

Master trust compliance report



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Background

Following the transposition of the IORP II Directive in April 2021 and the publication of the Code of Practice for trustees (the Code) in November 2021 there has been extensive and ongoing engagement with master trusts by the Pensions Authority (the Authority) in preparation for the Authority's compliance deadline of 1 July 2022 for master trusts.

In anticipation of the 1 July deadline, the Authority's supervisory focus for 2022 concentrated on the following key risk areas:

- trustee structure and director appointments,
- trustee fit and proper requirements,
- trustee decision-making,
- capitalisation,
- key policies and procedures, and
- key functions.

The Authority also sought copies of the annual compliance statement for each master trust and confirmation that key documents such as the own-risk assessment and the continuity plan have been prepared. This report sets out the Authority's main compliance findings in the risk areas listed above.

Overview

The Authority's 1 July compliance assessment indicates that master trusts have complied with the core requirements of the legislation and the Code in relation to the above key risk areas. Overall, and particularly since the Authority first conducted its engagement programme with master trusts in 2020, good progress has been made by trustees in improving governance and management structures and standards for master trusts across the board. However, it is important to note that these are minimum requirements, and the Authority will apply a more in-depth focus on the requirements of the Code as part of the ongoing supervisory review process for all master trusts over the coming months and years. Further, the Authority expects that master trusts will approach compliance in a more proactive way rather than relying on sustained engagement and prompting from the Authority.

The Authority sees the master trust sector as being of systemic importance for the future of Irish pensions provision especially considering the large number of small pension schemes that will likely transition to master trusts. In this respect, the Authority will continue to engage extensively with the sector so there can be no doubt about the minimum standards expected to deliver optimum outcomes for pension scheme members.

Master trust data

The Authority engaged with 12 master trusts in 2022 and is collecting data from these master trusts on a monthly basis. The data includes the number of active and deferred members, the level of assets under management and the number of participating employers.

The overall position for master trusts at end June 2022 is as follows:

	Active	Deferred
Number of members	48,167	25,363
Assets under management	€2.6bn	
Number of participating employers	821	

Master trust key risk areas

Trustee structure and directorships

In accordance with the Code, the trustee of a master trust must be incorporated as a Designated Activity Company (DAC). All master trust founders and trustees should note that there is a minimum requirement for two directors to be appointed to the trustee DAC. The Authority expects the configuration of the board of directors to be appropriate for the size, nature, scale and complexity of the master trust and this should be kept under constant review.

In relation to the appointment of directors to the trustee DAC, many of the directors are employees of the founder organisation. In several cases, former employees or former senior managers of the founder (or an organisation with close links to the founder) are appointed as the independent director and chairperson to the trustee DAC. The Authority also observed instances of individuals acting as director for several trustee DACs. Trustees are reminded to closely monitor the potential for conflicts of interest that may arise with such appointments.

Some master trusts have engaged in a thorough recruitment process for independent directors and have appointed an independent chair with no employment links to the founder organisation. This is a welcome development from the Authority's perspective. The independent chair of the trustee DAC plays an important role in the management of the master trust and the Authority expects to engage directly with independent chairs in future supervisory engagements.

Trustee fit and proper requirements

The Authority observed that the majority of directors or proposed directors of master trust DACs met either the ‘experience’ or ‘qualification’ requirement specified in the Code and met both in some cases. However, there were some instances where proposed or newly appointed directors did not meet the experience requirement and had not yet fully completed a recognised trustee qualification (although they may have been in the process of achieving same). In the case of one master trust, two of the proposed directors did not adequately meet the experience or the qualification requirements and new directors were proposed following dialogue with the founder organisation involved. The Authority expects that master trust directors will meet either the experience or qualification criteria in advance of appointment to the board. Trustees are also reminded to review the fit and proper requirements of the directors of the trustee board at regular intervals, and in particular when appointments of new directors arise.

