

The Trustee toolkit downloadable

Introducing pension schemes

Tutorial three: What is a trustee?

By the end of this tutorial you will better understand:

- ▶ the nature of a pension trust
- ▶ who can be a trustee
- ▶ the process for appointing trustees

This tutorial is part of **Scenario two**.

Glossary

A detailed glossary of technical terms can be downloaded from the Resources tab when you log in at www.trusteetoolkit.com

The Pensions
Regulator

Defining a trust

A pension scheme is established as a trust run by trustees. A trust is a legal concept where assets are held by one or more persons (the trustees) for the benefit of others (the beneficiaries) for a specified purpose. Trustees may also be beneficiaries, eg scheme members.

Trustees

Where a pension scheme is set up under trust, the trustees have certain obligations under trust law and specific laws and regulations relating to pensions. Remember that the trustees are the legal owners of the scheme's assets.

There are two types of trustee arrangements for pension schemes, namely individual trustees or corporate trustees.

Individual trustees

If the scheme has individual trustees, when a new trustee is appointed a deed will have to be executed to effect the appointment. Similarly, when someone ceases to be a trustee a deed of removal must be executed.

Corporate trustees

Instead of having individual trustees a scheme may have a corporate trustee. This is a limited company, and the directors of that company will fulfil exactly the same role as individual trustees.

New directors of the trustee company must be appointed in accordance with the provisions of company law. Similarly, someone who ceases to be a trustee director must be removed in accordance with company law.

Types of trustee

There are several different types of trustee, but the most common is a 'lay trustee'.

Lay trustees

Lay trustees can be either employer-nominated trustees (ENTs) or member-nominated trustees (MNTs). In either case, they usually work (or have worked) for the sponsoring or participating employer of the scheme and can be members of the scheme.

Occasionally, lay trustees may not have any connection to the employer (or to the employer's group). This is most common in the charity sector.

Lay trustees are not usually paid for the work they do for the scheme, but may be paid expenses.

Professional trustees

These are companies or individuals who provide professional trustee services.

For some purposes related to governance standards for DC schemes, there is a specific definition of 'professional trustee body'. It means a body which:

- ▶ was not established by an employer in relation to the scheme
- ▶ is remunerated for its services as a trustee by one or more schemes
- ▶ has arranged a policy of indemnity insurance in relation to the exercise of its functions as a trustee of the scheme
- ▶ is carrying out its functions as a trustee of the scheme in the ordinary course of a profession or business which consists of, or includes, providing and holding itself out as providing services in connection with the management or administration of trusts or any particular aspect of such management or administration, whether or not such services relate to a particular kind of trust

Some schemes engage professional trustees because of their expertise. Professional trustees have the same duties, powers, responsibilities and accountabilities to the scheme as lay trustees.

However, professional trustees have a higher standard of care than lay trustees. Some DC schemes may also have a 'professional trustee body', in relation to governance standards.



Who can be a trustee?

Five people would like to become trustees. Consider each one and decide whether you think they are eligible to be a trustee or not.

1. Uri Savir: Uri is 18 and has only been a member of his employer's scheme for three months.
2. Gilda Jones: Gilda declared herself bankrupt two years ago, and has not been discharged.
3. Oliver Reynolds: Oliver spends most of the year living in his villa in Spain. He comes back to England several times a year and attends all the trustee meetings.
4. Robert Lemmon: Robert is 45 and has a criminal conviction for obtaining a loan by deception. The conviction was spent six years ago.
5. Margaret Bennett: Margaret is 82 and retired from her employer nearly 20 years ago.

Answers are at the back

Who can be a trustee?

Trustees look after assets on behalf of other people, so there is an expectation that they have honesty and integrity, competence and capability and are financially sound. Those who are ineligible to become trustees include those who:

- ▶ are under 18
- ▶ are an undischarged bankrupt
- ▶ have unspent criminal convictions involving dishonesty or deception
- ▶ are disqualified from being a director

There are some rigid rules about who can hold the position and more information can be found in The Pensions Regulator's 'MNT/MND – Putting arrangements in place' code of practice at www.tpr.gov.uk/code8.

