

The Trustee toolkit downloadable

Pensions law

Scenario one

In this scenario Beatrice, the scheme lawyer, discusses a member complaint and updates the trustees about The Pensions Regulator. The trustees also elect an interim chair.

As you work through this scenario you will be tested on your knowledge at decision points. Here you will have the option to work through a related technical tutorial before returning to the scenario or you can skip the tutorial. You can always work through the tutorial separately later if you would prefer.

This scenario includes two tutorials:

- ▶ Pensions-related legislation
- ▶ The Pensions Regulator

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

Legal briefing

You have been a trustee for a few months now and you are attending the next meeting. The minutes and matters arising are swiftly dealt with, and Meryl proceeds to item three on the agenda. She says: "Most of you know Beatrice, from Birch, Green and Associates, our scheme lawyer."

Beatrice says: "Thank you Meryl. Today I want to talk about two things: Mr Allan's complaint in relation to the law and an update from The Pensions Regulator." (Mr Allan was a member of the defined contribution part of scheme. He is now 50 and wants to retire. He has been told the earliest age he can retire is 55.)



Mr Allan's complaint and the law

Beatrice's presentation is very helpful. She says: "As you know, pensions law is continually changing. It's important to keep up to date so you understand your trustee duties and can apply the law correctly to your own scheme."

Pensions law has evolved through a combination of UK and EU legislation and case law covering a wide range of areas such as what happens on divorce of a member, dealing with employer debts and disclosure requirements.

In the case of Mr Allan, the relevant law is the Finance Act 2004 which changed the earliest age at which a member could retire from 50 to 55."



Decision point: Mr Allan's complaint

Beatrice and the trustees continue to discuss Mr Allan's complaint and the relationship between the law and the scheme rules. Of the statements below, which three do you think are correct?

1. The Finance Act 2004 raised the earliest age of retirement to 55, so Mr Allan is not entitled to retire at 50, regardless of what the scheme rules say.
2. We need to check how the law applies to our scheme rules as Mr Allan could still have the right to retire at age 50 despite the change in law.
3. The scheme rules state that only members made redundant have the right to retire at age 50, we need to check if Mr Allan was made redundant.
4. Even if Mr Allan was made redundant this does not necessarily mean he can retire at 50. We need to check the conditions in the Finance Act 2004.

[Answers at the back](#)



Need help with this question? Read the [Tutorial 'Pensions-related legislation'](#)

The Pensions Regulator (TPR)

Meryl introduces the next item which is a reminder about TPR from Beatrice. Beatrice says: "From time to time TPR will publish new codes or guides to help you get to grips with changes in legislation or regulations and also help you with practical guidance on best practice.

They also provide tools to help you assess your scheme against governance standards or statements to help you with your scheme valuation. I'd recommend you use the tools they provide to assess your DC scheme against the standards they've set in their DC code of practice soon. It'll help you with the chair's statement you need to write."

Edmund says: "Beatrice, before you go on, I think I'd like to understand a bit more about TPR and what it does if you have time."

Roles and powers of TPR

Beatrice has a presentation on her laptop about TPR.

Status and powers of TPR

- ▶ Statutory body (it has statutory objectives).
- ▶ Powers of determination (tribunal is a civil court).

Objectives

TPR's objectives are to:

- ▶ protect the benefits of members of occupational pension schemes
- ▶ protect the benefits of members of personal pension schemes (where there is a direct payment arrangement)
- ▶ minimise any adverse impact on the sustainable growth of an employer (DB only), in relation to the exercise of its functions under Part 3 only
- ▶ promote, and to improve understanding of, the good administration of work-based pension schemes
- ▶ reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
- ▶ maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008

Relationship with schemes

TPR has a relationship with trustees and employers rather than members.

- ▶ It may take action in extreme cases against trustees, employers and third parties (eg advisers, outsourcers, pension providers, etc) in breach of the law.
- ▶ It can arbitrate between employers and trustees when they cannot reach agreement on funding or contributions.
- ▶ It can take action against employers and individual directors if it finds that they have deliberately tried to evade their obligations in relation to an occupational scheme.
- ▶ From October 2018, it is responsible for the authorisation and supervision of master trust pension schemes.



Decision point: The role of TPR

The trustees discuss TPR with Beatrice. The statements about TPR below are all said during the conversation. Which one of them is true about TPR?

1. The Financial Conduct Authority (FCA) reviews all trustee appointments to schemes to ensure they are fit and proper.
2. TPR has a range of enforcement powers available to it including prohibiting trustees, imposing fines and in some circumstances it can prosecute offences in the criminal court.
3. TPR has the power to make rules in the same way as the FCA.
4. Trustees must complete a scheme return every year by law and in the meantime notify TPR of any breach of the law or notifiable event.

[Answers at the back](#)



Need help with this question? Read the [Tutorial 'The Pensions Regulator'](#)

Final item: Meryl's last meeting

The trustees agree that assessing the DC scheme is a good idea and Tony adds it to the business plan for a later meeting. Meryl moves on to the final item on the agenda. She says: "Well, as you all know, this is my last meeting for a while, as I'll be going on maternity leave in three months. The employer has decided to appoint an independent professional trustee, Charlotte Ryder of Able Trustees Ltd, in my place.

There are several advantages to having an independent professional trustee. One of these is that Charlotte's not a member of our scheme, so she won't have a personal interest in it.

You'll be electing a new chair at the next meeting. But for now we need to elect an interim chair of the board. I'd like to suggest Paul for the role."

Rounding up

The board discusses the role of interim chair for some time but eventually Paul is elected. The meeting comes to an end.

Now that you have completed this scenario we would recommend that you begin to work through the 'Check your scheme' worksheet for this module.

Answers

Decision point: Mr Allan's complaint

The first answer is not correct. It is important for trustees to keep up to date with changes in the law and understand how they apply to their scheme. In this example, although the Finance Act 2004 did increase the earliest retirement age to 55, there are provisions to protect earlier retirement ages for members in schemes where the scheme rules allowed for earlier ages, so the first answer is not correct.

In this scheme members were allowed to retire at age 50 if they were made redundant, so the trustees will need to check Mr Allan's status. However, there are conditions in the Finance Act 2004 for protected status to apply so it is important to refer to both the law and the scheme rules in cases like these.

Decision point: The role of TPR

The second option is the only correct answer. The range of enforcement powers listed are available to TPR, but this is the only true statement here.

The Financial Conduct Authority do not review the appointment of trustees.

TPR doesn't make rules. The Department for Work and Pensions (DWP) writes regulations and TPR has codes of practice, all subject to Parliamentary approval.

Finally, trustees are generally obliged to complete a scheme return at least every three years by law. In practice many schemes do complete a return every year, the duty is to complete the scheme return if one is issued to them by TPR. In the meantime trustees are expected to report breaches of the law that are materially significant and notifiable events to TPR.