



An tÚdarás Pinsean  
The Pensions Authority

# **Engagement Programme Findings Report 2021**



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## Introduction

The Pensions Authority (the Authority) met with the trustee boards of a number of master trust (MT), defined contribution (DC) and defined benefit (DB) pension schemes as part of its 2021 engagement programme. The engagement programme built on the work started in 2020 and forms part of the Authority's move to a forward-looking risk-based approach to supervision. The primary purpose of the engagement was to examine how well schemes were equipped to meet the enhanced governance and risk management requirements under Directive (EU) 2016/2341 (IORP II) following its transposition into Irish law on 22 April 2021.

The Authority met with all established MTs and some potential new ones that are considering entering the market. For the DB and DC engagement meetings, the scheme selection process was designed to ensure that the Authority met a broad range of schemes across various industry sectors, with a representative mix of professional and non-professional trustees and a representative mix of professional service providers associated with the selected schemes.

The purpose of this findings report is to share observations on the key findings identified during the 2021 engagement programme. It highlights many common themes that emerged across all scheme types, and it also outlines some DB and MT specific issues. While the details of the findings set out are not exhaustive, the Authority expects all trustee boards and their advisers to consider these findings and evaluate their own practices to establish if any improvements are required.

## Overview

Overall, the Authority found that while some progress had been made by schemes in preparing for the enhanced IORP II standards, particularly by MTs, the overall position was that trustees were waiting to hear more specific detail on their obligations before taking substantive steps to meet the new requirements.

The Authority acknowledges that it has taken time for the details of the IORP II obligations to be known. Nonetheless many of the most important aspects of the new requirements have been in the public domain for well over three years. In this respect, it was disappointing to see that some trustee boards had given little consideration in advance of the transposition date to how they would meet their new obligations.

Some trustee boards advised the Authority they were reflecting on the additional time and resources required to fulfil their responsibilities due to the increased obligations and in some cases, we were advised of ongoing discussions with the sponsoring employer about the structure of the trustee board. For example, we were informed that some employers were considering the appointment of a professional corporate trustee

and in the case of some large employers with standalone DC pension schemes of significant asset size and membership numbers, a move into an MT was being actively explored.

In addition, many non-professional trustees expressed the view that they would look to their external advisers and service providers more for support to assist them in meeting the new obligations. While the Authority recognises the role advisers and service providers play in overall scheme management, we expect trustees to have a solid understanding of their responsibilities under the Pensions Act, 1990, as amended (the Act) and to be able to give clear direction and instruction to their service providers in relation to their expectations, having regard to the specific characteristics of their individual schemes.

The remainder of this report outlines our specific findings under the engagement programme.

## **1. Minimum qualification and experience requirements for trustees**

Very few schemes had completed a thorough review of the trustee board to assess any gaps in the fit and proper requirements. No scheme was able to provide documented evidence of an agreed approach or policy that determines how the trustee board will acquire and maintain a mix of skills, knowledge, and experience, sufficient to ensure good governance for their scheme. In a number of the schemes, the composition of the trustee board was not reflected in registration details held on the Pensions Data Register (the Authority's online services portal), which in some cases had not been amended by the trustees for some considerable time.

Trustee boards need to have a structured approach to assessing that the minimum qualification and experience requirements are satisfied on an ongoing basis. Where there is a change in trustee, trustees are reminded that notification to the Authority is required within one month of the occurrence of such change.

## **2. The appointment of key function holders**

While all trustees were aware of the requirement to have key function holders (KFHs) in place for risk management and internal audit, only a minority of schemes had made specific appointments. Some schemes were still determining how to deliver the risk management and internal audit functions with decisions pending as to their agreed approach. Where an employer had multiple schemes, trustees advised they were liaising with the sponsoring employer to explore the most cost-effective method of sourcing KFH services across all schemes.

The Authority expects trustees to make significant progress in appointing KFHS now that the Code of Practice has provided further relevant information. Trustees are reminded that the appointment of internal audit and risk management KFHS must be notified to the Authority from 1 December 2021.