Trustee decision making

In previous years, the Authority has raised concerns around trustee decision making and especially where master trust legal documentation restricts or fetters the decision-making powers of trustees, for example in relation to the appointment or removal of service providers. Such restrictions are now expressly prohibited in the Code and the Authority notes that, where this arose previously, master trust boards have engaged with the founder to remove such legal restrictions.

Master trust rules may often require the trustees to consult with the founder in relation to certain decisions. Trustees should note that such consultation should not involve seeking consent from the founder. Some master trusts have documented protocol agreements and escalation agreements in place to deal with decision making processes which is encouraged by the Authority. In its ongoing supervisory activity, the Authority may examine the extent of this engagement to ensure that there is a bone fide consultation process.

Capitalisation

The Authority has previously clarified that the capital reserve for master trusts can be made available by the founder either as a capital contribution to the trustee DAC, via an escrow account or a legally binding letter of credit from the founder to the trustee DAC.

The majority of master trusts have entered into capitalisation agreements with the founder, whereby a legally binding letter of credit or letter of guarantee secures a commitment from the founder to meet the expenses associated with the wind-up of

the master trust. One master trust has been capitalised using a capital contribution from the founder.

Trustee policies and procedures

All master trusts have made good progress with the policies and procedures required under the Code, although there appears to be a degree of variance in the level of detail contained in policies. The Authority will focus on the content of policies in its future supervisory engagement with master trusts. Trustees are reminded that it is not sufficient just to have a policy in place: they must be able to evidence that the policy is being followed and determining behaviour. Furthermore, the Authority expects trustees to ensure there is a structured process for the ongoing review of policies and documented evidence of such a review must be maintained.

Key function holder appointments

All master trusts have identified key function holders for risk management and internal audit, and most are currently in the process of incorporating these key function holders within the overall risk management and internal control frameworks. Several master trusts commented on the challenges in hiring internal audit services from the market and that it has taken longer to appoint internal audit key function holders than risk management key function holders.

The majority of master trusts have hired independent third-party internal audit services; however, a small number of master trusts have appointed the internal audit function of the founder organisation. Several master trusts have also appointed the risk management key function holder from within the founder organisation, although most have appointed an independent risk management key function holder. In some cases, it was not evident that trustees had considered any options other than the appointment of key function holders from within the founder organisation.

Trustees are reminded of the potential for conflicts of interest that may arise where a key function holder is also providing services to the founder, and this should be reflected in the conflicts of interest policy and the conflicts of interest register. Trustees are also reminded that the appointment of a key function holder from within the founder group constitutes an outsourcing arrangement which must be documented by a legally enforceable contract and notified to the Authority.

All instances of outsourcing must be regulated by written contracts (including service level agreements) between trustees and their service providers. The Authority expects trustees to clearly demarcate the role and responsibilities of all service providers and to document this via appropriate written legal agreements. This process is still ongoing in some cases, whereby the trustees are entering into new legal agreements between the newly established trustee DAC and various service providers.

Conclusion

The objective of the Authority's 2022 engagement with master trusts was to ensure master trusts are fit for purpose to offer a viable alternative to schemes which choose to wind-up rather than meet the substantially increased governance and risk management requirements which apply to new schemes since 1 July and will apply to all schemes (other than derogated one-member arrangements) from 1 January 2023.

The Authority's 1 July compliance assessment indicates that master trusts have complied with the core requirements of the legislation and Code. However, this should not be interpreted as the conclusion to the Authority's supervision, or an endorsement of the master trusts involved, and the Authority will continue to focus on these key risk areas as part of its ongoing engagement with the master trust sector.

The Authority has issued individual letters to each master trust and expects their trustee boards and advisers to consider these findings and evaluate their own practices. The Authority will continue to apply an intensive supervisory focus to master trusts in accordance with its forward-looking, risk-based approach to supervision to ensure these vehicles are appropriate to offer new and alternative pension provision for members.