

DC hot topic

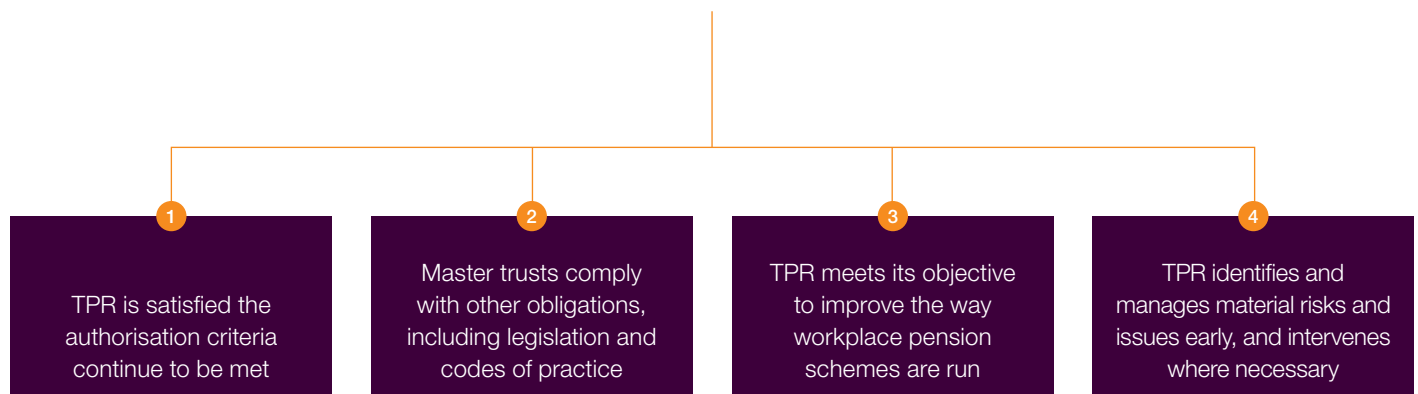
October 2019

Master trust supervision regime



Until recently, the focus of master trusts has been on obtaining authorisation from the Pensions Regulator (TPR). Master trusts that have been authorised will not, however, be able to rest on their laurels for long. Obtaining authorisation is only the first hurdle, and TPR intends to monitor master trusts closely under its supervisory regime.

TPR expects schemes to be open, transparent and honest, and to engage with TPR proactively. TPR states that supervision is how it aims to ensure the following:



Legislative framework

The master trust legislation sets out the framework within which TPR will operate its supervisory powers. TPR's code of practice on authorisation and supervision of master trusts (the Code) includes some information about the supervision regime, but it is relatively light on detail. Additional guidance is provided on the "supervision of master trusts" page on TPR's website, as well as in TPR's supervision and enforcement policy.

The key legislative requirements feeding into TPR's supervisory regime are the need for trustees to submit periodic supervisory returns and their annual accounts, a requirement for the scheme funder to submit its accounts, and obligations on various parties involved with master trusts to report "significant events" and "triggering events". These mechanisms are intended to ensure master trusts are obliged to provide TPR with information that would alert it to issues or to identify where a scheme no longer meets the authorisation criteria.

Master trust supervision regime cont.

► Action

Supervisory return

Supervisory return notices will be issued at a master trust's scheme year end, with schemes having three months to complete and submit the return. TPR expects to start issuing notices from January 2020.

TPR has flexibility around what information it can require in the supervisory return but has published the questions it expects to ask on its website. These cover matters such as:

- whether all "significant events" have been reported over the previous 12 months
- how the scheme has continued to ensure that all relevant individuals are "fit and proper" (both individually and collectively)
- the risk register and how it has changed
- how systems and processes have been monitored
- details of member/employer complaints
- other matters relevant to continued authorisation.

- Master trust trustees should consider these questions now and ensure they are taking and documenting the actions that will feed into the answers when they come to complete their supervisory return.

