

Spotlight on Pensions

PRESENTS

Le Grand View



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The Fight Against Money Laundering: Upping the Game for Trustees

For the past decade the UK has operated a strict regime in respect of financial transactions, aimed at preventing the world's financial systems being used by criminals and terrorists to turn money obtained illegally, or intended to be used for illegal purposes, into apparently legitimate funds protected within the system.

Those wishing to "launder" funds in this way employ a number of processes. A common approach involves using illegally-obtained monies to purchase financial products. Once purchased, those monies are then "legitimised" by being within the financial system, where they can sit accruing further value until their owners are ready to utilise them.

A key weapon in the fight against such illegal transactions is therefore the establishment of a clear provenance for all monies held within the legitimate financial system. Clearly this requires accurate records being established and maintained - in respect of the monies themselves, those who "own" them and third parties who look after the monies.

As repositories of very large pools of money, pension funds make attractive targets for this type of activity. That potential is mitigated in the case of trust-based workplace schemes through the need for an employment link for those placing monies into a scheme. This is reflected to an extent in the way in which the new regulations are being interpreted in practice by HMRC, as pension schemes are regarded as low-risk entities for this purpose.

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Nevertheless, using a scheme to launder illegal funds is possible and recognition of this fact has prompted a greater focus on workplace pension schemes under new tighter regulations introduced from **26 June 2017** - The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. These have been introduced to comply with an EU Directive but now, as part of UK domestic legislation, are unaffected by whatever outcome emerges from the Brexit process and must be complied with.

New requirements on schemes

Currently some details of what will be required of pension scheme trustees by HMRC and the FCA (who are effectively policing the system for pension funds) require clarification, but the main duties are clear. Trustees need to address these now.

Duty 1: Record keeping. Trustees must maintain, in writing, accurate and up-to-date records of all the beneficial owners of the trust, and of any potential beneficiaries. This will include sponsoring employers (current and, if different, those that established the trust), the trustees themselves, financial and legal advisers to the scheme and all members and other beneficiaries.

For beneficiaries the records will require details such as NI and/or tax reference numbers, date of birth and their relationship with the scheme. Much of this information will be held already. There will be some beneficiaries however whose details will be unknown, and the practical solution to compliance will be to retain records that describe the classes into which those beneficiaries fall.

Duty 2: Disclosure. Where the trustees transact with any third parties who themselves are subject to the money laundering regulations, they must if requested provide this information to the third party. However, in this case the information provided can be limited to generic descriptions of the classes of beneficiaries.

Disclosure must also be made to HMRC, the FCA or law enforcement agencies if requested. In this case the information required is likely to be more detailed.

Duty 3: Registration. If the scheme is liable in any tax year to pay income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax or land and buildings transaction tax, then the trustees must register with HMRC's beneficial owner register. If applicable, the information must be provided initially by 31 January 2018. In subsequent years where the registration requirement is triggered, it must be provided by the 31 January following the end of the tax year to which it relates. Trustees are then required to update the information with any subsequent changes, or confirm that there have been none.

The information to be provided is theoretically the full detailed information from the scheme's records described under Duty 1 above. However, recognising the practical issues involved with supplying such large quantities of information as a matter of course, HMRC is planning to issue guidance on their requirements in practice.

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Specific requirements for Professional Trustees

Paid professional trustees are already subject to existing money laundering requirements. Under the new regime they will in addition have other specific duties.

Duty 1: Record keeping. Beneficial ownership records must be retained for at least 5 years after the scheme is wound up.

Duty 2: Due diligence. The identity of anyone with whom trustees contract must be verified by them. In this case only simplified verification will be necessary, reflecting pension schemes' "low risk" status.

Duty 3: Risk Assessment. Professional trustees must continue to carry out risk assessments on their business to identify possible vulnerabilities to money laundering and terrorist financing and employ appropriate processes to address them.

Trustee actions required

In the light of these new requirements, it is clear that all trustees need to review their schemes, records and practices. In many cases existing records should already satisfy the requirements, since The Pensions Regulator has imposed data requirements on schemes for many years. However, if a scheme is not fully compliant already, the new money laundering requirements provide a further impetus for getting its house in order.

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In complying with this new regime, trustees need to be ever mindful that the data of which they are custodians is extremely valuable, both to its owners and to criminals and needs to be handled with care. The requirements of data protection legislation and the growing risks of cyber attacks mean that trustees need to ensure that where they are sharing information with other parties, that they are only doing so to the extent required to discharge their legal obligations, and that any data leaving their custody only does so in a secure manner.