The Trustee toolkit downloadable

The trustee's role

Tutorial one: Becoming a trustee

By the end of this tutorial you will better understand:

- the knowledge and understanding you'll need to acquire
- the importance of regularly reviewing your levels of knowledge and understanding
- the need for a good range of skills and expertise at both board and individual level

This tutorial is part of Scenario one.

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

The trustee's role

The trustee's role carries significant responsibilities. The issues that you will have to manage as a trustee will be diverse, may be sensitive and can be complex.

Amongst other things, you must ensure that scheme assets are invested appropriately and that your scheme is well governed and administered so that beneficiaries receive the right benefits at the right time. You must also ensure that members receive communications as required by law. These help members understand the scheme and can enable them to make informed decisions.

Trust deed and rules

Trust-based pension schemes are invariably set up by a trust deed and governed by scheme rules. Trustees are the legal owners of the assets but they must use those assets for the benefit of the beneficiaries. Trustees must ensure that the scheme is operated in accordance with:

- trust law
- the provisions of the scheme's trust deed and rules
- pensions and other relevant legislation (such as the Data Protection Act)

Duties, powers and responsibilities

As a trustee you have:

- 'duties' – such as acting in the best interests of the scheme beneficiaries
- 'powers' – as set out in the trust deed and rules and may include powers such as appointing a new trustee (subject to legislation that may override some provisions of your scheme rules)
- 'responsibilities' – such as becoming familiar with the trust deed, rules and other scheme documents

You can find out much more about these in the Tutorial: 'Duties and powers' later in this module.

Fiduciary duties

Many of your duties as a trustee are based in trust law. These are known as your 'fiduciary' duties. A trustee has to exercise reasonable care and to show the prudence and diligence that an ordinary person in business would exercise in the management of his or her own affairs.

Taking office

It's your first day and you are being shown the ropes.

Conflicts of interest

You would be asked to complete a form in which you declare any conflicts of interest that you are aware of. It is important to declare potential conflicts of interest immediately. For example, if your spouse works for a large organisation which is seeking to provide services to the trustees then it is important to ensure that this is declared to avoid allegations that a trustee took a decision which was not in the members' best interest. Note that new conflicts of interest can occur at any time.

Signature mandate

You would be asked to provide a specimen of your signature to go on the signature mandate form. The signature mandate form gives everyone whose name is on it the power to sign cheques and documents on behalf of the scheme. Some schemes give all their trustees signing power; others only give it to some of their trustees. So it's quite likely that you'll have to provide a specimen of your signature.

Trust document

You would be shown where the trust documents are (and expected to remember how to access them). You do need to know how to access all the trust documents, and so you'll probably be given your own copy of the trust deed and rules. You'll need to become familiar with the trust deed, but this doesn't mean you'll be expected to read it all in one sitting.

Other documents

You would read through the scheme booklet, statement of investment principles and other agreements or documents recording policy adopted by the trustees relating to the administration of the scheme in general. Other trust documents that would be useful to look at once you've become a trustee are adviser and service provider agreements and examples of member communications.

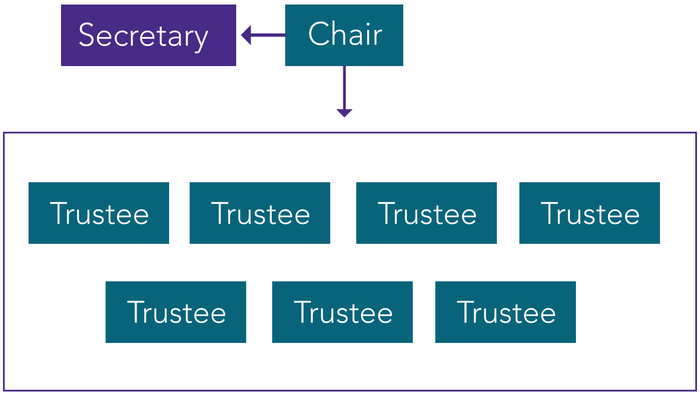
If your scheme is a defined benefit (DB) or a scheme that offers mixed benefits, documents relating to the scheme's funding status and principles such as the last actuarial valuation and report, the recovery plan, schedule of contributions and statement of funding principles should also be read. If your scheme is a defined contribution (DC) scheme you should become familiar with the payment schedule.

In time, you will need to identify documents that set out policies and practices you have the discretion to review and change. Part of your role will be to ensure any such policies and practices remain effective.

The trustee board

There are different types of trustee and together, they make up the trustee board. The board, as a whole, is responsible for the governance of the pension scheme and all of the trustees are responsible for the board's decisions.

