



The trustee's role and due process

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Agenda

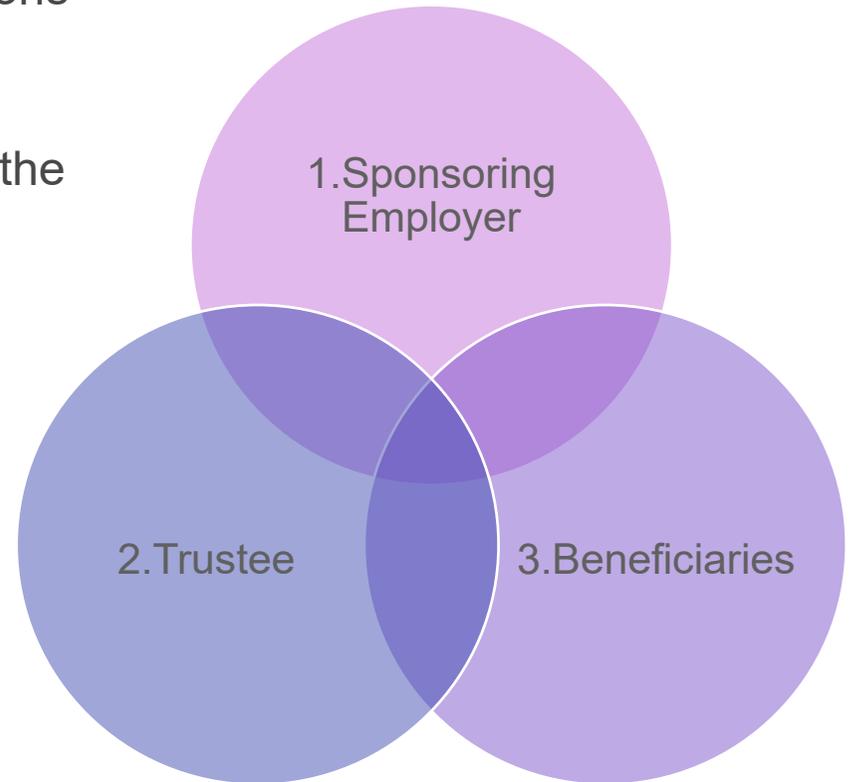
- The concept of trusts
- The relationship between Trustees, Employers and Members.
- Trustee responsibilities
- The concepts of duty of care, impartiality and the meaning of 'acting responsibly and prudently
- How a conflict of interest may arise and how it can be managed.
- Trustee powers and the nature of a discretionary power.
- The roles, responsibilities and accountabilities of advisers and the need for proper monitoring of delegated functions.
- Due process and governance
- The importance of sound administrative arrangements, including the risks and controls involved and the need for procedures to be put in place and followed.



What is a Trust?

Occupational pension schemes are set up under trust and are subject to law of trusts and pensions law.

A trust is a three-party **fiduciary relationship** in which the first party, transfers a property upon the second party, for the benefit of a third party.



Who are the beneficiaries?

Beneficiaries can include:

Current members

- Active
- Deferred, and
- Pensioners

Future members

Current and future dependants

Sponsoring employer

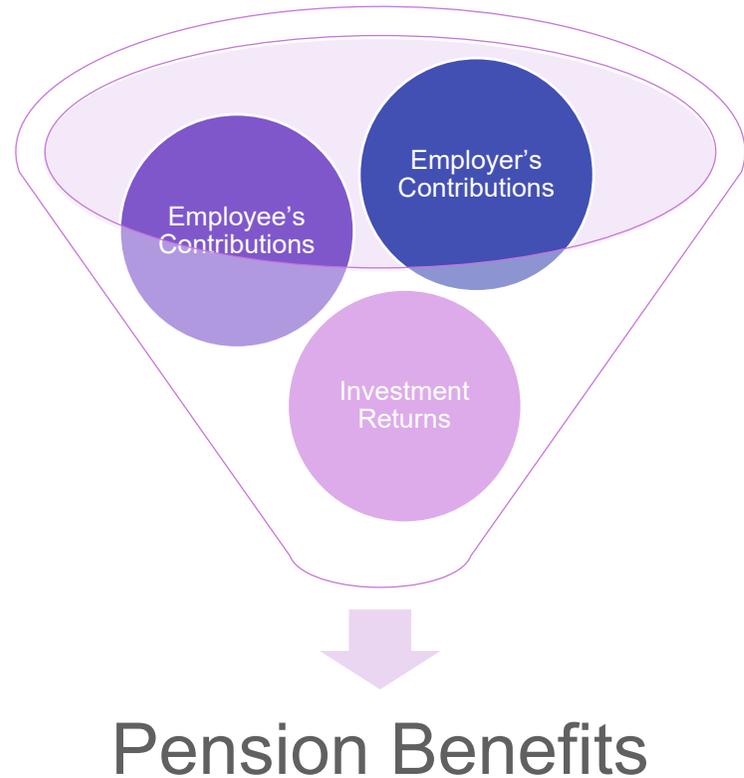


Pension Trust – Assets

In an occupational pension scheme, the property is known as the scheme's assets.

The Trustees must hold the assets on behalf of the beneficiaries until such time that they become entitled.

The assets must be kept separate from the employer.



