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Occupational Pension Schemes - Trustees' Responsibilities

Many employers offer their staff an opportunity to save for their retirement through an occupational (or company) pension scheme.

Those employees who join the scheme need to have confidence that the scheme is being well run and pension scheme trustees play a critical role in ensuring this.

We outline in this factsheet the main responsibilities of occupational pension scheme trustees.

Background

The Pensions Act 1995 (the Act) brought about a number of major changes to the way occupational pension schemes are run. The 2004 Pensions Act brought about further change and introduced, in April 2005, The Pensions Regulator (TPR) as the UK regulator of work-based pension schemes.

TPR has an important role in the pension sector. Its objectives, as set out in legislation, are to:

- protect the benefits of members of work-based pension schemes
- protect the benefits of members of personal pension schemes (where there is a direct payment arrangement)
- promote, and to improve understanding of the good administration of work-based pension schemes
- reduce the risk of situations arising which may lead to claims for compensation being payable from the Pension Protection Fund
- maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008
- minimise any adverse impact on the sustainable growth of an employer (in relation to the exercise of the regulator's functions under Part 3 of the Pension Act 2014).

TPR has three core powers that underpin its regulatory approach:

- investigating schemes by gathering information that helps them identify and monitor risks
- putting things right where problems have been identified
- acting against avoidance to ensure that employers do not sidestep their pension obligations.

In fulfilling its role, TPR produces important guidance for those involved with pension schemes including trustees as well as auditors and actuaries. This guidance is available from TPR's website www.thepensionsregulator.gov.uk.

The Pensions Act 2008 introduced a requirement on UK employers to automatically enrol all employees in a 'qualifying auto-enrolment pension scheme' and to make contributions to that scheme on their behalf. Enrolment may be either into an occupational pension scheme or a contract based scheme.

Many contract based schemes are group personal pensions where an employer appoints a pension provider, often an insurance company, to run the scheme. The National Employment Savings Trust (NEST) is a government backed pension scheme that employers can use for auto enrolling employees.

Further information is available at www.tpr.gov.uk/autoenrolment.

In recent years, TPR has taken steps to increase the standard of governance in the sector, with additional responsibilities arising for trustees as a result. The recent Pension Schemes Bill reforms introduce major structural changes to governance and trusteeship, including expectations of higher trustee competence, accreditation and knowledge standards, governance reforms aligned with corporate governance norms and preparation for the forthcoming system of large, consolidated "megafunds".

TPR's General Code of Practice is also now in force, calling for a more structured internal controls framework and completion of a mandatory Own Risk Assessment (ORA) for schemes with more than 100 members (with the first of these due in March 2026).

Pension scheme classification

Employers can help promote retirement benefits for their employees in a number of ways including:

- occupational schemes
- group personal pension schemes
- stakeholder schemes.

Group personal pension schemes and stakeholder schemes are personal plans in individual member's names, where the employer simply acts as an administrator. There are no accounting or audit requirements for these types of schemes.

An occupational pension is an arrangement an employer can use to provide benefits for their employees when they leave or retire.

There are two main types of occupational pension scheme in the UK:

- salary-related schemes
- money purchase schemes.

Whatever the type of scheme, it will usually have trustees.

The role of trustees

Most company pension schemes in the UK are set up as trusts. There are two main reasons for this:

- it is necessary in order to gain most of the tax advantages
- it makes sure that the assets of the pension scheme are kept separate from those of the employer.

A trustee is a person or company, acting separately from an employer, who holds assets for the beneficiaries of the pension scheme. Trustees are responsible for ensuring that the pension scheme is run properly and that members' benefits are secure.

In fulfilling their role, trustees must be aware of their legal duties and responsibilities. The law requires trustees to have knowledge and understanding of, amongst other things, the law relating to pensions and trusts, the funding of pension schemes and the investment of scheme assets.

The law also requires trustees to be familiar with:

- certain pension scheme documents including the trust deed and rules
- the statements of investment principles and funding principles.

