

Professional trustee description policy

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The Pensions
Regulator

This policy document sets out our description of a professional trustee, associated policy and examples to demonstrate the application of the policy.

We expect higher standards from professional trustees; this description specifies those we expect higher standards from. We want to see good quality professional trustees with expertise across trustee matters generally who will help improve the governance of pension schemes.

As we expect higher standards across all scheme matters, we will normally apply higher penalties for those meeting the professional trustee description who fail to meet their duties (see our monetary penalties policy at www.tpr.gov.uk/strategy).

In this document the term 'trustee' should also be taken to mean any person who exercises any trustee functions (eg directors of a corporate trustee) unless the context suggests otherwise.

Professional trustee description

We consider a professional pension scheme trustee to include any person, whether or not incorporated, who acts as a trustee of the scheme in the course of the business of being a trustee.

We would not normally consider a remunerated trustee to be acting as a trustee of the scheme in the course of the business of being a trustee if:

a) they are or have been:

- a member of the pension scheme or a related pension scheme (ie a scheme with a sponsoring employer in the same corporate group¹); or
- employed by, or a director of, a participating employer in the pension scheme (or an employer in the same corporate group); and

b) they do not act, or offer to act, as a trustee in relation to any unrelated scheme.

Where an individual represents or promotes themselves to the trustees or sponsors of one or more unrelated schemes (ie schemes in relation to which the individual does not meet either of the descriptions in (a) above) as having expertise in trustee matters generally (rather than just in certain areas), whether for remuneration or otherwise, we would normally consider them to be acting in the course of the business of being a trustee.

¹ Two companies are in the same corporate group if they are part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006.

Remuneration

Trustees increasingly receive some kind of financial compensation (beyond reimbursement of necessary or incurred expenses). We will not automatically consider a trustee who is receiving financial compensation for being a trustee to be a professional trustee.

We will consider all relevant factors and indicators before forming an opinion. We expect trustee boards to have processes in place to regularly assess and evidence the value their remunerated trustees bring to the board (and in some cases there is a legal requirement for them to do so).

Our view is that remuneration alone is not necessarily determinative of whether someone is acting in the capacity of a professional trustee. It could potentially discourage people from being trustees if remuneration alone results in them being treated as a professional trustee (and therefore higher standards and tougher enforcement action applying).

In addition, we do not want a trustee who we think should be caught by the description of a 'professional trustee' to fall outside it merely by receiving remuneration in a different way (for example, by receiving indirect benefits which might not be considered to be 'charging') or by acting pro bono. We expect a professional trustee to bring the same high standards whether or not they are remunerated for a role.

Determining whether a trustee is a professional trustee

We expect the person appointing a trustee to a pension scheme to understand whether the trustee meets our description of a professional trustee and is therefore subject to higher standards and potentially higher penalties if breaches occur.

Where a trustee has experience by virtue of being a trustee of a specific scheme for a long period, we will not usually consider them to be a professional trustee by virtue of this long tenure alone. However, where such a trustee represents or promotes themselves to one or more unrelated schemes as having expertise in trustee matters generally, we will usually consider them to be acting in the course of the business of being a trustee and therefore to be a professional trustee.

Where a trustee is a professional trustee in respect of one scheme, we consider them to be a professional trustee on all schemes of which they are a trustee. Once a non-professional trustee is appointed to a different scheme as a professional trustee they will be considered a professional trustee for all trustee appointments they hold, including the original appointment.

We expect such trustees to notify the sponsor and any other trustees on their schemes of their professional trustee status as soon as reasonably practicable.

Scheme return categorisation

As part of the scheme return trustees are required to let us know if any of the trustees of the scheme are professional trustees. This classification is not determinative and we may also form the opinion that a trustee is a professional trustee on the facts of the case, whether or not that trustee is categorised as a professional trustee on the scheme return.

Independent trustees

We note that the terms 'independent trustee' and 'professional trustee' are often used interchangeably or together. There is some confusion over the difference between the terms. We do not consider independence to be determinative of whether a person is a professional trustee. While professional trustees are often independent, this is not always the case (for example they may have employment links with the employer). It is possible for a lay trustee to be independent.

Legislative definitions

Where legislative provisions define particular types of trustee, those definitions apply for those purposes (not the description above). For example, the definition of 'professional trustee body' in regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 applies for the purposes of determining who can be the chair of trustees of a 'relevant scheme'.²

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As defined in Regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

Examples

The following examples illustrate when we may consider someone to be (or not to be) a professional trustee.