### **3. Requirement for written policies**

Many schemes had some policies in place, primarily in the areas of conflict of interest and risk management but several of these needed to be reviewed and updated to bring them in line with the new requirements. Most schemes did not have written policies for remuneration, outsourced activities, or internal audit. Many non-professional trustees expressed the view that they would look to external consultants for support with drafting these policies. The Authority has no difficulty with this approach but would remind trustees to ensure they are satisfied that their policies reflect their individual scheme and are not off the shelf templates.

The Authority expects trustees to drive the development of the required policies and to ensure there is a structured process for their development and ongoing review. Having written policies enables trustees to make consistent and balanced decisions, ensures compliance with regulations and guidance and helps to streamline processes. The Authority would also remind trustees 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 influencing behaviour, particularly, but not exclusively, when it comes to managing conflicts of interest.

### **4. Management of outsourced service providers**

Using third-party service providers in areas such as administration, investment management and custodianship is common practice in the management of Irish pension schemes. Nonetheless, the Authority saw deficiencies in several trustee board procedures in relation to assessing service providers performance against pre-determined key performance indicators. The Authority expects trustees to have robust performance review structures in place and trustees should not maintain or re-hire existing service providers without having completed a documented and structured review of the performance of that provider.

During some engagement meetings, the Authority encountered trustees who demonstrated an unwillingness to change provider, on the basis that this would cause too much upheaval notwithstanding the fact that there may be performance or quality issues. There is no doubt that changing service providers can cause severe disruption and trustees will need to conduct a cost benefit analysis in such a scenario. However, the Authority expects quality and performance management of service providers to be addressed proactively by trustees even though it may cause disruption. The Authority

expects trustees to set out minimum standards for service providers and agree steps to be taken where standards fall short of what is required.

## **5. Contractual arrangements with service providers**

All instances of outsourcing must be regulated by written contracts (including service level agreements) between trustees and their service providers (including advisers). In several schemes, there were casual arrangements in place where a current service provider gave additional support on an ad-hoc basis, but where there was no contract in place to cover these additional services. The provision of services outside those covered in written legal agreements may contribute to the potential for conflicts of interest as it results in the same service providers being used repeatedly, which in turn can affect trustees' ability to oversee service providers in an objective and impartial manner. The Authority expects trustees to clearly demarcate the role and responsibilities of all service providers and to document this via appropriate written legal agreements.

## **6. Communication and information to members**

At a minimum, trustees must ensure that members and beneficiaries are given certain information within specific timeframes as set out in the Act and related regulations. The Authority also expects trustees to consider what, if any, additional information or communication would benefit and support members in making pension related decisions and in the overall understanding of their pension scheme benefits.

In some schemes, trustees had a documented pensions communications strategy which made use of various channels and media and was designed to support members with their retirement savings. Specifically, the Authority noted some effective examples around scheme charges where members were provided with a total expense ratio in the investment booklet rather than the annual management charge alone, so that members could have a more accurate measure of the total charges associated with each individual fund choice.

However, very few schemes could demonstrate that they took into account member feedback or experience when developing their communication materials. The Authority advises trustees, where practicable, to obtain member feedback on the content and quality of scheme communications which will allow trustees to tailor communications to meet the needs of their membership.

## **7. DC investment**

Some of the key investment tasks for trustees of a DC or MT arrangement are to set the default strategy, provide a range of investment choices, and decide what the risk

and return objective is for each of the fund choices within the scheme. In some of the better examples seen by the Authority, the trustee board had spent a significant amount of time considering the profile and needs of their members and had developed an investment strategy and default fund most likely to deliver good retirement outcomes for their specific member profile.

A small number of schemes had incorporated environmental, social, and governance factors into investment decisions. However, most schemes had given little consideration to this matter.

In general, the Authority did not see enough evidence of trustees actively assessing information on the investment needs of their members and of reviewing the fund options and default investment strategy based on their scheme's profile. There was little indication that trustees were keeping the asset mix of the default investment strategy at retirement under active review so that it reflects the most likely choice for members at retirement whether that be annuity, approved retirement fund or cash. This is an area that the Authority expects trustees to be more actively engaged with and to make appropriate decisions on.

## **8. Defined benefit**

### **Investment de-risking**

The Authority requested the trustees of DB schemes that were part of the engagement programme to provide information on any future intended de-risking of the scheme's assets and to provide details of the criteria for any such de-risking. For some schemes with a funding proposal in place, the de-risking of the scheme's assets was less than the commitment that was made in the funding proposal.