> You can learn more about the trustee types in the Module: 'Introducing pension schemes' in the Tutorial: 'What is a trustee?'.



The board's role is different from a management role. It's the board's legal duty to make sure that the right processes, systems, people and procedures are in place and followed to administer the scheme, manage the scheme's investments, and control the risks that can arise.

Although the board may delegate some of the work to others, it remains responsible for supervising and scrutinising such delegations. The only function where both the work and the responsibility for decisions can be fully delegated is if the trustee board appropriately delegates the investment management function of the scheme.

In some cases, the law dictates how a trustee board is made up and how trustees are appointed, for example for master trusts.

> You can learn more about appointing new trustees, the role of the chair and board composition at www.tpr.gov.uk/trustee-board.
>
> Although this guide is linked to the DC code, the guidance set out is relevant for all scheme types.

The chair

Although it is common for trustee boards to appoint a chair of trustees, subject to some limited exceptions, all schemes which offer money purchase benefits are required by law to have one.

The role of the chair is very important and The Pensions Regulator (TPR) expects schemes to have a documented process in place for appointing a chair that takes into account the leadership qualities of candidates and their ability to drive good practice within the scheme.

Exemptions

Examples of schemes that are specifically exempt from the requirement to have a chair of trustees include:

- where the only money purchase benefits in the scheme are attributable to additional voluntary contributions (AVCs)
- the scheme has fewer than 12 members where all the members are trustees and make decisions by unanimous agreement, or the scheme has a trustee that is independent (as defined in section 23 of the Pensions Act 1995) and is on TPR's register of independent trustees
- the scheme has fewer than 12 members where all members are directors of a company which is the sole trustee of the scheme and decisions are made by unanimous agreement, or one of the directors is independent (as defined in section 23 of the Pensions Act 1995) and is on TPR's register of independent trustees

Additional responsibilities

The chair will be responsible for the conduct of trustee meetings and will take a lead in setting the agendas and helping to guide the trustees when necessary. If your scheme is required by law to have a chair, the chair has the additional responsibility of having to sign an annual chair's statement on behalf of the trustees. However, all trustees are jointly responsible for ensuring that the legal duties they must report on in the chair's statement have been met and well explained.

> You can learn more about how to complete the chair's statement at www.tpr.gov.uk/communicate.

Amongst other things, the chair's statement confirms the trustees' view of how the scheme is meeting statutory governance standards and restrictions on charges.

You may wish to speak to the scheme's legal adviser.

The secretary to the trustees

The secretary to the trustees fulfils an important role and should be independent from the trustee board. The secretary will normally arrange meetings, organise attendees, send out board papers to the trustees and take minutes. They often support the chair with a variety of tasks, including setting the meeting agenda.

What else might the secretary do?

The secretary may take on a number of other activities for the trustee board such as:

- developing and operating a strategy to achieve the objectives set out in the scheme's business plan
- documenting and reviewing scheme policies and processes
- helping to manage day-to-day relations with advisers, service providers and the employer
- providing constructive feedback on overall scheme governance and management
- carrying out board effectiveness reviews, including an assessment of the chair and any sub-committees
- succession planning
- corresponding with members on behalf of the trustees (eg when dealing with complaints)
- maintaining the register of conflicts of interest
- keeping the training log
- submitting the scheme return to TPR annually

A potential issue to be aware of

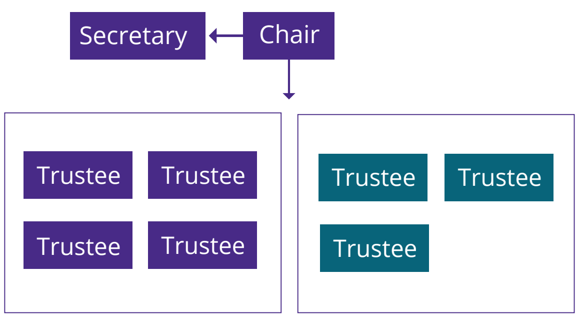
If the secretary to the trustees works for the sponsoring employer then they may find that they learn information that is confidential to the trustees, the employer, or both. This can give rise to difficulties, for example the employer might ask to be told about matters discussed by the trustees. Trustees need to be aware of this possibility.

What can the trustees do in this situation?

If they think that such a situation could occur they should take steps to avoid the problem, for example by asking the secretary to leave the meeting during sensitive discussions, and recording those proceedings in a separate set of minutes which are not shared with the secretary.

