

Spotlight on Pensions

PRESENTS

LeGrand View



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Are you a professional trustee?

This may seem like a strange thing to ask. You probably know in your own mind whether you are a professional. To be clear, we're not talking here about whether you perform your role as a pension scheme trustee in a professional manner. We're talking about whether the outside world would regard you as a professional trustee - and in particular whether you satisfy the proposed new definition applied by The Pensions Regulator.

Why is that important? Well, the Regulator is currently on a mission to improve the standards of pension scheme trusteeship, under its 21st Century Trustee project. Although there are plenty of strong trustee boards and effective trustees around, there are apparently also a sufficient number of examples of the opposite to cause concern. The Regulator has been surveying trustees on an anonymous basis for several years and although the results have shown improvement, progress has been slow and patchy (see, for example, qualitative survey results on <http://www.thepensionsregulator.gov.uk/docs/trustee-landscape-qualitative-research-2016.PDF>). The Regulator is concerned that, at the present rate of progress, it will take too long to bring standards up to the level sought - with continuing implications for schemes, their members and sponsors.

The Regulator has made it clear that it supports the trustee board model that includes lay member-nominated board members, as part of a balanced group of experts and others, to bring a broad focus to the running of the scheme. Every individual trustee is expected to attain a minimum standard of pensions technical knowledge, through completion of the Regulator's Trustee Toolkit, supplemented by additional specific training on relevant issues during the year as and when appropriate. This supports the formal Trustee Knowledge and Understanding requirements applied to all pension scheme trustees. In that way, the board as a whole should be empowered to do its job to the required standard.

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The rise of the professional trustee

However, a growing number of boards contain a professional trustee, appointed with the aim of bringing a higher standard of technical knowledge in-house. That professional is often completely independent of the board and sponsor before appointment, but does not have to be. Likewise, although the professional, where appointed, often assumes the position of chair (indeed, some will only accept the appointment if they are also made chair), that is not always the case, as the specific duties of the chair are more focused around the organisational aspects than necessarily the technical ones.

The Regulator has made clear its expectation that professional trustees will demonstrate a greater level of knowledge and meet a higher standard of care than other trustees. This is reflected already through tougher enforcement action on professionals, such as higher penalties, where they fail to comply with pensions legislation through for example lack of competence or failure to devote sufficient time to their role. Going forward, it is proposed that penalties for trustees will become more formalised by the adoption of a new system of penalty bands, into which professional trustees will be judged against higher standards. It is possible that further regulatory requirements will be introduced specifically for professional trustees.

How to spot a professional

The first step is to produce a satisfactory working definition of a "professional" trustee. This has been the subject of much head-scratching, involving both the Regulator and the pensions industry. One approach might be to distinguish professionals on the basis that they are paid more than just a reimbursement of their expenses. However, it is becoming increasingly common for all trustees to be paid, so that alone would not be an effective distinction. It was also thought that the professional would be someone who held themselves out in some way as being a professional. Although this was a widely-accepted criterion, it turned out to be a difficult thing to define.

Proposed new definition

So now the Regulator has come up with a proposed definition upon which it has consulted the industry. This can be found in the consultation paper "Draft monetary penalties policy and revised professional trustee description" published on its website.

The new definition builds on the old. It will include any person, whether or not incorporated, who:

- Acts as a trustee of the scheme in the course of the business of being a trustee, and
- Is an expert, or holds themselves out as an expert, in trustee matters generally.

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To be considered a professional, a trustee also has to be remunerated in their position. However, a remunerated trustee is less likely to be deemed to fall under the first arm (and thereby not be deemed to be a professional) if any of the following apply:

- They are or have been:
 - A member of the scheme or a related scheme (broadly a scheme with a sponsoring employer in the same corporate group)
 - Employed by a participating employer in the scheme (or an employer in the same corporate group)
- They do not act, or offer to act, as a trustee in relation to any unrelated scheme.

The Regulator has also drawn a distinction between "professional" and "independent" trustees. It notes that the two terms are often used interchangeably or together, but that they are in fact two different concepts and should not be confused.

Where to from here?

Following the closure of the consultation period, the Regulator will take time to consider the responses and is expected to publish its new policy later in the year. Given the circumstances and the way in which the case for the new definition was presented, it seems likely that the proposal will be adopted.

Trustees who might fall just to one side or the other of the dividing line will have to decide whether they want to be classified as a professional, and so be judged against higher standards and potentially subject to greater regulation and higher penalties if they get things wrong. Similarly, those with the responsibility of appointing trustees will have to decide whether they want a professional trustee on the board, with the attendant implications for both standards and fees.

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