

Guidance for trustees

Our guidance for trustees outlines some of the wide-ranging responsibilities placed on pension scheme trustees and some of the powers they usually have.

**Our regulatory guidance is designed primarily to be viewed online.
This is a print version of web content as at 6 December 2007.**

www.thepensionsregulator.gov.uk/trustees/guidance/index.aspx

Key points

- This guidance provides a detailed overview of the role for newly appointed trustees, those thinking of becoming trustees and those simply interested in finding out more about what being a trustee involves.
- Employers may also find this guidance a useful explanation of the trustee's role.
- Before reading this guidance, trustees should be aware of the legal requirements for trustee knowledge and understanding.
- This guidance complements our Trustee toolkit, setting out useful information with links to related guidance on our website, which those who have completed the toolkit will find useful.

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Trustee knowledge and understanding

The law requires that trustees have knowledge and understanding of (among other things) the law relating to pensions and trusts, as well as the principles relating to the funding of pension schemes and the investment of scheme assets. The law also requires you to be familiar with certain scheme documents including the trust deed and rules, the statement of investment principles and the statement of funding principles. Certain exemptions apply to trustees of schemes with fewer than 12 members.

The Pensions Regulator's code of practice Trustee knowledge and understanding explains what trustees need to do in order to comply with the law.

Trustee toolkit

New trustees must acquire the appropriate knowledge and understanding within six months of being appointed. However, we want trustees to be able to achieve this without incurring any additional cost. We have therefore developed a free e-learning programme called the Trustee toolkit.

The Trustee toolkit is a highly engaging, interactive online learning experience, covering the points made in this guidance. You're able to test your knowledge and understanding as you go along and print out a certificate demonstrating that you have successfully completed the toolkit.

Our Guidance for trustees complements our Trustee toolkit, setting out the information in a more at-a-glance format, and providing links through to other regulatory guidance on our website which those who have completed the toolkit will find useful.

Introduction

In becoming a trustee of an occupational pension scheme, you are choosing to take on an extremely important role.

As a trustee, you are responsible for the proper running of the scheme – from the collection of contributions, to the investment of assets and payment of benefits. The scheme members look to you to make sure that the scheme is well run and that their benefits are secure.

This is a great responsibility, but help and advice is available from a range of sources, including your fellow trustees, your professional advisers, pensions organisations such as the Pensions Management Institute (who have a special trustee section), the National Association of Pension Funds and the Pensions Regulator, particularly through the Trustee toolkit and this guidance.

If you are a trustee, or are considering becoming one, you need to understand some basic details about pensions, trustees and the legal framework surrounding occupational pensions.

This section of the guidance looks at the following:

- What is an occupational pension scheme?
- What is a trustee?
- Who can be a trustee?
- The legal background

The Trustee toolkit covers this section in the first three modules: Introducing pension schemes, The Trustees' role and Pensions Law.

What is an occupational pension scheme?

An employer, or group of employers, can choose to set up an occupational pension scheme to provide pension and other benefits for their employees when they retire. If the employee dies, the scheme may provide benefits for their dependants.

Main types of occupational scheme

Occupational pension schemes in the UK are usually defined by the type of benefit they provide.

There are three main types:

- defined benefit schemes (sometimes known as 'salary-related' or 'final salary' schemes);
- defined contribution schemes (sometimes known as 'money purchase' schemes); and

- hybrid schemes (mixture of defined benefit and defined contribution benefits).

Each of these can be funded by contributions from the employer only (a 'non-contributory scheme') or from both the employer and employee (a 'contributory scheme').

Other types of pension scheme

Other ways in which employers can provide retirement benefits for their employees include:

- setting up a group personal pension scheme; and
- offering a stakeholder pension scheme.

What is a trustee?

The law requires that most occupational pension schemes in the UK are set up as trusts. A trust ensures that the pension scheme's assets are kept separate from those of the employer. This is important for the security of members' benefits.

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

Types of trustee

- If you are an individual trustee, you will usually be one of several trustees responsible for running the scheme; this group is often referred to as a board of trustees.
- Where the trustee is a company (known as a corporate trustee), you will be a director of that company. However, you will have the same responsibilities as an individual trustee in relation to the scheme. The employer itself may be the corporate trustee.
- Some individual trustees, or directors of a trustee company, will be nominated to be trustees by at least the active and pensioner members of the scheme. These are known as member-nominated trustees (MNTs) or member-nominated directors (MNDs).
- Some individuals volunteer to be trustees and start with little knowledge or experience of what being a trustee involves. Often they will also be members of the scheme, employees of the sponsoring employer, or both.
- Others are professional trustees who are paid for their services.

Who can be a trustee?

Generally, anyone aged 18 years and over, and legally capable of holding property, is eligible to be a trustee. There are some exceptions, which are described below.

Disqualification

A person is disqualified from being a trustee if:

- they are convicted of an offence involving dishonesty or deception (unless the conviction is spent);
- they are an undischarged bankrupt, or have entered into certain other voluntary agreements with creditors;
- they have been disqualified from acting as a company director;
- they have property in Scotland which is covered by a sequestration order;
- the person is a company and any director of the company has been disqualified from being a trustee; or
- the person is a Scottish partnership and any of the partners has been disqualified from being a trustee.

Scheme auditors and actuaries

Other than in a few exceptional circumstances anyone acting as an auditor or actuary of the scheme cannot be a trustee of the scheme.

Prohibition

The Pensions Regulator can prohibit a person from being a trustee of a scheme or schemes if we are satisfied that the person is not 'fit and proper' to act as a trustee. Our guidance on prohibition of trustees sets out our policy for deciding whether a person is fit and proper. We maintain a register of every person we have prohibited in this way.

The legal background

Trustees must act within the framework of the law. There are several types of law affecting occupational pension schemes, in particular:

- the general law of trusts; and
- specific UK law applying to pension schemes, including Acts of Parliament and regulations (supported by the codes of practice issued by the Pensions Regulator).

Variations within the UK

References to pensions law in this guidance are to the law as it applies in England, Wales and Scotland. Northern Ireland has its own pensions law and references in this guidance to the legislation of Great Britain, includes the corresponding legislation of Northern Ireland. It should be noted that some areas of pensions law – such as pension rights on divorce and some aspects of trust law – are dealt with differently in Scotland.

European law

European law implemented by UK legislation and decisions of the European Court of Justice may also have an effect on pension schemes.

The law of trusts

The law of trusts has developed over many years through Acts of Parliament and through case law. The basis of trust law is that one group of people (the trustees) hold assets for the benefit of another group of people (the beneficiaries).

When applied to a pension scheme, trust law provides the foundation for how trustees must act in relation to the scheme. These are a trustee's 'fiduciary' duties. The guidance on trustee's duties and powers tells you more.

Test your knowledge and understanding by going to the Trustee toolkit, especially the module covering 'The Trustees' role'.

UK law applying to pension schemes

Pension schemes are affected by specific legislation, including Acts of Parliament, and regulations. This law sets down detailed requirements on how pension schemes must be run and on the duties of trustees.

Two of the most important pieces of pensions legislation in relation to the role and duties of a trustee are the Pensions Act 1995 and the Pensions Act 2004, and the regulations made under them.

