

Pensions Simplification

Role of Trustee

June 2007

These notes are intended as an overview of the role of a trustee of a stand-alone group life assurance scheme which is Registered with Her Majesty's Revenue and Customs (HMRC).

This is not a definitive document and you should obtain independent legal advice to ensure this guidance meets your particular situation. Unum does not accept any responsibility for any loss which may arise from reliance on the information enclosed.

Registration with the HMRC means the scheme has favourable tax treatment.

There are many sources for information on trustees. For example, the Pensions Regulator provides guidance for trustees on their website: www.thepensionsregulator.gov.uk/trustees/

Trust Deed & Rules

Trustees of a stand-alone group life assurance scheme manage death benefits for a group of employees. The scheme has a Trust Deed & Rules, which details how the scheme is run, and all those involved with the running of the scheme should be familiar with its contents.

The trustees must act in accordance with the Trust Deed & Rules at all times and ensure they are kept up to date. It is important to keep the literature issued to members updated to maintain consistency in the information given about the scheme.

The liabilities of the scheme are generally covered by a group life assurance policy.

Who is the Trustee?

Normally, the Principal Employer will act as the trustee (known as a corporate trustee and each director acts as a trustee). When executing powers permitted under the Rules of the Scheme at least two people must sign on behalf of the Principal Employer. This should include one director and either another director or the Company Secretary.

The Principal Employer can appoint a specialist company to act as a corporate trustee of the scheme with all the associated powers.

Anyone who is capable of being the legal owner of property can be a trustee. However, there are some categories of people who are specifically excluded, such as:

- Anyone convicted of dishonesty, deception or any kind of fraud.
- Un-discharged Bankrupts.
- Anyone disqualified from acting as a company director.
- Anyone who has been disqualified from acting as a trustee.

Member-nominated trustees and member-nominated directors

A group life assurance scheme is not required to have member-nominated trustees or member-nominated directors.

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Trustee's responsibilities

Trustees must always act honestly and prudently and, at all times, with the utmost good faith. Trustees must not make any personal profit at the expense of the scheme or its members (although professional trustees may charge the Employer for any agreed services). Trustees must take all reasonable care when dealing with the payment of benefits and always act in the best interests of the beneficiaries.

Liability as a Trustee

Trustees have 'joint and several liability' resulting from any breach of trust. A breach of trust can happen when a trustee takes an action not authorised under the Trust Deed & Rules or fails to act as they so require, also if duties are not performed with sufficient care.

The scheme may protect trustees from personal liability for a breach of trust, except where it is due to actual fraud.

Knowledge and training

The Pensions Act 2004 (sections 247-249) requires trustees of occupational pension schemes to have knowledge and understanding of the law relating to pensions and trusts and the principles relating to the funding of occupational schemes and the investment of scheme assets. Trustees are also required to be conversant with their own scheme's policy documents.

This requirement does not apply to trustees of a group life assurance scheme, though the trustees must have appropriate knowledge for them to properly exercise their functions as a trustee.

Identifying and paying beneficiaries

Trustees have discretion over who receives the death benefit. In executing this responsibility, and in order to ensure that lump sum benefits and pension benefits are paid out to appropriate beneficiaries, the trustees must obtain all relevant information about the deceased's dependants and then determine who should receive benefits.

The trustees should have regard to the wishes expressed in writing by the member but they are not bound by these wishes. Either way, the trustees must exercise their discretion on who is to receive the death benefits and make payment within 2 years.

Where the trustees are of the opinion that the beneficiary is incapable (either mentally or physically) of dealing with his/her affairs, the Trust Deed & Rules allow the trustees to pay out the benefit to a relative or other person acting on behalf of the beneficiary.

Taxes and Lifetime Allowance Charge

The scheme administrator has responsibility for all tax charges, interest and penalties for the Registered scheme in addition to being the person who is responsible for Registering a new scheme.

The scheme administrator is not responsible for payment of a Lifetime Allowance Charge when a lump sum death benefit is paid following a member's death. Any Lifetime Allowance Charge falls solely on the recipient(s) of the lump sum payment(s). The scheme administrator pays any lump sum death benefit in full, without any regard to any Lifetime Allowance Charge that may potentially be due. The personal representatives of the member are responsible for ascertaining whether a chargeable amount arose following the payment of a relevant lump sum death benefit.