Robert Maxwell

The Mirror Group Pension Funds Scandal

- Embezzled pension fund money to support his business empire.
- £530m hole in the pension funds of 16,000 employees.
- Pensioners in general received half of their company pension entitlement.
- Partly repaid by public funds.
- 1995 Pensions Act.



Role of the Trustee

- The pension scheme is a trust and needs trustees

*“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**”*

the Pensions Regulator

*“the trustee has a **legal obligation** to carry out the **duties** conferred upon him by trust. The relationship between the trustee and the beneficiaries is a **‘fiduciary’ relationship**, such that the trustee **must always place the interests of the beneficiaries above his own**”*

ICAEW



Duty of care and prudence

- Act responsibly and honestly – *duty of care*
- Act prudently – *the way a prudent person would in their own affairs*
- Take account of the *relevant* facts
- Consider if professional advice is required

Duty of impartiality

- It is your duty to consider the interests of all the classes of beneficiary
- You should generally treat members of a class the same
- This does not necessarily mean you should treat all classes in the same way:
 - Strike a balance to give appropriate weight to the interests of each class
 - This will depend on the issue you are considering
- You need to weigh the interests of an individual against the needs of all the other beneficiaries



Conflicts of Interest

“A secondary interest that may unduly influence judgement or actions/inactions”

the Pensions Regulator



Trustees powers

Accept contributions into the scheme

Decide investment strategy and invest scheme assets

Amend rules of the scheme

Admit members to scheme

Deal with surplus assets / wind up the scheme

Apply discretionary powers

Trustees can delegate duties; but not responsibility



Discretionary powers

- Recipient of a dependant's pension
- Recipient of lump sum benefits
- Early/late retirement consent
- Pension increases
- Ill health benefits
- Accept transfers in



Decision Making Process

- Follow any provisions in trust deed and rules
- Consider pensions legislation and any guidance
- Agree own decision-making procedures if appropriate
- Agree process in advance (if possible)
- Ask for and consider all relevant information before making a reasonable decision
- Manage conflicts of interest
- Document the process - Trustees must be prepared to defend their reasons for taking discretionary decisions
- Communicate the outcome



Legal Framework

- Statutory Law
- Regulations
- Case Law
- Codes of Practice
- Regulatory Guidance



Role of Professional Advisers

- Administrators
- **Actuary**
- **Auditor**
- Employer covenant advisers
- General pensions advisers
- Fund managers and investment consultants
- Legal adviser

Characteristics of a good working relationship:

- ✓ Mutual trust
- ✓ Open and honest dialogue
- ✓ Productive communications
- ✓ Collaborative

Role of Professional Advisers

- Your advisers should:
 - Explain which parts of the law affect your scheme and help you comply
 - Provide clear and relevant advice
 - Help Trustees run schemes effectively
 - Tell you when to get more expert help
- Trustees should:
 - Check advisers have knowledge and experience
 - Be able to question or challenge advisers
 - Supervise and monitor



Trustee Liability

- Breach of trust
 - Act when not authorised to do so
 - Fail to do something you should have done
 - Fail to perform duty or with insufficient care
- Your liability as a trustee
 - Personal
 - Joint and several liability
- Protections from personal liability
 - Scheme assets
 - Indemnities and insurance



Due Process & Governance

- Reasons for good governance
- 21st Century Trusteeship
- Trustee Meetings Process
- Internal Controls
- Documentation and Record Keeping



Good Governance

“As a trustee, it’s your responsibility to make sure your scheme is well run. You should spend time and resources getting your scheme governance right. This will help you to minimise risk and maximise opportunities for your scheme and your members. Investing in good governance is likely to save you in the long run, delivering good value for members and sponsoring employers, and improving member outcomes.”

the Pensions Regulator



Reasons for good governance

- Better member outcomes (fewer complaints)
- Better investment returns for the risk you take to produce that return.
- Compliance with pension legislation
- Reduce risk of trustee liability
- Keep the Pensions Regulator “happy”
- Reduce cost of buy-out (maybe?)

“Good governance is the bedrock of a well-run pension scheme. There is a clear link between good governance and good fund performance so it is an essential part of effective scheme management. Without good governance, you are unlikely to achieve good outcomes for members.”

the Pensions Regulator

21st Century Trusteeship

- tPR's drive to raise standards among Trustees and improve the way pension schemes are managed.
- Not new or higher standards of governance
- Clarifying what good governance looks like
- Raising awareness of what they will do if standard aren't met

Governance,
roles and
strategy

Training skills
and advisers

Risk and
conflicts of
interest

Meetings

Value for
members



Trustee Meetings

- Sufficient notice of time and date
- Quorate attendees
- Purpose of meeting
- Ensure minutes are accurate and actions documented
- Regular agenda items:
 - Notice of meeting – apologies, due notice, quorum
 - Matters arising/ decisions and documents between meetings
 - Conflicts of interest
 - Actuarial matters, Covenant, Investment
 - Governance, Internal controls and administration



Internal Controls



Documentation and record keeping

- Data Protection & GDPR
- Records
 - Members
 - Existing and past
 - Decisions
 - Legal/contractual documents
- Trust Deed and Rules (and amendments)
- Minutes
- Key Documents
- Signatories and Mandates



Questions?



Keep asking questions!





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