Sub-committees

Many larger trust-based schemes set up sub-committees. This ensures that specific areas of the trustees' responsibility (eg investment, governance and administration) receive more detailed attention and scrutiny from a few trustees.



It can also help schemes to use and effectively apply the specific knowledge and understanding of particular board members.

However, the sub-committees will still report back regularly to the main trustee board and the trustee board remains responsible for the actions of any sub-committees.

Schemes should ensure that sub-committees have terms of reference agreed, documented and regularly reviewed.

Confidentiality

In the course of fulfilling their duties trustees will become party to confidential information which should not generally be disclosed outside the trustee board without the consent of the person concerned. This may be information about individual members of the pension scheme, or about the employer, or other information shared with the trustees in the course of their work for the scheme.

Member information

You will have access to personal and private information about the members of the scheme, and you will have to keep this confidential. (For example, applications for ill-health retirement; information on expression of wish forms.)

You will need to be particularly careful if the members of the fund are also your colleagues or associates. You should be aware of the requirements of the Data Protection Act and related regulation and guidance regarding the collection, processing and destruction of personal data (including sensitive personal data).

Company information

In your role as a trustee, the employer may give you access to sensitive information. (For example, if they feel they cannot pay the level of contributions that the trustees would like.)

You should take care to ensure that you do not, actively or inadvertently, release this information to others, apart from to those who are advising the trustees and are bound by obligations of confidentiality to use and protect the information appropriately.

In particular, the release of price sensitive information into the public domain may help the employer's competitors or influence the share price. Some employers will insist that trustees sign a confidentiality agreement before sharing sensitive information with them. You may wish to speak to the scheme's legal adviser about these issues.

Building an effective relationship with the scheme's employer or employers

Most employers will work effectively with the trustees to ensure that a good pension scheme is provided for the members and trustees should encourage them to take an active interest in running and supporting the scheme.

It's helpful to bear in mind that employers can provide valuable resources to the scheme such as secretariat and human resources (HR). Trustees should also support employers to understand and carry out their duties in relation to the scheme.

However, the interests of the employer and the beneficiaries may be different (eg when considering how quickly to make up the shortfall in a DB scheme or when considering the annual budget for the administration of a DC scheme).

All trustees need to ensure that they are able to distinguish between the needs of the employer and the interests of scheme beneficiaries when making decisions as a trustee, and to be conscious of the fact that their primary duties are to protect the interests of scheme beneficiaries.

Trustee training

Trustees need the degree of knowledge and understanding that is appropriate for the purposes of enabling them to properly carry out their role, which includes meeting the strategic objectives set out in the scheme's business plan. Take a look at the examples below.

Change of scheme type

Penny is an experienced trustee of a DB scheme. However, the way in which DB and DC schemes work, and their investment needs, can be different so she will need to gain additional knowledge and understanding if she becomes a trustee of a DC scheme, or a scheme that has both DC and DB elements and offers mixed benefits. Penny might want to take a qualification for DC schemes or study the DC modules in the Trustee toolkit.

Understanding and challenging investment advice

The trustees of the Willow Fences DB scheme are meeting with their investment advisers to discuss the performance of their current investment strategy. They need sufficient knowledge and understanding of investments to be able to:

- instruct the investment managers in accordance with the trustees' investment strategy for the scheme
- understand the performance of the investment funds which underlie the investment strategy
- understand how the advice impacts on any decisions that they are making
- scrutinise and, where appropriate, challenge the advice and actions of investment managers

The trustees review the Trustee toolkit investment modules and share information from previous investment seminars they attended.

New legislation

New legislation is coming which may affect how scheme benefits are calculated. The trustees need to consider how to implement the changes in a few months' time.

The chair arranges for the scheme's lawyer to explain the legislation at their next board meeting. The trustees are then able to discuss how to implement the changes.

New trustees have joined since the last valuation

A valuation for a DB scheme is due in a few months. Two of the trustees were appointed to the trustee board after the last valuation was completed, so have never participated in the valuation process.

The chairperson asks all the trustees to refresh their knowledge of the valuation process by means of the Trustee toolkit. Even for the trustees who were on the trustee board for the last valuation it is nearly three years since they last looked at that part of the toolkit, and refreshing their knowledge will benefit the whole board.

Annual training needs analysis

Every year, the trustees are asked to rate their knowledge in specific areas by filling in a learning needs analysis tool available on the Trustee toolkit website. This year, the results show that many of the trustees feel that their knowledge about alternative investments is inadequate.