- The Pensions Act 1995 reinforces trust law affecting how schemes should be run and increases the security of members' benefits.
- The Pensions Act 2004 builds on this with the aims of further improving the security of members' benefits and standards of scheme administration, and strengthening the scheme funding requirements. Both Acts give trustees additional rights and duties, which we outline in this guidance.

Codes of practice

The Pensions Regulator has to issue codes of practice about certain requirements of the Pensions Act 2004, and may issue other codes if it wishes. The codes contain practical guidance on how to comply with the requirements in question, and set out the standards the Pensions Regulator expects.

A code of practice is not a statement of law: you do not have to follow it. You can choose to do things differently as long as you can demonstrate that your alternative meets the legal requirements. If a court or tribunal is deciding whether a particular requirement has been met, they will take the code of practice into account.

The trustees' duties and powers

Many of your duties as a trustee arise from trust law. These are your 'fiduciary' duties. Your powers derive from the trust deed and rules of the scheme.

This section of the guidance describes the main fiduciary duties and outlines the types power available to you:

- Acting in line with the trust deed and rules
- Acting in the best interests of the scheme beneficiaries
- Acting impartially
- Acting prudently, responsibly and honestly
- The trustees' powers

You can also find these topics in the Trustee toolkit, under The Trustees' role.

Acting in line with the trust deed and rules

The trust deed and rules set out the trustees' powers and the procedures trustees must follow. As a trustee, you must act in line with the terms of the trust deed and rules.

The trust deed is a legal document that sets up and governs the scheme. The scheme rules set out more detailed conditions, for example, the benefits that will be provided.

These are important documents, and trustees must be familiar with them and with other documents governing the scheme.

Acting in the best interests of the scheme beneficiaries

As a trustee you must always act in the best interests of scheme beneficiaries.

Who are the beneficiaries?

A 'beneficiary' is anyone who is entitled to, or who might receive, a benefit from the scheme, now or in the future.

Scheme beneficiaries can include:

- active members – employees who are building up benefits in the scheme;
- pensioner members – people who are receiving a pension from the scheme;
- deferred members – people who have left the scheme, but who still have benefits in it (for example, because they have not transferred all their benefits to another pension arrangement);

- prospective members – people who, if they go on to meet the eligibility conditions, may be entitled to join the scheme at a future date;
- widows and widowers of members;
- dependants of members – for example, their children or other relatives who financially depend on them;
- former husbands and wives of members who, as a result of a court order on divorce (for example a pension sharing order) have been granted pension credits within the scheme; and
- in some circumstances the employer who, for example, may be able to receive a payment from the scheme if there is a funding surplus or when the scheme is wound up.

Acting impartially

As a trustee, you must consider the interests of all the classes of beneficiary covered by the trust deed and rules and act impartially. This does not necessarily mean you should treat all classes in the same way; you will need to strike a balance so that, depending on the issue you are considering, you give appropriate weight to the interests of each class.

You should treat members of a class the same. When dealing with individual beneficiaries you will also have to weigh the interests of that individual against the needs of all the other beneficiaries.

Acting prudently, responsibly and honestly

This duty will touch on many aspects of your work as a trustee.

When you are acting as a trustee your duties are to the scheme. Regardless of any other position you may hold, your duty must not be to any group or individual that you are connected with, such as the employer or a trade union, or a particular group of members such as pensioner members. So, for example, the cash flow needs of the employer or negotiations between the employer and workforce representatives about pension benefits are separate issues and must not influence you while carrying out your trustee role.

Conflicts of interest

Conflicts of interest is a legally complex area and legal advice should be sought and conflicts managed. The consultation document: conflicts of interest guidance will be available on our website.

Acting prudently

The duty to act prudently means you must act in the way that a prudent person would in their own affairs. In doing so, you must use any skills and expertise you have. This duty is particularly relevant to selecting and dealing with the scheme's

investments, and this guidance provides more details in the section on investing scheme assets.

Reaching decisions

When deciding whether to exercise a power you must consider the circumstances impartially, take account of all the relevant facts (ignoring all the irrelevant facts) and reach a reasonable decision. It may be appropriate to announce that decision to the members concerned promptly. It is usually good practice to record the factors that influenced your decision.

You should take professional advice on any matters which you do not understand and on technical issues which may affect the scheme.

Personal profit

You must not make any personal profit at the expense of the fund. This does not mean that a trustee cannot be a scheme member. The Pensions Act 1995 makes it clear that if you are a scheme member you can still be a trustee and benefit personally from a decision you and the other trustees have taken, as long as this will benefit members generally or a specific class of members.

The trustees' powers

The trust deed and rules give the trustees powers, some of which will be discretionary. Trustees' powers differ from scheme to scheme, but usually the trust deed includes the power to:

- accept contributions into the scheme;
- decide the investment strategy and invest the scheme's assets;
- amend the rules of the scheme;
- admit members on special terms;
- increase (or 'augment') members' benefits;
- deal with a funding surplus; and
- wind up a scheme.

In some cases the trust deed may state that the employer has to agree to your use of a particular power, or that you may only use the power if the employer asks you to do so.

Discretionary powers

A discretionary power allows the trustees a choice, for example to decide:

- who will receive a dependant's pension;
- who will receive a lump-sum death benefit;
- whether to pay a pension on early retirement; and

- whether to accept a transfer into the scheme.

When considering whether to use a discretionary power, you should:

- check the limits of the power in the trust deed and rules;
- follow any procedures set out in those documents;
- ask for, and consider, all relevant information (ignoring irrelevant information) before reaching a reasonable decision; and
- take advice from your legal adviser if you have any doubts or concerns about using the power.

You must follow the procedures set out in the trust deed and rules when considering whether to use a discretionary power. For example, the rules may require you to seek medical advice before reaching a decision on whether to allow a member to retire early on ill-health grounds.

Delegating powers

You cannot usually delegate your powers, including your discretionary powers, unless the trust deed and rules allow you to do so. An exception to this is the power to delegate investment decisions found in pensions law.

Where the trust deed and rules allow you to delegate a power and you do so, you remain responsible for the actions taken. However, where you have delegated responsibility for investment decisions, your liabilities are generally more restricted.

Your liability

Trustee boards work effectively by:

- following the requirements – and keeping within the restrictions – of the law and their scheme documents; and
- taking regular advice from their advisers before making decisions about changing circumstances and more complicated issues.

If something goes wrong, trustees may be personally liable for any loss caused to the scheme as a result of a breach of trust.

This section of the guidance explains the following:

- What is a breach of trust?
- Your liability as a trustee
- Protection from personal liability

See also, the Trustee toolkit module covering The Trustees' role.

What is a breach of trust?

A breach of trust can happen when:

- you carry out an act as a trustee which you are not authorised to do under the trust deed and rules (unless agreed by the court or directed by the Pensions Regulator);
- you fail to do something which you should have done under the trust deed and rules; or
- you do not perform one or more of the duties that you have under trust law or pensions law or do not perform them with sufficient care.

The breach of trust may be unintentional (for example, because of an administrative error), or it may be caused by negligence or through fraudulent and dishonest behaviour.

Your liability as a trustee

You could be personally liable for any loss which you cause to the scheme as a result of a breach of trust.

Even if you stop being a trustee, you are still liable for the decisions you took when you were a trustee.

