

CONFLICTS OF INTEREST IN CORPORATE PENSION SCHEMES

Introduction

Historically it has been usual for directors and officers of a company to also be trustees of the company pension scheme.

Despite the introduction of the Member Nominated Trustee requirements, many schemes went for an "opt out" and continued with the sole trustees being directors and officers of the company. Obviously that must now change with the removal of the "opt out" option in the Pensions Act 2004.

But many directors and officers who are also trustees are finding that they are facing a conflict of interest. This results from the Pensions Act 2004.

Pensions Act 2004

This brought in many important changes. Firstly, trustees are now legally required to have certain competences:

- a) conversant with trust law
- b) conversant with pensions law
- c) conversant with actuarial principles
- d) conversant with investment principles

and lots more

But it also sets out clearly, in law, that it is now the **trustees** who set the actuarial assumptions on which the scheme is funded, ideally with the consent and agreement of the employer. The responsibility rests with the trustees, not the employer.

It gets worse. Because the law also requires that the trustees are **prudent** in setting each actuarial assumption i.e. they must have a prudent investment assumption and a prudent mortality assumption.

This will inevitably mean that trustees are required, by law, to err of the conservative side in setting the funding basis.

The employer, on the other hand, will want to err on the more optimistic side.

Where does this leave the MD or FD who is also a trustee? In an impossible position, we would contend.

Couple this with the fact that the MD or FD is likely to be aware of any major potential corporate changes eg expansion or closure of a division or take over/sale of a division or indeed the whole business. How can they act as trustee, knowing privately what they know confidentially wearing their corporate hat?

If they are members of an Executive category of the scheme, there is further scope for potential conflicts of interest.

What is the resolution?

We believe that in most cases it is no longer right for a senior officer or director of a company to also be a trustee. They should resign.

The best solution may well be to appoint an additional Independent Trustee, to work with the other trustees and alongside and with the employer and members to "manage" the scheme properly going forward.