental part of good governance and will be requesting copies of chair's statements routinely as part of the supervision of authorised master trusts.

- ▶ **Pause orders:** A key concern for us is to protect members' interests. We appreciate that the commercial implications of a pause order are potentially significant. In section 3.5 of the policy we explained that pause orders can only be issued by the Determinations Panel. In such circumstances, the standard or special procedure will be followed, depending on the circumstances of the case. The Determinations Panel will assess whether in all the circumstances of the case it is lawful and proportionate to impose a Pause Order. It may be possible to appeal a pause order and more information on this is set out at section 3.6 of the policy.
- ▶ **Publication of regulatory information:** We have an established publication policy and will operate in line with that policy when deciding whether to publish details of regulatory action taken, taking into account the range of factors already articulated. We do not propose to issue any further guidance specifically in relation to this point, but we appreciate the potential impact of negative publicity on individual master trusts and on the wider master trust brand within the retirement industry and we will give careful consideration to whether publication is lawful and proportionate.

Part 3: Withdrawal of authorisation

We asked:

1. Does the draft policy provide sufficient clarity on the circumstances in which we may move to withdraw authorisation of a master trust?
2. Is the policy clear on the steps we will take to initiate withdrawal of authorisation?

You said:

In relation to withdrawal of authorisation, there were a number of pertinent themes and points that emerged:

- ▶ **Tax implications of withdrawal of authorisation:** Several respondents highlighted tax considerations within the Finance Act 2018, which introduced additional powers for HMRC around the de-registration of pension schemes. HMRC may de-register a master trust in connection with a withdrawal of authorisation and also on other tax-related grounds. If a pension scheme is de-registered, a tax charge is levied against the scheme administrator of 40% of the value of the scheme's assets immediately before the date that the scheme ceased to be registered.
- ▶ **Clarification of withdrawal of authorisation process detail:** Several master trusts requested we provide:
 - the criteria that need to be met in order for special procedure to be used to withdraw authorisation
 - details of the process of withdrawing authorisation, including issuing notices and associated communications
 - details on how we intend to exercise the enforcement power, and
 - definition of the term 'detriment to members'.
- ▶ Clarification of the meaning of cease to 'operate': One respondent requested clarification around whether master trusts had to complete a transfer of members and wind up the scheme by 31 March 2019 in situations where they were not applying; had authorisation refused or were applying but had not yet received a response.

Our response:

In relation to the enforcement topics and points summarised above, our response is set out below.

- ▶ **Tax implications of withdrawal of authorisation:** We have worked with HMRC in developing the authorisation process and will continue to do so with the aim of protecting members' benefits.

HMRC retains control over de-registration of master trusts but does state in the overview of their 2017 policy paper that they primarily aim to protect individuals by reducing the number of fraudulent pension schemes being registered with HMRC.

- ▶ **Clarification of withdrawal of authorisation process detail:** The power to withdraw authorisation rests with the Determinations Panel and, as explained above, there are already procedures in place which will apply depending on the circumstances of the case. Please see section 4 of the policy where there is a link to the standard and special procedures. These procedures apply to withdrawal of authorisation decisions, without modification.

Generally, any decision to withdraw authorisation will be made using the standard procedure. However, we will use the special procedure where we believe there is an immediate risk to members' benefits or scheme assets. The standard procedure details how a Warning Notice will be issued. We wish to protect members where possible and so do not believe it appropriate to further define 'detriment to members'.

It is important to note that it is only when the decision to withdraw authorisation becomes final that the 28-day time limit for trustees to submit an implementation strategy begins and trustees are required to follow continuity option 1 (transfer of member benefits and wind up). This happens when any appeals have been finalised or timed out under the standard and special procedure.

Under the special procedure a pause order could be immediately issued. Depending on the terms of the order this may prevent new members joining the scheme immediately, rather than at the end of a warning notice period if the standard procedure is followed. The special procedure will only be used where it is reasonable and proportionate to do so, taking into account all relevant considerations.

- ▶ **Clarification of the meaning of cease to 'operate':** Existing master trusts should inform us ahead of the 31 March 2019 deadline if they do not intend to apply for authorisation, and to notify the relevant triggering event within the statutory time limit. Where master trusts have already notified us of the relevant triggering event or a decision has been made to refuse authorisation, we do not necessarily expect them to complete a transfer of members and wind up of the scheme by 31 March 2019 unless their approved implementation strategy requires this.

Where an existing master trust has not applied for authorisation by the end of the application period, or been granted an extension of up to 6 weeks, we will issue a notice that the scheme is operating without authorisation, which constitutes a triggering event. This will require the master trust to follow continuity option 1 to transfer all members out and wind up the scheme. There is no appeal available in these circumstances where an existing master trust fails to apply for authorisation within the application period and so an implementation strategy will have to be submitted within 28 days of the notice. In this situation we would be more likely to consider use of a wider range of powers.

Next steps

- ▶ The finalised master trust supervision and enforcement policy document is being published alongside this document. Please refer to our website for the final document.
- ▶ In addition to the policy, and in line with previous communications, we have committed to publishing further specific information:
 - We will issue further guidance in relation to triggering events, significant events and the supervisory return. We are currently liaising with market participants to refine our thinking in this area.
 - As outlined above, our compliance and enforcement bulletin may in due course include examples of enforcement action that we take in relation to master trusts.
- ▶ The supervision element of our TPR Future initiative launches later this year and will supervise selected pension schemes as part of our wider shift to a more proactive regulatory approach. This may include a limited number of master trusts, irrespective of the implementation of the regime under the Pensions Act 2017. If master trusts are included within the TPR Future initiative and are subsequently authorised, we will liaise with them to explain any practical implications.
- ▶ As we initiate supervision, we will look to refine our operational approach where possible and will keep our master trust supervision and enforcement policy under review.

Appendix

We received 24 responses to the consultation. A list of the 23 non-confidential respondents is set out below, excluding the one respondent that requested their response remain confidential to the consultation:

Aon
Aegon
Association of British Insurers (ABI)
Association of Pension Lawyers (APL)
Atlas Master Trust
B&CE (provider of The People's Pension)
Barnett Waddingham LLP
Fidelity International
Legal & General Investment Management
Linklaters LLP
National Employment Savings Trust Corporation (NEST)
NOW: Pensions
Pension and Lifetime Savings Association (PLSA)
Pinsent Masons LLP
Sacker & Partners LLP
Scottish Widows
SEI (Investments) Europe Ltd Company
Smart Pension Limited
Squire Patton Boggs (UK) LLP
The Cheviot Trust
The Institute of Chartered Accountants in England and Wales (ICAEW)
The Pensions Management Institute (PMI)
The Society of Pension Professionals

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