The Pensions Regulator can take action with regards trustees who commit breaches of trust or against those who have breached pensions law. For example, we may

order a trustee to put right a breach of pensions law and in more extreme cases fine them and/or remove them from their trusteeship.

Joint and several liability

You and your fellow trustees have 'joint and several liability'. This means you can be held responsible for a breach of trust committed by another trustee. That is why clear communication and regular trustee meetings are important to keep abreast of developments of the scheme.

Breaches of trust that occurred before your appointment

If you become aware of a breach of trust committed before you became a trustee of the scheme, you cannot just ignore it. If you take no action to correct the breach, you may be held liable for it even though it happened before you were appointed.

The code of practice Reporting breaches of the law tells you more.

See also the Trustee toolkit module on The Trustees' role.

Protection from personal liability

The rules of your pension scheme might protect you from personal liability for a loss caused by breach of trust, except where it is due to your own actual fraud. You should seek legal advice as to what your scheme rules say about this.

Using scheme assets

If the Pensions Regulator or a court fines you as a result of a breach, you can neither pay the fine out of the scheme's assets nor use the scheme's assets to pay the premiums for a policy insuring you against fines.

Indemnities and insurance

It may be possible to obtain indemnity from the employer or insurance to cover you in case of a breach of trust. You should seek advice about either and who should or may pay for it.

Appointing and removing trustees

This section of the guidance describes the requirements for appointing and removing trustees:

- Who has the power to appoint trustees?
- Member-nominated trustees and member-nominated directors
- Removing trustees
- Actions to take if you are removed as a trustee

See also the Trustee toolkit module covering The Trustees' role.

Who has the power to appoint trustees?

The trust deed normally gives the employer or the existing trustees the power to appoint trustees (subject to the requirements for member-nominated trustees).

The first trustees of the scheme are named in the trust deed. Any later appointments will usually be made by an amending deed or deed of appointment (or by the method set out in the trust deed).

In certain circumstances, a trustee can be appointed by a court or the Pensions Regulator and may take over some, or all, of the powers of the existing trustees or just strengthen the board.

Member-nominated trustees and member-nominated directors

The law requires trustees to ensure that arrangements are in place, and implemented, that provide for at least one-third of trustees, or at least one-third of directors of a trustee company, to be member-nominated. These member-nominated trustees (MNTs) and member-nominated directors (MNDs) must be nominated by at least the active and pensioner members of the scheme and selected by some or all of the members.

Provided that some basic requirements are met, trustees will have the flexibility to design arrangements for nomination and selection which best suit their scheme.

The code of practice MNT/MND - putting arrangements in place and guidance on MNTs and MNDs tells you more.

See also the Trustee toolkit module covering The Trustees' role

Removing trustees

A trustee will no longer be a trustee, when they:

- resign or die;

- are removed or automatically has to retire under the conditions of the trust deed (including appointed MNTs or MNDs whose period of office has expired);
- are removed by the other trustees if this is allowed by the trust deed and law;
- are removed in accordance with the Trustee Act 1925;
- receive a transfer notice from the Board of the Pension Protection Fund under which it assumes responsibility for the scheme;
- are removed by the court;
- are prohibited from being a trustee by the Pensions Regulator; or
- become automatically disqualified.

Depending on the trust deed and rules and subject to the MNT and MND requirements, your appointment as a trustee may not automatically end when you stop working for the employer or when you are no longer a member of the pension scheme.

MNTs and MNDs who stop being scheme members

In the case of an MNT or MND who is a member of the scheme when they were appointed, your role as trustee may end if you stop being a member. This may happen, for example, if you are no longer an active member of the scheme and you transfer all your benefits to another pension arrangement.

Following procedures set out in the trust deed

The trust deed usually sets out how a trustee should retire or otherwise be removed. You must follow that procedure as your responsibilities as a trustee will continue until your removal is legally effective.

Actions to take if you are removed as a trustee

If you are removed as a trustee, you should seek advice as to what action you need to take. For example, if the scheme has any property, such as land, amongst its assets, you may need to sign formal transfer forms to transfer ownership of the property to the replacement trustee.

Even after you have been removed, you will continue to be liable for the decisions you took when you were a trustee. You should therefore make sure that any indemnity insurance you have continues to provide cover for an appropriate period after you are removed.

Working with the employer

Trustees and employers each have a vital role to play in the proper running of their pension scheme.

You and the employer need to form and maintain a good working relationship. Regular consultation is important; in some cases the law requires employers to consult.

This section of the guidance provides information and advice on your relationship with the sponsoring employer:

- Keeping informed of the employer's plans
- Information that trustees, employers and professional advisers must share
- Upholding the interests of scheme members
- Protection against dismissal or victimisation

Keeping informed of the employer's plans

The cornerstone of a good working relationship between trustees and the sponsoring employer is clear and open communication.

As a trustee, you should put procedures in place to ensure that the employer keeps you informed about its financial position and of any plans that will change or impact upon the pension scheme.

For example, the employer should tell you about:

- future plans which are likely to significantly change the size of the workforce and the scheme membership, for example, mergers or redundancies;
- corporate restructuring that may affect the employer's ability to support the pension scheme;
- proposed changes to the scheme rules;
- proposed changes to members' benefits; and
- proposals to switch from a salary-related scheme to a money-purchase scheme, or vice versa.

Trustees should treat the information they receive from the employer as confidential, and they should not pass it on to anyone other than their appointed professional advisers. Entering into a confidentiality agreement with the employer is one way of ensuring that all parties understand the importance of confidentiality.

Information that trustees, employers and professional advisers must share

The law requires trustees, employers and professional advisers to share certain information. For instance:

- The employer (and any previous employer involved with the scheme), and any actuary or auditor working for the employer, must give you any information that:
 - you reasonably need as a trustee; or
 - you reasonably need for your professional advisers.

- If the employer deals with the administration of the scheme for you, the information that must be made available includes:
 - who administers the scheme; and
 - the terms on which they do it.

- The employer must tell you, within one month, if something happens which is likely to be of material significance to you or your professional advisers. 'Material significance' could include, for example:
 - a large group of new members joining as a result of the employer buying a new company;
 - a major redundancy programme involving members taking early retirement; or
 - a restructuring of the employer which may have a materially detrimental effect on the pension scheme.

Trustees should be aware that an event that has a materially detrimental effect on the pension scheme may be one for which the employer should consider seeking 'clearance' from the Pensions Regulator.

Clearance is the term used to describe the voluntary process of obtaining a statement from the regulator that gives assurance that we will not use our anti-avoidance powers in relation to an event. If you become aware of such an event and you know the employer is not seeking clearance you should consider informing the regulator.

Our guidance Clearance statements tells you more.

Upholding the interests of scheme members

As a trustee, you must protect the interests of beneficiaries. In order to do this there may be occasions when you need to be assertive in your dealings with the employer.

This may be where the employer has the power to make changes to the scheme but needs your agreement, or in relation to discussions over the funding of the scheme. You must make sure that the employer does not influence your decision to the extent that you breach any of your duties.

Our guidance on scheme funding gives more information on negotiating with the employer, Our Trustee toolkit gives helpful examples of negotiations with employers, especially in relation to scheme funding – particularly the module covering defined benefit schemes: recovery plans etc.