The Authority expects trustees to follow the de-risking commitments that are set out in a funding proposal. Where trustees change the investment strategy during the term of a funding proposal, the Authority expects trustees to promptly notify and engage with it to explain the change. We draw trustees' attention to the Authority's [reminder to trustees on investment strategy implementation for schemes under funding proposals](#).

### **Employer covenant**

For some DB schemes, the Authority observed that the strength of the employer covenant appeared to be judged on sentiment or on the history of employer support rather than on any evaluation and discussion with the sponsor on its ability and willingness to support the scheme into the future.

While the covenant of the sponsoring employer was recognised as a key concern for the sustainability of their scheme by most of the trustee boards that the Authority

engaged with, some expressed a reluctance about raising the matter too frequently with the sponsor in case it might trigger a more fundamental review of the provision of DB benefits. The Authority is concerned with this type of short-term thinking and expects trustees to undertake regular engagements with the employer on covenant, funding, and investment matters. An evidence-based view of the strength of the sponsor's covenant to the scheme must form a key component of the trustees' Own Risk Assessment.

## **9. Master trust**

The Authority carried out a detailed assessment of MTs in 2020 and issued specific findings with an accompanying progress timeline to each MT. In 2021, the Authority engagements focused on assessing how much progress each of these MTs had made in addressing the previous year's findings.

The Authority also met with and carried out a detailed review of two new MTs and had exploratory meetings with a further four prospective MTs that are considering entry to the market.

For established MTs, the Authority found some progress had been made by the majority in establishing appropriate policies and in putting in place action plans to ensure delivery of items in time to meet the new requirements by July 2022. There was also evidence of progress on enhancing member communications.

Queries on the permissible methods of capitalisation were raised by several MTs. The Authority clarified that the capital reserve can be made available by the founder either as a capital contribution to the trustee designated activity company (DAC) or via an escrow account or a legally binding letter of credit from the founder to the trustee DAC. The purpose of this is to ensure that the trustee company has legally binding access to the capital reserve at all times and can draw on it should circumstances require it, e.g., in the event of the MT winding up.

The issue of the trustee structure for MTs was a regular topic at a number of the engagement meetings held in 2021. The Authority's view is that that trusteeship of a MT must be structured as a DAC which is responsible for one MT only. The DAC structure requires an objects clause and in the case of a MT, it must state its objective is to act as trustee to one, and only one, named MT and to conduct its business accordingly. The Authority also clarified that there is no restriction on the number of MT DACs for which a person can act as director.

The Authority had raised concerns with all MTs about the potential for conflicts of interest in 2020. Some MTs had made progress in addressing conflicts of interest with service providers affiliated to the founder and had expressly addressed this through amending the MTs governing legal requirements. However, some MTs still appeared

to be of the view that this was a matter mainly for the founder. As the Authority has previously stated, any legal provisions that fetter the fiduciary responsibilities of trustees are unacceptable. The Authority would draw MTs' attention to paragraphs 132 to 134 in Chapter 7 of the recently published Code of Practice which highlights the significant potential for conflicts of interest in many MTs in relation to the appointment of service providers.

## Conclusion

The Authority expects all trustee boards, and their advisers, to fully consider these findings and evaluate their own practices to establish if improvements are required.

The Authority has published a Code of Practice for trustees and other guidance and material, and considers that trustees of occupational pension schemes now have all relevant information needed to comply with the IORP II requirements and make decisions about the future of their pension schemes. The Authority would remind trustees of the compliance deadlines outlined in [the information note on IORP II](#), published in May 2021, and would encourage all trustees to engage immediately with the issues raised by the new legislation so that they can achieve compliance with their statutory obligations.

The Authority will continue to conduct supervisory reviews of all types of pension schemes through a variety of means including direct engagement meetings with pension scheme trustees, thematic audits, surveys and supervisory reviews of information submitted by trustees. This will be supported by an ongoing communications programme and the Authority will issue further guidance and clarifications as required.

The Authority emphasises the need for all trustees to take action to comply with the new requirements as soon as possible and to raise any associated issues with the sponsoring employer at the earliest opportunity.