Significant events

Various parties involved with the master trust, including the trustees, scheme funder, scheme strategist and certain advisers and service providers, are required to notify TPR as soon as reasonably practicable if they become aware that a "significant event" has occurred. TPR says its focus here will be on whether the authorisation criteria continue to be met. However, "significant events" are a mix of events which may simply be a change that TPR would want to know about, as well as matters which may indicate a problem with the master trust.

The current list of "significant events" includes changes to persons involved in functions such as the scheme strategist or scheme funder (among others), a significant change to the statement of investment principles, a significant change that requires a revision of the business plan, and certain events that may indicate problems with the master trust.

- Master trust trustees and other parties involved with the master trust will need to ensure a system is in place for identifying "significant events" and reporting them quickly when they arise. Some events require a judgement to be made about whether or not they count as "significant" and so deciding when the reporting duty has been triggered will not be straightforward in all circumstances. For example, the legislation requires reporting of "a significant change" to the systems and processes used in the running of the scheme. The Code and guidance on TPR's website provides a steer on the less concrete "significant events" by providing examples of the types of changes or events TPR considers would be significant. However, the examples provided are not a complete list and thought needs to be given as to how to assess events where they are only reportable if "significant". TPR encourages parties to err on the side of notifying where there is any doubt.

Triggering events

- As well as significant events, there are notification duties in relation to "triggering events". Triggering events are events that may indicate the master trust cannot continue to operate. The duty to notify such events applied prior to authorisation, and so master trusts should already have a system in place to identify and notify triggering events to TPR.

Other general requirements

- As well as the master trust-specific supervision requirements, master trusts will also need to be alive to general requirements applicable to all occupational pension schemes. These include the duties to report breaches of the law and to prepare a compliant chair's statement, which will need to be provided to TPR. The judges in [two recent appeals](#) by master trusts to the First-Tier Tribunal against fines for non-compliant chair's statements took a strict approach to compliance, and these judgments should be considered when preparing future statements.

Master trust supervision regime cont.

TPR's supervision and enforcement policy

Master trusts should expect TPR to be proactive in its supervision, but also proportionate and risk based. Those master trusts presenting the highest risk can expect to be the focus of supervision. This could depend on factors such as the scale and complexity of the master trust, as well as whether there are concerns arising out of the authorisation process, the master trust's track record, or its current approach in terms of openness with TPR.

TPR will use the information gathered during authorisation to provide an initial understanding of a master trust's particular levels of risk and will update that using information obtained through supervision and enforcement activity. That will include gathering information through the formal supervisory mechanisms such as the supervisory return and event notification duties. TPR may also request information on a voluntary basis and can use its general information gathering power under section 72 of the Pensions Act 2004 to require information relevant to the exercise of its functions.

It is worth noting that, outside of the master trust context, penalties for failure to comply with a section 72 notice only apply where the failure is "without reasonable excuse". However, in a master trust context, legislation gives TPR power to issue fixed and escalating penalty notices for a failure to comply within set deadlines, irrespective of the reasons. TPR also has power to pursue a criminal prosecution for a failure to comply, although in this case a "reasonable excuse" defence is available.

TPR also expects to interact with master trusts through meetings, visits and phone calls, as well as proactive monitoring where there are specific concerns, key sector risks, or areas TPR wants to understand further, eg through thematic reviews. Large master trusts will have one-to-one supervision.

Actions on supervision



Master trusts should ensure they:

- are taking the ongoing actions necessary to feed into the supervisory return questions
- have appropriate systems in place to identify, assess and report significant events/triggering events
- are operating in accordance with their systems, processes and policies, particularly if anything was newly documented as part of the authorisation process
- undertake a gap analysis exercise to show where the authorisation application for the scheme did not meet TPR's guidance and determine the extent to which this will be a specific focus for TPR for that scheme, and the extent to which that gap can be plugged
- continue to take care when preparing their chair's statement, with an eye to the approach taken in the First-Tier Tribunal cases, and
- aim to foster good relations with TPR as part of their supervisory engagement.



For further information, please speak to [Helen Ball](#), [Claire van Rees](#), [Jacqui Reid](#) or [Ferdie Lovett](#) or your usual Sackers contact. You can also visit www.sackers.com/expertise/schemes/defined-contribution/master-trusts.