

The Trustee toolkit downloadable

The trustee's role

Scenario two

In this scenario you will meet Tony again to sign some paperwork now that you are a trustee. You will also attend some induction training with Beatrice the scheme lawyer.

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 three tutorials:

- ▶ Conflicts of interest
- ▶ Duties and powers
- ▶ Trustee liabilities and protections

Glossary

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

Meeting Tony

You arrive for your induction training before the first trustee meeting. Tony asks you to come in to the office before the training starts to sign some paperwork.

Tony says: “Congratulations on becoming a trustee. Thought we’d just spend a few minutes to sort out some paperwork before the first meeting. This is where we keep all the documents. I’ve emailed you a copy of the trust documents and the scheme booklet which you’ll find useful.



First you’ll need to sign this deed of appointment which officially makes you a trustee. Also could you sign this mandate? This gives you signing powers, like the other trustees, so we can still get a cheque signed if people are away. It also removes Adam’s name as trustee.

I’ve also emailed you a copy of the conflicts of interest policy. You need to read it carefully as you’ll need to declare any conflicts you are aware of.”



Decision point: Are you conflicted?

After reading through the conflicts of interest policy you are a bit confused. Which three of these statements about conflicts of interest are true?

1. I’m going to be conflicted all the time as my friends are also beneficiaries of the scheme. Perhaps I shouldn’t be a trustee
2. I took part in a golf day sponsored by a company who provide our scheme investments. I should declare this now
3. I will need to declare any new conflicts of interest at the start of every trustee meeting
4. I have some shares in various companies which the scheme also invests in. I should declare these

Answers at the back



Need help with this question? Read the Tutorial ‘Conflicts of interest’

Training with Beatrice

You've declared your conflicts of interest for the register and now meet Beatrice, the scheme lawyer. She is here for some other meetings but has agreed to spend a couple of hours with you to talk about trustee duties, powers, liabilities and protections.

Beatrice says: "Trustees have to perform a number of duties and exercise some powers. Duties are things you must do. They arise from trust law, other legislation or are refined in the trust deed and rules. Powers also come from law or the scheme rules and are given to trustees so they can do their job. These vary from scheme to scheme and may be exercised, so are different from duties.

You can seek professional advice when exercising your powers, but ultimately you, as trustee, make the final decision so it's important to ask good questions, take the relevant law in to account, along with all other relevant factors, to arrive at a reasonable decision. You'll need to record decisions in the minutes of course."



Decision point: Duties or powers?

Take a look at this list from Beatrice and think about whether these are fiduciary duties, statutory duties or powers.

1. Act in the best interests of all scheme beneficiaries and not make a personal profit out of being a trustee at the expense of the scheme.
2. Appoint scheme auditor, actuary, investment manager or legal adviser.
3. Delegate certain activities to advisers.
4. Distribute lump sum benefits upon the death of a member.
5. Report breaches of the law to The Pensions Regulator.

[Answers at the back](#)



Need help with this question? [Read the Tutorial 'Duties and powers'](#)

The training continues

There is a lot to get to grips with and this does sound like a big responsibility. You're worried about getting it wrong, especially as you're so new to the trustee role. Beatrice says: "You might remember from the list I gave you earlier, that it said trustees have a statutory duty to report breaches of the law to The Pensions Regulator (TPR). There is a traffic light analysis you can apply to breaches to see if they are materially significant and need reporting to TPR.

As a trustee you could be personally liable to your scheme's beneficiaries for any loss you cause to the scheme as a result of a breach of trust. This means that you may need to meet the cost out of your own pocket. TPR can fine the trustees and in some cases there are custodial sentences applied as well as fines.

Don't get too alarmed. There are protections in place and it is relatively unlikely that you'll be directly responsible for a breach of trust unless you have been dishonest. The scheme has an indemnity in place plus insurance policies and some schemes have exoneration and exemption clauses that can protect trustees."



Decision point: Breaches, liabilities and protections

At the end of the training you meet Tony again to talk about the training. Which two of these statements are correct about breaches, liabilities and protections?

1. All breaches of the law must be reported to TPR. The traffic light analysis tells you how they will be dealt with. Red means the trustees are likely to be fined.
2. If TPR fines me it'll be ok. We have an exclusion for personal liability in the scheme rules so I won't have to pay.
3. TPR can fine individual trustees up to £5,000 and corporate trustees/sponsoring employers up to £50,000 in appropriate cases.
4. Unless I am reckless, dishonest or act in bad faith I may be covered by indemnities or exoneration/exemption clauses in the scheme rules.

Answers at the back



Need help with this question? Read the Tutorial 'Trustee liabilities and protections'

Rounding up

You know more about the duties, powers and liabilities of being a trustee and Beatrice has reassured you about the available protections. In the next Module: 'Running a scheme', you'll attend your first trustee meeting and learn the practicalities of the job.

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: Are you conflicted?

The second, third and fourth answers are true.

Most, if not all, the trustees on the board are also members of the scheme so you are not alone in having friends who are members. Trustees have a fiduciary duty to act in the best interest of all beneficiaries so you'll need to be aware of this when making decisions and declare any conflicts of interest but it shouldn't stop you from being a trustee. So statement one is not correct.

All the other statements are correct. Any significant personal investments should be declared along with any hospitality you've been offered by providers of services to the scheme, even if you didn't accept it.

Trustees should also declare any new conflicts at the start of trustee meetings to keep the conflicts register up to date.

Decision point: Duties or powers?

Acting in the best interests of all scheme beneficiaries and not making a personal profit are both fiduciary duties under trust law along with acting responsibly and prudently amongst others. Specific tasks such as appointing various advisers and service providers and reporting breaches of the law are statutory duties from the Pension Acts. These are things the trustees must do.

Delegating activities to advisers or service providers and how lump sum death benefits are distributed are powers that trustees can exercise if stated in the trust deed and rules.

Decision point: Breaches, liabilities and protections

The third and fourth answers are correct.

The traffic light analysis helps trustees understand which breaches should be reported to TPR, not how TPR will react to breaches. Green breaches don't need to be and red breaches must be reported. Amber breaches are not as clear cut and trustees will need to decide whether to report these.

TPR can fine individual trustees, corporate trustees and even the sponsoring employer and those figures are correct. However, even if your scheme rules exclude you from personal liability, this does not cover fines imposed by TPR and you will have to pay. Finally, indemnities and exoneration/exemption clauses will not cover you for dishonesty, recklessness or acting in bad faith.