In addition our guidance on Inducement offers helps trustees understand their responsibilities where the employer offers scheme members a financial inducement to transfer out of a DB scheme or accept a reduction in benefit.

Protection for trustees against dismissal or victimisation

It is against the law for a trustee to be dismissed or detrimentally treated for carrying out your duties or using your powers properly. If you are, you have a right to complain to an employment tribunal. The Employment Rights Act 1996 provides this protection for trustees who work for the employer.

Keeping the Pensions Regulator informed

The Pensions Regulator operates a risk-based approach to regulation. Our assessment of the risk relies on us having up-to-date information about your pension scheme and on us receiving reports of significant events which affect the scheme.

The law requires that you must provide us with information at certain times and in particular circumstances. You must supply us with information for our register of pension schemes and complete regular scheme returns. You will also have to inform us when particular scheme or employer-related events and certain breaches of the law happen.

This section of the guidance explains the information you have to provide to help us to perform our role effectively:

- Providing information for the register and the scheme return
- Notifiable events
- Breaches of the law

See also the Trustee toolkit, particularly the module covering Pensions Law.

Providing information for the register and the scheme return

The Pensions Regulator keeps a register of pension schemes, holding information about the scheme and the employer. Trustees must:

- provide the Pensions Regulator with the information required by law for the register (for example, the address where we can contact each trustee); and
- notify us of changes to the information.

Where a scheme is being registered for the first time the trustees must provide all the information within three months of the scheme being established. The regulator must be told about any changes to the information within a reasonable period.

The register will be used by the Pensions Regulator to carry out its duties. Some information on the register will also be available to the Pension Tracing Service, a service operated by the Department for Work and Pensions to help members to trace pension schemes they have lost touch with.

The scheme return

The Pensions Regulator has a duty to issue a scheme return to all schemes on the register on a regular basis. Defined benefit and large defined contribution schemes will receive a return annually while smaller defined contribution schemes may wait up to three years between returns. The return asks for:

- the information needed for the register; and

- other information that we reasonably need to carry out our duties, for example, to assess the risks for each scheme.

Scheme returns are available for completion on-line and to ease the burden on trustees they come pre-filled with information we already hold where possible. The scheme return notice makes it clear the date by which the trustees must complete and send the return back.

The online services section of our website provides further information on the scheme return and how to complete it.

Notifiable events

Notifiable events are designed to provide a warning system. Where a scheme is eligible to cover from the Pension Protection Fund (PPF) they alert the Pensions Regulator to a potential employer insolvency or to problems with the funding of the scheme. This allows us time to try and help improve the situation before a claim on the PPF becomes inevitable.

Notifiable events are scheme-related or employer-related. Trustees of schemes with a defined benefit element have to report to the Pensions Regulator when particular scheme-related events happen. Sponsoring employers of these schemes must notify us when particular employer-related events happen.

- An example of a scheme-related event is two or more changes to the post of scheme actuary or auditor within 12 months.
- An example of an employer-related event is any decision by the employer to cease to carry on business in the UK.

The full list of notifiable events can be found in the regulations.

Some notifiable events do not need to be reported if at the time the event occurred certain conditions are satisfied. The exemptions are set out in the Notifiable events directions.

The report must be made in writing, as soon as 'reasonably practicable' after the person becomes aware of the event.

Our code of practice - Notifiable events - gives practical guidance on how trustees and employers may meet the notifiable events requirements.

Reporting breaches of the law

Trustees must report certain breaches of the law to the Pensions Regulator. This duty is often known as 'whistleblowing'. This places a duty on trustees, employers, professional advisers and others to report to the Pensions Regulator when they reasonably believe that a legal duty relevant to the administration of the scheme has not, or is not being met, and that it is materially significant to the Pensions Regulator.

A report must be made in writing, as soon as reasonably practicable.

Our code of practice - Reporting breaches of the law - contains practical guidance about meeting the reporting requirements, and outlines the standards and practice we expect trustees and others to meet. Separate guidance contains examples of breaches of the law and explains whether we would consider them to be of material significance.

Your advisers

Running a pension scheme is a complicated business. You will rely on others to carry out tasks for you and you will often need to take specialist advice. By law you are required to appoint various 'professional advisers' to assist you in running the scheme.

As a trustee, you will need to work with a range of advisers. This section of the guidance describes the various types of adviser and your relationships with them:

- Understanding the role of advisers
- Advisers required by law
- Appointing and removing professional advisers

See also the Trustee toolkit, in particular the module covering the Trustee's role.

Understanding the role of advisers

You should make sure you understand what help and advice you can expect from your different advisers and service providers – in particular, the type of advice they can, and will, give you and the limits of that advice. You can ask them, for example, whether they can:

- explain which parts of the law affect your scheme;
- help you comply with the law; (in some instances, for example in relation to some aspects of scheme funding, you are required to seek the advice of an adviser before reaching a decision); and
- tell you when and how to get more expert help.

You should also check that all your advisers and service providers have the knowledge and experience they need to do their job properly. Some advisers must have professional qualifications and meet professional obligations in order to act.

You should always feel that you can ask your advisers to explain if you do not understand something, and that you can question or challenge them if you do not agree with what they are saying. You do not always have to follow the advice they give but if you choose not to, you may be called upon to justify your decisions by the members of the scheme or by the regulator.

Delegating trustee duties

In some circumstances trustees are allowed to delegate their duties to suitably qualified people, but you still retain the overall responsibility for the actions taken. That is why it is important that, whenever you delegate one of your duties, you have procedures in place to monitor the performance of the person acting for you. You should also make sure that you are told when mistakes happen or problems arise.

Conflicts of interest

Where Trustees appoint advisers to the scheme, it is important that they establish that any such appointment and subsequent advice is independent. Trustees should request that any real or potential conflicts should be disclosed to them – Trustees also need to ensure that adviser conflicts are managed.

Your advisers' duty to report breaches of the law

If any of your advisers, or anyone involved in the administration of the scheme, reasonably believes that there has been a breach of the law relevant to the administration of the scheme, and that this breach is likely to be of material significance to the Pensions Regulator, they have a legal duty to report it to us.

Our code of practice - Reporting breaches of the law - tells you more.

Advisers required by law

The Pensions Act 1995 requires the trustees to appoint certain 'professional advisers' to carry out specific tasks in relation to the scheme. Trustees can only rely on advice from professional advisers who have been properly appointed.

The principal types of professional advisers, and their roles, are described below.

The scheme auditor

Nearly all schemes must have a scheme auditor to:

- prepare the auditor's statement about the contributions payable to the scheme; and
- if required, audit the scheme's accounts.

The scheme auditor may be an individual or a firm.

Our guidance on the auditor's statement and audited accounts gives more information on these requirements.

The scheme actuary

Schemes with a defined benefit element must also have a scheme actuary to provide advice on all aspects of the funding of the scheme. This includes:

- advising before taking important decisions which relate to scheme funding such as on the content of the statement of funding principles or the schedule of contributions;
- certifying the calculation of the technical provisions;
- preparing actuarial valuations at least once every three years. This places a value on the scheme's liabilities which can then be compared to the value of the assets;
- working out what contributions need to be paid to the scheme in future, after taking account of any surplus or deficit, and certifying the schedule of contributions;
- calculating transfers out of the scheme and for calculating members' benefits on transfers in; and

- advising you on the implications for scheme funding of events affecting the scheme, and on options for members' benefits.