Independent trustees and pro bono appointments

Freya is an independent trustee. She has a number of remunerated trustee appointments on unrelated pension schemes on the basis of her trustee skills and experience. One of her trustee appointments is pro bono. We consider Freya to be acting in the course of the business of being a trustee and therefore to be a professional trustee in relation to all of her trustee appointments, including her pro bono appointment.

Long serving remunerated trustees

Trustees of scheme A are remunerated well above necessary expenses, recognising and valuing the role those trustees play in managing the scheme. The trustees have financial expertise due to the sector they are employed in. Some trustees have served on the board for long periods and when seeking re-selection they include this experience in their application.

Toby, one of these trustees, is appointed as a trustee on scheme Y, an unrelated pension scheme, having represented himself as having expertise in a range of trustee matters. The other trustees of scheme A have no other trustee appointments. We consider Toby to be acting in the course of the business of being a trustee because he has represented himself as having expertise in trustee matters generally. We consider Toby to be a professional trustee in relation to both schemes. Toby should let the other trustees and scheme sponsor know of his professional trustee status. The trustees of both schemes should notify us of Toby's professional trustee status on the scheme return. .

We would not usually consider the other trustees of scheme A to be professional trustees. However, we may take their remuneration and any particular expertise into account when calculating a penalty for a breach of pensions legislation.

Trustees with particular expertise

The employer and trustees of scheme B evaluate the current trustee board, identifying a gap in the board's investment knowledge and experience. An open selection process is held and Clara, an experienced investment consultant, is appointed to the board as a remunerated trustee. This is her only trustee appointment.

We do not consider Clara to be a professional trustee as she has only represented herself as having expertise in a particular area (investment), rather than in a range of trustee matters and this is the only trustee appointment she has ever had. However, we may take her remuneration and investment expertise into account when calculating a penalty for a breach of pensions legislation.

Trustees with multiple appointments for particular expertise

Bella has remunerated trustee appointments on a number of unrelated pension schemes. She is appointed for her expertise as a former covenant adviser. We would consider Bella a professional trustee. Although Bella has only represented herself as having expertise in covenant matters (rather than trustee matters generally), she has a number of remunerated trustee appointments so we would consider her to be acting in the course of the business of being a trustee.

Former executives appointed as independent trustees

Eddie was previously a finance director and trustee of scheme C. He retires as a finance director but is retained as an independent trustee to the scheme and receives remuneration for this role above necessary expenses. Eddie has detailed knowledge of the specific scheme along with knowledge and experience of finance matters. He does not hold any other trustee appointments.

Eddie has not represented or promoted himself to the trustees or sponsors of one or more unrelated schemes as having expertise in trustee matters generally and has never had any other trustee appointments, so is not acting in the course of the business of being a trustee. We do not therefore consider Eddie to be a professional trustee. We may take his remuneration level and expertise in finance matters into account when calculating a penalty for a breach of pensions legislation.

Were he to represent or promote himself to one or more unrelated schemes as having expertise in trustee matters generally, or to take up other remunerated trustee appointments on unrelated schemes on the basis of his expertise in finance matters we would consider him to be acting in the course of the business of being a trustee and therefore to be a professional trustee.

Portfolio career trustees

The current chair of trustees of scheme D is due to retire as a trustee and a replacement needs to be found. An open selection process is held and Tessa is appointed as a trustee to chair the trustee board. Tessa's application includes details of the chairmanship skills she has acquired as a result of her remunerated positions on company boards as a non-executive director. She has no other trustee appointments.

This is the only trustee appointment that Tessa has ever had and she has represented herself as only having expertise in chairmanship skills (rather than in trustee matters generally), so we do not consider her to be acting in the course of the business of being a trustee. We do not therefore consider her to be a professional trustee. However, we may take into account her particular expertise (chairmanship) when calculating a penalty for a breach of pensions legislation.

Professional trustees who take on poorly performing schemes

Dan is a professional trustee. He has a number of remunerated trustee appointments on the basis of his expertise in trustee matters generally. Dan is appointed to scheme E following an open tendering process after the employers and trustees of scheme E became aware of issues with the scheme's governance.

Dan quickly works with the other trustees on the board and establishes that they are breaching some of their investment duties. He considers that the breaches are likely to be of material significance to us so reports them. Dan engages and co-operates with us and works with the other trustees and the scheme's advisers to remedy the problem and prevent future breaches from occurring. We would take Dan's behaviour into account. We would not normally seek to penalise trustees who are brought onto a trustee board for their expertise, who identify and swiftly report breaches, engage and co-operate with us, remedy any breaches and put controls in place to prevent future breaches.

How to contact us

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Free online learning for trustees

www.pensionseducationportal.com

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