

ISSUES FOR TRUSTEES OF COMPANY SCHEMES

Introduction

Trustees have always had a very onerous responsibility. The Pensions Act 2004 extended these considerably. The enhanced responsibilities are summarised in this note. We have to seriously ask: who would voluntarily want to be a trustee?

What does a Trustee need to know in the new era?

General knowledge:

- Know and understand pensions law
- Know and understand trust law
- Know and understand principles governing pension scheme funding
- Know and understand principle governing investment

Scheme specific:

- Be familiar with the scheme's documentation
- Be familiar with the Statement of Investment Principles
- Be familiar with the Statement of Funding Principles, which will need to incorporate a strategy for funding pension commitments and a strategy for correcting deficits
- Be familiar with any and all other trustee policy documents

How many individual trustees can comply with all the above?

What decisions do trustees have to make?

Historically, probably the most difficult will have been the distribution of lump sum death benefits, perhaps where there was a complex personal situation.

Whilst they will have taken various investment decisions, they will have relied heavily on professional advice from a specialist investment adviser.

Most trustees will, in all honesty, never have fully got to grips with actuarial matters and in many cases will have followed the advice of their Scheme Actuary without question. But, post the Pensions Act, their responsibilities are clear:

- Trustees determine the methods and assumptions to be used in actuarial valuations, these to be agreed with the employer. Note that the responsibility for determining the funding basis of the scheme clearly rest with the **Trustees**, not the employer. It gets worse – first, Trustees are required **by law** to set actuarial assumptions which are "prudent" (though our new friend Prudence is not defined in law), and secondly: each element of the actuarial assumptions must itself be prudent. That means a "prudent" investment return assumption and a prudent mortality assumption etc. This is bound to push up the recommended contribution rate. Given that Trustees have an overriding duty of care towards the members, how should they react when the employer pleads for a weaker actuarial basis due to the state of the business?
- Trustees determine the investment policy, which (hopefully) will be agreed with the Employer. Again, imagine the potential conflicts of interest.
- If there is a Debt on the Employer, the Trustees have the duty to determine the date on which it is calculated – bear in mind the date chosen will affect the amount, and the Employer will want to minimise the Debt: more conflicts!
- If the Employer cannot meet the Debt as a one off payment, the Trustees will have the responsibility to negotiate a possible compromise. Can a director or officer also be a trustee in these circumstances?
- If a Trustee is aware of matters that may affect the Scheme, they will need to take appropriate action, including possibly whistle-blowing.

What does this mean for existing Trustees?

- At the very least, they need to review whether they are comfortable to remain as a trustee.
- Can a Managing or Finance Director be a Trustee given the obvious potential for conflicts of interest?
- Also, bizarrely, the Pensions Act removes the "opt out" regarding Member Nominated Trustees so that more schemes will have MNT's (the law says 1/3rd of trustees must be MNT's). How does this square with their responsibilities and the knowledge required?

Should an Independent Trustee be appointed?

We believe that, given the sheer depth of the responsibilities and knowledge requirements, for most pension schemes, be they final salary or money purchase, **an Independent Trustee should be appointed**, either as an additional trustee to initially (at least) sit along side the existing trustees or as a sole Independent Trustee.

What about costs?

Whilst lay trustees generally perform their role and duties “free of charge”, a professional Independent Trustee will charge fees. On the other hand, our experience is that where an additional Independent Trustee is appointed:

1. Trustee work, including meetings, tends to be more focused on the crucial issues.
2. Because of the experience of the professional Independent Trustee, better and more controlled use is made of professional advisers, thereby reducing their fees.
3. If the Independent Trustee “drives” the management of the Scheme, it leads to better liaison and co-ordination between all the interested parties – employer, members and trustees. This has the benefit of ensuring there is cohesion, with everyone working together.
4. If there is a need to change the pension arrangements, the process of change and its communication is managed better and more cost-effectively.

Why MW Pensions?

We offer Independent Trustee services through our subsidiary company, Moores Williams Trustees Limited.

The advantages we offer are:

1. **Experienced staff** who have spent many years in pensions, recently as trustees and previously as consultants and actuaries to trustee bodies.
2. **Our fees are wholly transparent and are much lower than many other Independent Trustees** – we are not based on London nor are we linked in any way with a large professional practice. Fees can be fixed or time spent. We are happy to agree a budget.
3. The **same senior team** deals consistently with the same client, ensuring continuity.
4. We place great emphasis on communication and management which leads to prompt, cost effective completion of projects.

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