The scheme actuary must be an individual, although they will usually work for an actuarial firm or an insurance company.

Other professional advisers

Your scheme may also need:

- a fund manager – to look after the day-to-day investment of the scheme's assets for you;
- a custodian to look after the scheme's assets;
- a legal adviser.

Appointing and removing professional advisers

You are legally required to formally appoint certain advisers. But it is good practice to appoint all advisers and have a formal agreement with them, including where the employer provides any administration services.

You must follow the procedures set out in law for appointing and removing professional advisers.

Appointing advisers

The appointment of the scheme auditor, scheme actuary and any other professional advisers must be in writing. The letter of appointment you send to the adviser must mention:

- the date the appointment begins;
- to whom the adviser will report; and
- who will give instructions to the adviser.

The adviser must acknowledge the appointment in writing within a month. They must also confirm that they will tell you about any conflict of interest that affects their role as soon as they become aware of one. The appointment is not legally effective until you have received this acknowledgement. You should not backdate the appointment.

You can find example letters of appointment and acknowledgement in the professional guidance notes issued to auditors.

Removing and replacing advisers

You can remove an adviser by giving them written notice of when their appointment will end.

If you remove a scheme auditor or a scheme actuary, they must give you a written statement about any circumstances related to their removal which they think could significantly affect the interests of scheme members, prospective members or others entitled to benefits under the scheme. If they are not aware of any such circumstances, they must give a declaration saying so. If the scheme auditor or scheme actuary resigns, they must give you the same statement or declaration.

A replacement scheme auditor or scheme actuary must be appointed within three months. You must give the new adviser a copy of the previous adviser's statement or declaration and also include it in your next trustees' annual report.

Scheme funding

One of your most important responsibilities is to make sure that the right money is paid into the scheme at the right time.

For schemes providing any form of defined benefit, this goes beyond the collection of employer and employee contributions – you also have to make sure that the contribution rates are sufficient to provide the benefits under the rules of the scheme.

This section of the guidance describes your responsibilities, as a trustee, in ensuring that contributions are paid on time, and are sufficient for the requirements of the scheme:

- Handling employees' contributions
- Reporting late payments to the Pensions Regulator
- Drawing up a schedule showing the contributions due
- The statutory funding framework

See also the Trustee toolkit – in particular the following modules: How a DB scheme works, Funding your DB scheme, DB schemes: Recovery plans.

Handling employees' contributions

The law requires that employers must hand employees' pension contributions over to the trustees within 19 days of the end of the calendar month when they were taken from member's pay. This includes any additional voluntary contributions (AVCs) paid by employees. For example, pension contributions deducted from pay at any time during June must be handed over to the trustees by 19 July at the latest.

There are no exceptions to the 19-day rule. An employer who fails to hand over employee contributions within the 19-day period is breaking the law. Trustees must monitor and check that the correct contributions are paid, and that they are paid on time. If they are not, you may have to report this to the regulator.

Reporting late payments to the Pensions Regulator

The Pensions Regulator focuses its efforts on matters that pose a real risk to members' benefits. Many late payments do not pose a risk because they are short-term administration errors which are corrected very quickly. This means that, as a trustee, we do not want you to tell us about every late payment. You should only contact us if you reasonably believe that the failure is of material significance.

Our codes of practice on reporting late payments of contributions to:

- occupational money purchase schemes; and
- personal pensions;

tell you more.

These explain the types of situation that we think are materially significant and how reports should be made.

Drawing up a schedule showing the contributions due

The trustees of most types of scheme must draw up a schedule showing:

- the contributions that should be paid to the scheme; and
- the dates when contributions should be paid.

A scheme with a defined benefit element must have a 'schedule of contributions'. A defined contribution scheme must have a 'payment schedule'.

Employers should pay the contributions set out in the schedule, including those deducted from their employee's pay, by the due dates shown. Trustees must monitor and check that the correct contributions are paid, and that they are paid on time.

See also the Trustee toolkit.

The statutory funding framework

The existing statutory funding framework, which replaced the minimum funding requirement, came into force on 30 December 2005.

Under the requirements each scheme must meet the 'statutory funding objective' to have sufficient and appropriate assets to cover its technical provisions. Technical provisions are an estimate, based on actuarial principles, of the assets needed to cover the schemes liabilities. Liabilities include pensions in payment, benefits payable to the survivors of former members and those benefits accrued by other members which will be payable in the future.

Technical provisions are calculated using an accrued benefits funding method and assumptions chosen by the trustees, after taking the actuary's advice and usually obtaining the employer's agreement.

Trustees' responsibilities

The scheme funding provisions require the trustees to:

- prepare a statement of funding principles;
- obtain regular actuarial valuations and reports;
- put in place a recovery plan addressing any funding shortfall; and
- keep scheme members informed about their scheme's funding position by issuing regular summary funding statements.

Our code of practice - Funding defined benefits - tells you more.

Our guidance on moving to scheme funding sets out the timings for actuarial valuations under the scheme funding regulations.

See also the Trustee toolkit.

Powers of the regulator

The Pensions Regulator has specific powers to intervene and help put matters right where the trustees or actuary are unable to meet their obligations under the scheme funding requirement. This includes the power to:

- modify future accrual of benefits;
- direct how technical provisions are to be calculated;
- direct the period within which, and how, any failure to meet the statutory funding objective is to be remedied; and
- impose a schedule of contributions.

The regulator's approach is to help trustees and employers understand the scheme funding requirements and equip them with the appropriate knowledge to carry out the funding process without regulatory intervention.

Scheme investments

A pension scheme has long-term liabilities. To be able to meet those liabilities when they fall due, trustees need to monitor the funding level of the scheme, manage the scheme's existing investments, and invest any new contributions they receive.

This section of the guidance describes your powers and responsibilities as a trustee in the investment of scheme assets:

- Setting the investment strategy
- Drawing up a statement of investment principles
- Making investments

See also the Trustee toolkit - particularly the modules covering the Four Asset Classes, Fund Management, Strategic Investment and How DC schemes work.

Setting the investment strategy

The trustees of most schemes are responsible for deciding the investment strategy to be adopted by the scheme. Only trustees of wholly fully insured schemes need not worry about this decision.

As a trustee you may be able to invest in different investments, including stocks and shares in companies (often called 'equities'), government stocks (often called 'gilts') and property. A range of 'alternative' vehicles such as hedge funds and derivatives may also be available to you.

When deciding upon an investment strategy you must consider:

- any limitations on investments contained in the trust deed and rules, and other legal requirements;
- your fiduciary duty to choose investments that are in the best financial interests of the scheme members – for example, you must not let your ethical or political convictions get in the way of achieving the best returns for the scheme,
- the suitability of different asset classes to meet the needs of the scheme and future liabilities;
- the risks involved in different types of investment and the possible returns that may be achieved; and
- appropriate diversification of the scheme's investments – in other words not 'putting all your eggs in one basket'.

All these decisions should be taken in light of appropriate advice taken from professional advisers such as the scheme actuary and investment consultants.