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Dispute resolution

Though the trustees of a group life assurance scheme are not required to have a set procedure for resolving disputes, as required for occupational pension schemes, establishing one would be good governance.

The trustees can establish an Internal Disputes Resolution Procedure so that relatives or other financial dependants of the deceased can formally question decisions made by the trustees.

If a dispute cannot be resolved using the Internal Disputes Resolution Procedure, the trustees should direct the complainant to The Pension Advisory Service (TPAS).

A specimen procedure is detailed on page 4. It tells someone with a complaint what happens. The trustees could use this as the basis of their arrangements for resolving disagreements.

Trustee bank account

Though the trustees of a group life assurance scheme are not required to have a trustee's bank account, as required for occupational pension schemes, establishing one would be both practical and good governance.

A trustee's bank account demonstrates a clear control over payment of benefits. Premiums can also be drawn from this account, if not already paid directly by the Principal Employer. The bank will need evidence of the trustees' appointment and a copy of the Trust Deed & Rules should be sufficient in this respect.

Trustee meetings

Written records must be kept of trustee meetings and especially any decisions made. It is possible that any particular decision may be challenged or referred to The Pensions Advisory Service (TPAS) if a beneficiary is not happy with the trustees' decision.

At the beginning of each trustee meeting, a Chairperson must be elected. If there are equal votes in the election of a Chairperson, the trustee to take the Chair could be chosen by lot.

Decisions should be made by a majority of the trustees not just by those present. Where there are an equal number of votes on each side of those trustees present, the Chairperson will have a casting vote. A resolution in writing signed by a majority of the trustees is as valid as if it had been passed at a full meeting of the trustees.

Trustee business can be delegated to a smaller committee consisting of at least 2 people (any of whom may be a trustee).

Appointment, resignation and removal of trustees

The number of individual trustees should not be less than 3 at any one time.

The power to appoint and/or remove trustees by Deed vests with the Principal Employer.

Any trustee can resign from office by giving notice in writing to the Principal Employer.

The Principal Employer can call on a trustee to resign by serving 7 days notice to that effect. At the end of the notice period, the trustee will be deemed to have retired as a trustee.

Appointment of Professional Advisers

The trustees can appoint professional advisers such as accountants, financial advisers and solicitors. Appointments of this kind can only be made with the agreement of the Principal Employer, as they will have to pay any fees payable.

The Pensions Regulator

A group life assurance scheme is not required to register or make reports of any events to the Pensions Regulator.

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Internal dispute resolution

Though the trustees of a group life assurance scheme are not required to have a set procedure for resolving disputes, establishing one would be good governance.

This specimen wording describes a procedure which shows someone how to make a complaint and what action will then take place and when.

This is not a definitive document and you should obtain legal advice to ensure this guidance meets your particular situation. Unum does not accept any responsibility for any loss which may arise from reliance on the information enclosed.

Specimen wording

Members can write to the trustees if unhappy with anything to do with the Plan.

Widow(er)s and surviving dependants of deceased members and prospective members, can also write to the trustees provided they were such not more than 6 months ago. You can also get someone else to deal with it for you.

When writing give your full name, address, date of birth and National Insurance number. If you aren't the member, give the same details for the member and your relationship to them. If someone is dealing for you, give their full name and address and say if all correspondence should go to them. Then say what you are unhappy about and why. Finally signing the letter.

The trustees will reply with a decision within 2 months or say when they expect to reply and why there is a delay. The decision will refer to any relevant law, Plan rules and discretions used in the Plan rules. It will also say you can ask for the matter to be reconsidered within 6 months.

If you wish the trustees to reconsider, you must provide the same details as before, send a copy of their decision and explain why you are unhappy with that decision.

The trustees will reply with a decision within 2 months or say when they expect to reply and why there is a delay. They will either confirm the decision or advise a new decision. You will be given details of The Pensions Advisory Service (TPAS) and it's address, which can assist where the matter cannot be resolved with the trustees. Also the Pensions Ombudsman and his address, who can investigate and give decisions on complaints or disputes (unless formal legal proceedings have started).

The Pensions Advisory Service
11 Belgrave Road
London SW1V 1RB
Tel: 0845 601 2923

www.pensionsadvisoryservice.org.uk

The Pensions Ombudsman
11 Belgrave Road
London SW1V 1RB
Tel: 020 7834 9144

www.pensions-ombudsman.org.uk