One of the scheme's fund managers is running an 'open seminar' on alternative investments, which seems suitable. The chair arranges for the trustees to attend together and then checks afterwards whether the trustees think that this has 'filled the gap'.

Trustee knowledge and understanding

The law requires trustees to have the relevant trustee knowledge and understanding (TKU) to perform their role within six months of their appointment (unless they are a professional trustee or a trustee appointed for their expertise, in which case they are required to have that knowledge and understanding immediately).

New trustees

Even a new trustee must be equipped to make the decisions with which he or she might be faced. New trustees should start immediately to acquire the appropriate knowledge and understanding and it can be helpful to put in place a structured induction process. This could include appointing established trustees as mentors or, where a scheme operates sub-committees, it can be useful for new trustees to attend as an observer to help build up their knowledge and understanding of specific issues.

New trustees may find they need to prioritise their learning according to the agenda of the early trustee meetings which they attend. New trustees should also consider preappointment training. This will help give them the necessary skills to undertake their role effectively straight away.

Trustees taking on specialist roles

If a trustee is taking on a specialist role (eg a chair of the investment committee) then they will need to have additional specialist knowledge.

Sometimes trustees take on additional responsibilities (eg become members of a committee) which do not require them to have specialist knowledge initially. However, they should make sure that they learn all they can about that area as soon as they can. In time, they may become very knowledgeable.

Professional trustees need to be able to demonstrate that they are adding value to justify the cost of their appointment (eg have higher levels of knowledge).

Professional trustees should have relevant experience and, ideally, an appropriate qualification from a recognised organisation such as the Pensions Management Institute before they are appointed.

> Read the 'Trustee knowledge and understanding' TKU code of practice at www.tpr.gov.uk/code7.
>
> The 'Governance and administration of occupational trust-based schemes providing money purchase benefits' code of practice is at www.tpr.gov.uk/code13.
>
> You can also learn more about scheme management at www.tpr.gov.uk/skills.

Considering the whole trustee board

It isn't necessary for every trustee on the board to have in depth knowledge about everything that may be needed to govern the scheme.

It's also important to remember the skills that different individuals bring to the board can significantly complement technical knowledge. For example, the ability to absorb and analyse large quantities of information, strong communication skills and experience of problem solving.

Trustee boards can provide better governance if they ensure that the trustees cover the key areas of knowledge in depth between them. For example, it is important to ensure that one or more members are very knowledgeable about investments or audit requirements.

It is important to remember though that all trustees are responsible for the decisions made and all trustees must have appropriate knowledge and understanding to make the decision, not just the individuals with the in depth knowledge of a particular issue.

Succession planning

To achieve this coverage of the key areas consistently requires the board to carry out succession planning to identify people who can be trained up so that they're ready to:

- take over responsibility for a particular area of expertise when an existing trustee resigns
- take a lead on an issue if the key individual is not available

Planning should take account of the strengths and weaknesses of the board and look to address any gaps in knowledge, skills and relevant experience. This might include developing and maintaining a skills matrix showing trustees' areas of specialism and interest.

It can also be helpful for existing trustees to interact with trustee candidates, eg at a board meeting or through a member panel, allowing candidates to improve their understanding of the role and give the scheme a chance to review the suitability of individuals ahead of an official appointment process.

In some schemes trustees may remain in the role for many years or even decades. However, there are other schemes where member-nominated trustees (MNTs) only serve one term or employer-nominated trustees (ENTs) change regularly. If there's a high turnover of trustees then this may affect decisions about appointments and, in some cases, expert individuals are co-opted onto sub-committees to assist trustees.

Ongoing requirement for TKU

The legal requirement for sufficient trustee knowledge and understanding is an ongoing requirement as this ensures that trustees can continue to undertake the role effectively and achieve the best outcome for members.

Trustee knowledge can become out of date and this may result in the trustees breaching legislative requirements. Trustees are required to regularly review their training needs, identify gaps and to keep their knowledge and skills up to date. Trustees should use the information from these reviews to develop an appropriate training programme and should ensure that all training that takes place is recorded.

If your scheme is required by law to have a chair and sign a chair's statement on behalf of the trustees, this must describe among other things:

- how the TKU requirements have been met during the year
- how the trustees combined knowledge together with advice available to them enables the trustees to properly exercise their functions as trustees of the scheme

Master trusts

As part of the fit and proper criteria for authorisation, trustees of master trusts are expected to obtain a foundation level of knowledge and understanding relevant to their master trust before they are appointed.