Master trusts

Trustees of master trust schemes must be able to satisfy the regulator that they possess a minimum level of skills, knowledge and integrity at the time of their appointment.

More information can be found under 'fit and proper' in our Code of Practice 15 at <http://www.tpr.gov.uk/docs/code-15-authorisation-and-supervision-of-master-trusts.pdf>

Appointing trustees

Some trustees are nominated and elected by the members of the scheme. They are called MNTs if they are individual trustees, or member-nominated directors (MNDs) if they are directors of the trustee company.

Any scheme member who consents to be an MNT can be nominated. Non-members can also be nominated in certain circumstances, but this usually requires the agreement of the employer.

Other trustees may be appointed by the scheme's sponsoring employer, in which case they are called ENTs or employer-nominated directors (ENDs) as appropriate.

For the remainder of this module the expression 'trustee' captures all trustees of the scheme, however appointed.

How many MNTs should a scheme have?

If all of a scheme's trustees (including if the scheme has only one trustee) are independent, or if all the members of the scheme are trustees, they are exempt from the requirement to have any MNTs. Otherwise, pensions legislation provides that there must be arrangements in place that provide for at least one third of the trustees of an occupational pension scheme to be MNTs. Except where provided for in the rules of the scheme, the number of MNTs can only exceed one third with the approval of the employer. Trustees should check the rules of their own scheme to see whether their rules make specific provision for MNTs.

What are the key considerations in the MNT process?

Once the nomination process is complete a selection process will normally be required, following which the successful nominee(s) will be appointed. Each step of the nomination and selection process needs to be proportionate, fair and transparent.

Further information

- ▶ Being proportionate means that the approach needs to take account of the costs of the process and the circumstances of the scheme.
- ▶ Being fair means that the arrangements treat all members fairly. It does not mean that all classes of member must be treated the same.
- ▶ Being transparent means that all stages of the nomination and selection process, and the method of selection, should be communicated to all the members involved in both processes.

Relevant multi-employer schemes (including master trusts)

Relevant multi-employer schemes, which includes schemes known as 'master trusts' are multi-employer schemes in which some or all of the employers using the scheme (the participating employers) are not connected to one another, or which are promoted to employers as schemes where participating employers do not need to be connected.

Relevant multi-employer schemes must comply with some additional governance standards relating to the representation and independence on the trustee board. They also include some restrictions about how long some trustees can remain in post.

Additional standards

Relevant multi-employer schemes must meet additional standards and report these in the chair's statement.

The scheme must have at least three trustees, or where there is a corporate trustee in place that isn't a professional trustee body, there must be at least three directors. Trustee boards may of course be larger than this, particularly in a large scale and more complex scheme. A majority of these trustees, including the chair, must not be affiliated with any company that provides advisory, administration, investment or other services to the scheme.

Non-affiliated trustees must be appointed to the scheme in an open and transparent fashion, for example, by a process involving advertising in an appropriate national publication, or using the services of a recruitment agency.

Trustees must have in place a process to encourage scheme members, or their representatives, to make their views known on matters that affect them. The chair's statement must include a description of how this has been achieved.

Answers and feedback

Who can be a trustee?

Uri is eligible to be a trustee. Generally if you are 18 or over, you are eligible to be a trustee regardless of how long you have worked for your employer.

Gilda is not eligible to be a trustee at this time. However once her bankruptcy is discharged she would become eligible again.

Oliver is eligible to be a trustee. However, if he is regularly unable to attend trustee meetings his appointment is unlikely to be appropriate.

Robert is eligible to be a trustee. Although he has a criminal conviction for deception, it is spent and as a result he is eligible to be a trustee.

Margaret is eligible to be a trustee. Generally if you are 18 or over, you are eligible to be a trustee regardless of how long you have worked for your employer or whether you are retired.