

## 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.

The role of pension scheme trustees is very important in ensuring that the scheme is run honestly and efficiently and in the best interests of the members.

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 are to:

- promote the benefits of members of work-based pension schemes
- promote the good administration of work-based pension schemes
- reduce the risk of situations arising which may lead to claims for compensation from the Pension Protection Fund and
- maximise employer compliance with employer duties (including the requirement to automatically enrol eligible employees in to a qualifying pension provision with a minimum contribution) and with certain employment safeguards.

TPR has two core activities that underpin its regulatory approach:

- the gathering of detailed and up to date information about schemes and how they are being run and
- a risk assessment of every pension scheme.

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](http://www.thepensionsregulator.gov.uk)).

The latest reforms, under Pensions Act 2008, have brought about a new requirement on UK employers to automatically enrol all employees in a pension scheme and to make contributions to that scheme on their behalf. Enrolment may be either in to an occupational pension scheme or the National Employment Savings Trust (NEST).

Compliance with the new regulations will take effect for the largest employers first, starting from 2012.

## 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 uses 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. From April 2006 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.

A code of practice has been issued by TPR explaining 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. 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 a 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 legal and administrative information about the scheme
- an investment report
- actuarial information, if applicable
- the audited accounts and audit report.

## **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.

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