Having established the investment strategy you should prepare the scheme's statement of investment principles (SIP).

Drawing up a statement of investment principles

The trustees of most schemes must draw up a written statement of investment principles (SIP). The SIP sets out the principles governing how decisions about investments must be made.

What the SIP must include

The SIP must include your policy on:

- choosing investments;
- the kinds of investments to be held, and the balance between different kinds of investment;
- risk, including how risk is to be measured and managed, and the expected return on investments;
- realising investments;
- the extent, if at all, you take account of social, environmental or ethical considerations when taking investment decisions; and
- using the rights (including voting rights) attached to investments if you have them.

Preparing the SIP

Before the SIP is drawn up, you must:

- obtain and consider the written advice of a person who you reasonably believe to have the appropriate knowledge and experience of financial matters and investment management; and
- consult with the employer.

In this case, 'consultation' means considering the employer's views carefully. It does not mean that you have to agree with the employer or carry out their wishes. The law makes the point that you do not need the employer's agreement.

Reviewing and revising the SIP

You will need to review the SIP regularly - at least every three years and whenever there has been a significant change in investment policy. When you revise the SIP, you will need to take advice and consult with the employer in the same way as when the SIP was initially drawn up.

See the Trustee toolkit for a sample SIP.

Making investments

When considering the investment of scheme assets, trustees must be aware of some important provisions of pensions law:

- Delegating day-to-day investment decisions
- Legal requirements when choosing investments
- Limitations on investing in the employer's business
- Holding scheme assets securely

See also the Trustee toolkit.

Delegating day-to-day investment decisions

Pensions law allows you to delegate day-to-day investment decisions, and sets out your responsibility for the decisions taken.

The law allows trustees to delegate investment decisions to an investment manager (referred to in the legislation and in this guide as a 'fund manager') who is authorised under the Financial Services and Markets Act 2000.

Trustees' responsibilities

If you delegate decisions to a fund manager, you must ensure that the fund manager is suitably qualified to carry out the scheme's investment business on your behalf. They must also be correctly appointed.

The trustees should set up appropriate procedures to review:

- the fund manager's performance in accordance with the targets or mandate you have set them; and
- the fees and management charges they are levying.

Whenever you delegate day-to-day investment decisions, as a trustee you remain responsible for the investment strategy which the fund manager must follow. However, you are not personally liable for any mistake the fund manager makes as long as you have made sure that they:

- have the appropriate knowledge and experience for managing the scheme investments; and
- carry out their work competently and in line with your policy for choosing investments, as set out in the statement of investment principles (SIP).

Legal requirements when choosing investments

Regulations set out how trustees or fund managers must exercise their investment powers. This includes exercising those powers:

- in a manner to ensure the security, quality, liquidity and profitability of the fund;
- in a manner appropriate to the nature and duration of the expected future retirement benefits of the scheme;

- having regard to the need for diversification in the choice of investments for the scheme; and
- making sure that the scheme assets are invested mainly in regulated markets.

When choosing investments, you (or the fund manager acting on your behalf) must exercise your investment powers in line with the scheme's statement of investment principles (SIP).

No decision to make an investment should be made without first obtaining and considering the proper advice.

Limitations on investing in the employer's business

'Employer-related' investments (often called 'self-investment') include shares in the employer's business and acquiring property used in the business, such as the premises from which the business operates.

You can only invest in the business of the employer in limited circumstances. For most schemes, you cannot normally invest more than 5 per cent of the scheme's assets in employer-related investments. Any such investment can only be justified by the expected return to the scheme, which must be at least as good as could be produced by another comparable investment.

Prohibited employer-related investments

Certain employer-related investments are not allowed at all. These include:

- loans to the employer;
- guarantees over loans or other financial arrangements involving the employer and connected or associated people;
- transactions at less than their normal market value; and
- certain loan arrangements with third parties which involve the employer.

Holding scheme assets securely

As a trustee, you have a duty to make sure that the scheme's investments are held securely on your behalf. This includes share certificates, title deeds to property, and any other documents of title showing which assets belong to the pension scheme.

If you do not use the services of a custodian, you should check that the arrangements in place for holding the scheme's assets are satisfactory. It is important to consider all the possible risks, including fraud, theft and the destruction of property.

Trustees must be able to clearly identify scheme funds. You must keep scheme money you receive in a suitable account with a bank or building society separate

from the employer's account. A third party – such as an insurance company or pensions administrator – can hold money on your behalf in a suitable account.

Appointing a custodian

If you plan to appoint a custodian to hold the scheme's assets, you should choose the custodian carefully after considering matters such as:

- what insurance arrangements the custodian has; and
- if the custodian uses sub-custodians to look after assets, how far will they guarantee the actions of those sub-custodians?

You should also check the arrangements in place between the custodian and the fund manager for making sure the assets the custodian holds are the same as those reported by the fund manager.

Administrative procedures

Good scheme administration is vital to the proper running of a pension scheme. The trustees are ultimately responsible for the scheme administration and you should actively monitor the quality and effectiveness of the scheme's procedures.

Trustees must establish, operate and maintain adequate internal control mechanisms for the purpose of monitoring that the scheme is being effectively administered and managed in the interests of the members and beneficiaries under the scheme rules.

This section of the guidance explains the principal aspects of scheme administration that, as a trustee, you must be aware of:

- Taking decisions about the scheme
- Keeping records and holding original documents
- Updating the trust deed and rules
- Obtaining an auditor's statement and audited accounts
- Providing information to members and others
- Producing the annual report
- Resolving disputes with scheme members

Our code of practice - Internal controls - gives practical guidelines about putting into place, maintaining and operating internal controls for your scheme.

See also the Trustee toolkit - in particular the module covering 'Running Your Scheme'.

Taking decisions about the scheme

Following the trust deed and rules

The trust deed and rules may tell trustees how to manage the scheme, including matters such as how to make decisions. For example, if the scheme documents say that decisions must be made in a trustees' meeting and agreed by at least two-thirds of trustees, you must keep to this rule.

Agreeing your own decision-making procedures

If these matters are not set out in the scheme documents, you can usually agree your own working methods. Pensions legislation provides that:

- If the trust deed and rules do not give details on how decisions should be taken, they may be made by a majority of the trustees. The 'majority' is a majority of all the trustees, not just those at the meeting.
- You can also decide the minimum number of trustees who must be present (the 'quorum') in order to make the business carried out at a meeting valid.

Other provisions of the pensions legislation

Pensions legislation also provides that:

- If a decision may be taken, all trustees must be given notice of the occasion (which will usually be a trustee meeting) stating the date, time and place, no later than 10 business days beforehand unless the trustees agree other arrangements.
- If a decision has to be taken urgently, you do not have to give formal notice.
- Any decisions made between meetings must be included in the minutes of the next trustee meeting.

Keeping records and holding original documents

You must keep proper records for running the scheme effectively. These include records of your trustee meetings, and records about scheme members and transactions.

Records of meetings

You must keep written records of your trustees' meetings, showing the:

- date, time and place of the meeting;
- names of the trustees invited;
- names of the trustees (and others, such as scheme advisers) who were at the meeting;
- names of the trustees who were not at the meeting;
- decisions made; and
- date, time and place of any decisions made since the last meeting, including urgent decisions, and the names of the trustees who took part.