You can find our more on this within our Code of Practice 15 at https://www.tpr.gov.uk/doc/code-15-authorisation-and-supervision-of-master-trusts.pdf

Useful links

TKU code of practice at https://www.tpr.gov.uk/codes/code-trustee-knowledge.aspx

Code 13 at https://www.tpr.gov.uk/codes/code-governance-administration-occupational-dc-trust-based-schemes.aspx

Guide to scheme management skills at https://www.tpr.gov.uk/trustees/scheme-management-skills.aspx

What does the law say I need to do?

Overall, trustees must have appropriate knowledge and understanding of the following areas.

The law relating to trusts

You can learn more about this later in this module in the Tutorial: 'Duties and powers'.

The law relating to pensions

You can learn more about this in the Module: 'Pensions law'.

The principles relating to the investment of the assets of the pension scheme

DB and DC trustees can learn more about this in the Module: 'An introduction to investment'. DC trustees can learn more about this in the Module: 'Investment in a DC scheme'. DB trustees can learn more about this in the Module: 'Investment in a DB scheme'.

The principles relating to the funding of occupational pension schemes (DB only)

DB trustees can learn more about this in the Module: 'Funding your DB scheme'.

Knowing your scheme-related documents

The law also says that trustees must be conversant with their own scheme-related documents.

For this purpose, being conversant with documents is taken to mean having a working knowledge of those documents such that the trustees are able to use them effectively when they are required to do so in the course of carrying out their duties as a trustee of a scheme. For example, trustees should know where to look up the definition of 'pensionable salary' in the rules.

Appropriate degree of knowledge and understanding on climate related risks and opportunities

Trustees of schemes that meet the criteria set out in the DWP's statutory guidance must have an appropriate degree of knowledge and understanding of the principles relating to the identification, assessment and management of climate change risks and opportunities.

Trustees can learn more about this from:

- the DWP's statutory guidance on the Governance and reporting of climate change risk: guidance for trustees of occupational schemes, and
- the Pensions regulator's guidance on the Governance and reporting of climate-related risks and opportunities.

Trustees who are not subject to the requirements might wish to follow this guidance to improve the governance and resilience of their schemes in relation to climate change. Trustees of schemes that are not currently in scope could consider applying those aspects of the guidance they feel are likely to have the most impace on their scheme in the first instance.

Scheme documents

Take a look at some of the documents trustees must be 'conversant with'.

The trust deed and rules of their own scheme

To understand your scheme properly and to deal with the issues that arise, you'll need to understand the rules that govern it. In particular, you will need to understand the benefits offered under your scheme.

If you are a trustee of a DC scheme, you should understand what constitutes a 'money purchase scheme' and how this relates to your scheme. If you are unsure, you should ask for professional advice.

If you are a trustee of a scheme that has both DB and DC elements and offers mixed benefits, you will need to understand the difference between the treatment of DC benefits and DB benefits, an how DC assets are held compared with DB assets.

It is important that you understand the extent of your powers under your scheme rules. This is known as the 'balance of power' under the rules.

The scheme's statement of investment principles

A sound knowledge of the investment powers and duties they have under scheme rules and legislation is essential for all trustees.

In DB schemes, this will help to ensure the scheme is appropriately funded and able to pay benefits as they become due.

In DC schemes, where the members bear the investment risk, the funds in which members invest will be a major factor in determining the size of their overall pension pot. You will need to ensure that the investment options available to members and the scheme's investments are appropriate and meet the needs of the scheme's membership profile.

It is therefore crucial that you understand how to prepare, maintain and revise the scheme's statements of investment principles and, in the case of a DB scheme, the statement of funding principles. We look at these documents in detail in later modules.

The most recently prepared statement of funding principles (DB only)

You can learn more in the Module: 'Funding your DB scheme'.

Any other document relating to the administration of the scheme generally

Other documents relating to the administration of the scheme include:

- member booklets and other key member communications
- trustee minutes
- copies of audited accounts
- in the case of DB or schemes that have both DB and DC elements and offer mixed benefits, documents concerning the funding status of the scheme (for example actuarial reports and valuations)

You can learn more about these in the Module: 'Introducing pension schemes' in the Tutorial: 'Important documents'.

Knowing your scheme's history

You are likely to find it useful to understand how the scheme has operated in the past (eg where funds have been invested, when scheme mergers that have taken place). Long-standing trustees or new trustees with many years as members of a scheme often bring useful additional knowledge of the scheme's history to the trustee board.

Many schemes with complex histories find it useful to create a scheme history document so that detailed knowledge relating to historic events is not lost on a change of trustees.