TPR's General Code of Practice explains what trustees need to do in order to comply with the law in this area. Trustees should arrange appropriate training as soon as they are appointed and should then continue with their learning to keep their knowledge up to date. New trustees have six months from their appointment date to comply with this requirement.

Trustees' duties and responsibilities

Trustees have a number of very important duties and responsibilities, which include:

- acting impartially, prudently, responsibly and honestly and in the best interests of scheme beneficiaries
- acting in line with the trust deed, scheme rules and the legal framework surrounding pensions.

In addition to these general duties, trustees also have a number of specific duties and tasks that they must carry out. The main tasks are to ensure the following happen.

Contributions

- The employer accurately pays over contributions on time. There are strict rules covering this area.

Financial records and requirements

- The right benefits are paid out on time.
- An annual report is prepared (see annual report below).
- An auditor's statement is obtained confirming details of the payment of contributions to the scheme and, if required, an audit of the scheme accounts is arranged.

Investment

- The pension fund is properly invested in line with the scheme's investment principles and relevant law.

Professional advisers

- Suitable professional advisers are appointed as running a pension scheme is complicated and often specialist advice will be needed.

Pension scheme records

- Full and accurate accounting records are kept, which include records of past and present members, transactions into, and out of, the scheme and written records of trustees' meetings.

Members

- Members and others are provided with information about the scheme and their personal benefits.

Registration, the scheme return and collecting the levy

- TPR is provided with information required by law for the register, that the scheme's annual return is completed and the annual levy for the scheme is paid.

Related matters

Reporting to TPR

Where a breach of law takes place and it is likely to be materially significant to TPR, trustees and indeed others involved in running the scheme have a legal duty to report the breach to the regulator. TPR's General Code of Practice, which incorporates the content of the previous Code of Practice 01, 'Reporting breaches of the law', provides guidance on the factors that should be considered when deciding to make a report.

In addition, trustees also have to notify TPR when particular scheme-related events happen. These are known as 'notifiable events', also the subject of TPR's General Code of Practice.

The annual report

The trustees of most schemes must make an annual report available within seven months of the scheme year end. The report usually includes:

- a trustees' report, containing investment, legal and administrative information about the scheme
- actuarial information, if applicable
- governance information, if applicable
- the audited accounts and audit report.

Other reports

Following the introduction of new regulations which came into force on 1 October 2021, the trustees of some schemes are also required to produce a Task Force on Climate-related Financial Disclosures (TCFD) report, although all schemes are able to adopt the new requirements on a voluntary basis.

The report should be published on a publicly available website, a link to which must be referred to in the scheme's Annual Report and Financial Statements.

A quick start guide, which outlines the TCFD requirements and trustee's legal duties, has been produced by the government and is available of the GOV.UK website https://www.gov.uk/government/consultations/aligning-your-pension-scheme-with-the-tcfd-recommendations/tcfd-for-trustees-of-pension-schemes-quick-start-guide.

There are plans to expand the new requirements to cover all schemes. A review of the requirements for smaller schemes is planned to take place soon, with an expectation that the requirements will be expanded to a wider range of schemes..

Trustees' liability

If something does go wrong with the pension scheme, trustees may be held personally liable for any loss caused as a result of a breach of trust. This could happen when, for example:

- a trustee carried out an act which is not authorised under the trust deed and scheme rules
- a trustee fails to do something that should have been done under the trust deed and scheme rules
- a trustee does not perform one or more of their duties under trust law or pension legislation or does not perform them with sufficient care.

The rules of the pension scheme might protect trustees from personal liability for a loss caused by breach of trust, except where it is due to their own actual fraud. In some cases, the employer may provide indemnity insurance for the trustees.

How we can help

We would be pleased to discuss your role as a company pension scheme trustee in more detail. We are also able to advise on the accounting and audit requirements of your scheme. Please contact us for further information.