Records about members and transactions

You must also make sure that you keep proper written records about scheme members and transactions so that you pay out the right benefits at the right time. You need clear and accurate details of transactions to and from the scheme and up-to-date information about its past and present members.

You also need this information to be able to satisfy your other duties as a trustee – for example, to be able to account to HM Revenue and Customs for any tax due or deducted from benefits paid, to obtain an auditor's statement and to prepare your annual report.

The records you need to keep include:

- the date each member joined the scheme;
- details of the contributions received;

- all payments to and from the scheme; and
- details of transfers of members' benefits into and out of the scheme.

Trustees' responsibilities for availability of records

You are responsible for making sure that proper records are kept, even if an insurance company or other administrator carries out the record keeping for you. You must keep the records for at least six years from the end of the scheme year to which they relate. In practice many trustees keep these and other records for much longer.

You must make the records, and any other relevant information, available if the scheme's professional advisers request them (so they can carry out their duties). You must also make them available if the Pensions Regulator, the Pensions Ombudsman, the Board of the Pension Protection Fund or a court request them.

Holding original documents

You need to make sure that, as a trustee, you have all the original documents and records relating to the scheme, for example:

- trust deed and rules;
- bank statements;
- correspondence with your advisers; and
- the other records we cover in this guide.

Scheme records are trustee property; they do not belong to the employer. All these documents are open to review and inspection by all the trustees.

Should both you and the employer need a document, the original should stay with the trustees and a copy be given to the employer. If, as is sometimes the case, the employer is the only trustee, trustee documents should be kept separate from company documents.

See also the Trustee toolkit module 'Running your scheme'.

Updating the trust deed and rules

The trust deed and rules for your scheme may not always be up to date.

Because they are often lengthy documents, it can be time-consuming and expensive to update them, and it is normal practice to make changes through separate amending deeds. This means that it can be difficult to keep track of the up-to-date position, particularly where there have been a lot of changes.

It is good practice to bring together the changes into a single replacement document at least every five years. You should also update any literature issued to members at the same time, to maintain consistency in the information given about the scheme.

Making changes to the trust deed and rules

If the trust deed and rules are to be amended, you must act in line with the scheme's power of amendment and pensions law.

A power of amendment will usually set out how a provision of the scheme can be amended.

Usually the power to do so rests with the employer and the trustees must agree its use. You must follow the procedure laid down or the amendment may not be effective.

You must also comply with the law when considering changes which affect benefits already earned by a member (subsisting rights). The Pensions Act 1995 requires that some changes to subsisting rights known as 'protected modifications' will always

need the member's consent - for example, changing the type of benefit the member has already earned from a defined benefit to a defined contribution basis. If an employer has the power to make an amendment, as a trustee, you must agree to that amendment being made. Other 'detrimental modifications' require that either the member consents, or the scheme actuary has to confirm that the actuarial value of the replacement benefits is not less than the actuarial value of the original benefits. You must tell the member that you have decided to make (or agree to) the amendment.

You should be aware that the employer is required to consult certain employees when considering certain changes to the scheme. If the trustees have the power to make amendments you must notify the employer of your proposed amendment and ensure that no changes are made until the employer has carried the necessary consultation.

Our code of practice - Modification of subsisting rights - outlines how trustees may satisfy this requirement and the standards it expects them to meet.

Obtaining an auditor's statement and audited accounts

The auditor's statement

The trustees of most pension schemes need to get a statement every year from the scheme auditor confirming whether or not, in the auditor's opinion, contributions have been paid in line with the scheme's payment schedule or schedule of contributions.

If the statement is negative or qualified, the scheme auditor must give reasons why.

Audited accounts

For many schemes, the scheme auditor will also need to audit the scheme accounts. The accounts usually form part of your annual report about the scheme. The scheme auditor will audit the accounts that you have prepared, or that have been prepared for you by your adviser.

The accounts must be prepared in accordance with the Statement of Recommended Practice (SORP) for pensions schemes, and must show a true and fair view of:

- the financial transactions of the scheme during the scheme year;
- the amount and disposition of the assets at the end of the scheme year; and
- the liabilities of the scheme, other than the liabilities to pay pensions and benefits after the end of the scheme year.

The auditor's report on the accounts

The accounts must include a report saying whether, in the scheme auditor's opinion, the accounts show a true and fair view and whether they contain specific information set out in law, and with guidelines set out in the SORP.

As a trustee, you will have to approve the audited accounts, and the scheme auditor must sign the report. This must be done within seven months of the end of the scheme year.

Providing information to members and others

The trustees of most pension schemes have to make information available about the scheme, including how it is run and the benefits that it provides.

Who is entitled to information about the scheme?

You should make information available to:

- members (including active members, pensioner members and deferred members);
- prospective members;
- the husbands or wives of members and prospective members;
- other people entitled to benefits under the scheme (however, not all these people are entitled to see all the information described on this page); and
- independent recognised trade unions.

When must information be provided?

The people listed above can usually ask for general information about the scheme and the benefits it provides, free of charge, once in any 12-month period. New members should be given this information automatically when they join the scheme.

You also need to provide information to individuals on other occasions either automatically or if they request it – for example, when a member retires, dies or leaves the scheme.

Sometimes scheme events will trigger the need to give information - for example, certain information must be sent out when a scheme starts to wind up or members are being transferred to another scheme without their consent.

Specific items that must be made available on request include:

- the scheme's trust deed and rules (although you only need to disclose those parts of the trust deed and rules that are relevant to the individual's membership or the membership the union represents);
- actuarial valuations;
- the scheme's schedule of contributions or payment schedule;
- the scheme's statement of investment principles; and
- the annual report.

Producing the annual report

The trustees of most schemes must make their annual report available within seven months of the end of each scheme year. This is a report on how the scheme has been managed and any changes which have happened in the year. It includes changes to the benefits provided by the scheme as well as changes in who is involved in running the scheme.

The report must include, among other information:

- a copy of the audited accounts and auditor's statement;
- details of the trustees and how they are appointed and removed;
- details of the scheme's professional advisers and fund managers;
- an investment report, including how the investments have performed;
- the number and breakdown of scheme members;
- the number of other people entitled to benefits under the scheme;
- details of pension increases for defined benefit schemes and how they are worked out;
- an address for enquiries; and
- the actuary's certification of the adequacy of the schedule of contributions.

Resolving disputes with scheme members

Trustees of most schemes must have a formal arrangement in place for considering complaints about their scheme. This is known as the 'internal dispute resolution' (IDR) procedure. You must tell scheme members about it.

The IDR procedure covers disputes between the trustees and:

- the members (including pensioner members and deferred members);
- prospective members;
- a widow, widower or someone else entitled to benefits as a result of a member's death;
- individuals who were recently in one of these categories; and
- individuals who claim to be in one of these categories.

The law does not prescribe the internal dispute resolution procedure to be adopted by trustees. Trustees can decide on a procedure that best suits the requirements of their scheme. The law simply states that the trustees must make a decision on a matter in dispute and communicate it to the applicant within a reasonable period. The regulator's code of practice suggests that the reasonable period should be four months.

It is good practice to review your IDR procedure regularly, to make sure that it is being administered properly and is working effectively.

