



PrivateEdge

Guide to Pensions Trustee Liability: Duties of Trustees and Practical Considerations

There are many obligations with which pension trustees must comply. All pension trustees need to be aware of their duties to avoid the possibility of being held liable should the scheme suffer a loss. This guidance note outlines some of the key duties that trustees should be aware of and some practical tips to help avoid breaching those duties.

Core Duties

Trustees play a key role in pension schemes and are responsible for making sure they are run well and the benefits are secure for the beneficiaries.

A breach of duty can result in the trustee being ordered to make an equitable contribution to the trust personally. Trustees have 'joint and several liability', so one trustee could be held liable for a breach of trust committed by another trustee. The amount ordered will represent the loss caused to the trust by the breach and could therefore see trustees facing significant liability. With this in mind, trustees should obtain legal advice if in any doubt about their duties.

Listed below are the six core duties which all pension trustees must comply with. This is by no means an extensive list and trustees should make sure they fully understand all of their obligations before becoming a trustee.

1 Duty to Act with Prudence

Trustees have a duty to act with prudence which is derived from common law (i.e. cases determined by the courts) and statute (i.e. legislation).

The common law standard is to *take such care as an ordinary prudent man of business would take in managing his own affairs*. Higher standards of prudence may apply for trustees acting in a professional capacity or trustees who are paid for their services.

The statutory duty requires trustees to exercise such *care and skill as is reasonable in the circumstances with regard to the trustee's knowledge or experience*.

Trustees are entitled to a period of six months from the date of their appointment to acquire the requisite knowledge and understanding to comply with their duty to act with prudence.

2 Duty to Act in accordance with Scheme Documentation

Pension trustees must always comply with the scheme's documentation, particularly the trust deed and rules. It is therefore imperative that the trustees understand these documents.

3 Duty to Familiarise Oneself with the Terms of the Trust

The duty to become familiar with the terms of the trust includes a duty to become familiar with any statutory or regulatory developments which affect the terms of the scheme documentation. There is therefore an ongoing obligation to maintain a sufficient level of knowledge throughout an appointment as a trustee. This can be an onerous obligation for pension trustees, particularly as pension's legislation can be very complex.



4 Duty to take advice on Technical and Uncertain matters

A pension trustee is not expected to have all the specialist knowledge that may be needed to manage a pension fund. However, they are expected to obtain and follow professional advice where they do not have the requisite specialist knowledge.

Trustees of certain occupational pension schemes are required by statute to consult various professional advisers, including:

- A scheme auditor
- A scheme actuary
- A fund manager

Trustees should make sure they are aware whether their scheme requires such professional advice to be obtained.

5 Duty to Act in the best interests of the Scheme Beneficiaries

Trustees should take into account the considerations below when assessing what is likely to be in the best interests of the beneficiaries:

- When the purpose of the trust is to provide financial benefit, the best interests of the beneficiaries are normally their best financial interests.
- When trustees make investments, they must weigh up the risks of the investment with the possible yield, and make investments honestly and fairly.
- Social or political pressures should not have an impact on trustees' decisions to the detriment of the scheme beneficiaries.

6 Duty to invest

Pension trustees enjoy the same powers of investment as though they were absolutely entitled to the scheme assets, subject to any specific rules within the scheme which may restrict these.

Practical Considerations to Avoid Breaching Trustees' Duties

1 Ongoing review

It is very important for trustees to continually review the investment aims and objectives of the beneficiaries throughout the lifetime of a scheme. These may change over time, particularly as schemes are winding up. Failure to do this could result in a breach of trustees' duty of care.

2 Keeping written records

Whilst not a statutory duty, trustees should record reasons for their decisions relating to the scheme. The Pensions Ombudsman had held that it can amount to maladministration not to do so. Written records will assist trustees should they ever need to demonstrate why they have taken the action that they have, and the very act of making a record should help trustees to consider whether they are meeting their obligations when making decisions.



3 Establish internal controls

Trustees of occupational pension schemes must have internal controls to ensure the scheme is managed and administered in accordance with the scheme rules and legislation. These include having adequate procedures in place for administration, monitoring administration, and ensuring the safe custody and security of the scheme's assets. Having internal controls in place will help trustees avoid inadvertently breaching their duties.

4 Investing in a scheme employer

This can be problematic and create conflicts of interest leading to a breach of duty by the trustees. Trustees should therefore be very careful before investing in a company connected to the employer, and ensure that any investment is reasonable and prudent in line with the usual standards of care.



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