The person making the complaint can contact the Pensions Advisory Service at any time about their complaint. And, if the person is not happy with your decision, or if your dispute resolution procedure is not operated properly, they may take the matter to the Pensions Ombudsman.

Special situations

Occasionally, trustees may have to deal with unusual events such as wind ups or situations arising from corporate activities.

This section of the guidance describes your duties as a trustee in the following situations:

- The pension scheme starts to wind up
- There is an event that has a detrimental effect upon the scheme
- The pension scheme is in surplus
- The pension scheme is operating across EU borders

The pension scheme starts to wind up

Pension schemes may be wound up for a variety of reasons. The most common is when an employer becomes insolvent and stops making contributions to the scheme. In this situation the trust deed and rules will usually state that the scheme should be wound up. You must check the trust deed and rules if you are unsure about whether the scheme should be wound up.

Trustees' duties

As a trustee, you are responsible for ensuring that the scheme assets are identified and protected, and that the wind up is completed as quickly as possible. The government published a report in 2006 (Speeding up winding up occupational pension schemes) that stated it was reasonable to expect that the key activities of winding up will be completed within two years. The key activities include:

- identifying and obtaining any debt on the employer;
- identifying individual members' share of the assets;
- securing pensioner benefits;
- conducting a final actuarial valuation of the scheme; and
- issuing option letters to members.

During a scheme wind up members may be feeling anxious and it is important that you keep them informed about what is happening. The law states that you must advise them that the scheme has started to wind up within one month of taking the decision and then update them of progress annually thereafter.

Most of the duties we have outlined in this guide continue to apply even if a scheme is being wound up. There are also specific duties and powers that come into play when a scheme is winding up. For example, you have a duty to tell the Pensions Regulator:

- that the scheme has started to wind up;

- after the scheme has been winding up for two years provide an initial report and thereafter annually; and
- as soon as reasonably practicable that the scheme has wound up.

Records must be kept of your decision to wind up the scheme.

We will be consulting on our approach to regulating schemes in wind up – the guidance will include good practice examples.

See the Trustee toolkit - we've issued a supplementary e-learning module, published as an additional learning tool to help trustees understand the winding up process. This is the first of a suite of three and covers winding up a DB scheme with a solvent employer. Further modules will cover winding up a DB scheme with an insolvent employer, and winding up a DC scheme.

Insolvency

If the employer becomes insolvent, an insolvency practitioner, or the official receiver acting as the receiver or liquidator, is likely to be appointed to act for the employer. By law they must tell you, the Pensions Regulator and the Board of the Pension Protection Fund that they have started to act for the employer.

In this situation, the Pensions Regulator has the power to appoint a statutory independent trustee from our register of independent trustees. Although the existing trustees will still be required to carry out their duties, the statutory independent trustee will take over the exercise of their discretionary powers.

Where you are a trustee of a scheme with a defined benefit element and your employer suffers an insolvency event your members may be entitled to compensation from the Pension Protection Fund. (The scheme will pay additional levies to cover the cost of the fund.) You will need to check whether you satisfy the qualifying conditions for entry.

There is an event that has a detrimental effect upon the scheme

As a trustee you should establish procedures for monitoring the possibility of an event occurring that has an actual or potential detrimental effect upon the pension scheme. The section 'working with the employer' tells you how to go about this. It is a complex area and trustees should avoid potential conflicts of interest and seek appropriate professional advice to help them.

The event may be one that weakens the employer's ability and willingness to support the pension scheme (its covenant) and/or affects the ability of the scheme to meet its liabilities. If an event is identified you should take appropriate action to seek mitigation for its detrimental effect. Examples of mitigation may include obtaining additional cash or contingent security for the scheme.

Examples of the type of event that may be detrimental to the scheme include:

- the replacement or merger of a participating employer;
- change in control of the employer – for example, a change of parent company;
- a corporate event that could reduce the cash flow of the employer – for example, an increase in debt;
- a return of capital – for example, dividend payments or share buy backs;
- compromise agreements – ie, where the trustees agree with the employer to reduce the debt amount being paid to the scheme;
- apportionment of the schemes debt – for example, where the scheme rules modify the amount of the pension debt that would otherwise be due on the withdrawal of an employer from a multi-employer scheme; and
- an arrangement that has the result of preventing a section 75 debt from triggering – for example, 'abandonment' of the scheme.

If a detrimental event of this type is identified trustees should be aware that the Pensions Regulator expects the employer to make a clearance application. Our guidance on clearance provides further information on detrimental events, mitigation and the clearance process.

Trustees should also be aware that some events may be notifiable events.

Our guidance on abandonment of DB pension schemes tells you more and you may find the information on multi-employer withdrawal useful.

The pension scheme is in surplus

A scheme is in 'surplus' if its assets are more than its liabilities.

If an ongoing defined benefit scheme is in surplus the employer may ask for the surplus to be paid to him. Trustees are only able to authorise a payment to an employer if they have obtained a written valuation from the actuary and this shows that the scheme is funded to above full buy-out level. If as a trustee you agree to the employer's request, the law requires you to notify the members of the potential payment and inform the Pensions Regulator when the payment is made.

A surplus may also arise in a defined contribution scheme when all the liabilities in respect of a member, beneficiary or his estate have been secured by the purchase of insurance policies, or paid in full. This surplus may be paid to the employer without the need to notify the members or the regulator.

The scheme is operating across EU borders

Pension schemes located in one EU member state must apply for authorisation and approval to accept contributions from employers employing members who are subject to the social and labour law of another EU member state.

As a trustee of a scheme with its main administration in the UK, you need to decide whether you have European members; that is a member who is working in another

EU state (but who is not a seconded overseas). If you do, and you want to accept contributions into the scheme in respect of them you will need to apply to the Pensions Regulator for authorisation and approval for your scheme.

Our guidance on EU cross-border schemes contains more information on when you need to make an application.

Legislation references

The law: s247-248 of the Pensions Act 2004
[back to Trustee knowledge and understanding]

Certain exemptions: Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2006
[back to Trustee knowledge and understanding]

The law: s252 of the Pensions Act 2004
[back to What is a trustee?]

Disqualified: s29 of the Pensions Act 1995
[back to Disqualification]

The Pensions Act 1995: Corresponding reference for Northern Ireland: The Pensions (Northern Ireland) Order 1995
[back to UK law applying to pension schemes]

The Pensions Act 2004: Corresponding reference for Northern Ireland: The Pensions (Northern Ireland) Order 2005
[back to UK law applying to pension schemes]

The Pensions Act 1995: s39 of the Pensions Act 1995
[back to Personal profit]

The law: s241-242 of the Pensions Act 2004
[back to Member-nominated trustees and member-nominated directors]

The law: regulation 6 of the Occupational pension Schemes (Scheme Administration) Regulations 1996
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Register of pension schemes: s59 of the Pensions Act 2004
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Information required by law: s60 of the Pensions Act 2004
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Procedures: regulation 5 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996
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Pensions legislation: s32 of the Pensions Act 1995
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Consult certain employees: s259 of the Pensions Act 2004
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Make information available: Occupational Pension Schemes (Disclosure of Information) Regulations 1996
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The law: Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [back to Trustees' duties]

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