



Trustees who do not have time to read all their scheme's documents can either share the reading with other trustees or seek help from an adviser

TRUSTEE KNOWLEDGE Trustees must have a working knowledge of their scheme's documents to be in line with the requirements of the pensions act

Get in on the act



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It is now just over a year since the "knowledge and understanding" requirements of the Pensions Act 2004 came into force on A-day. Recognising that many trustees need time to undertake a training programme, the Pensions Regulator generally allowed six months for existing trustees to complete a programme appropriate to their needs. New lay trustees are given a six-month period of grace from the date of their appointment.

Many trustees have found it relatively straightforward to brush up on their knowledge and understanding of trust law, pensions law, scheme funding and investment, as required by the pensions act. There are, after all, an increasing number of face-to-face courses and seminars available to help trustees with these topics in addition to the regulator's online trustee toolkit. However, trustees have generally found it harder to meet the requirement to be "conversant" with their own scheme's documents.

The pensions act refers to a requirement for trustees to be

conversant with their trust deed and rules, their statements of funding and investment principles, and other scheme documents "recording policy for the time being adopted by the trustees relating to the administration of the scheme generally". The regulator's scope guidance gives a fuller list of the other relevant scheme documents that it believes are of significance for the majority of schemes and with which trustees should be conversant (see opposite). However, the code of practice points out there may be other documents for a particular scheme that also fall into this category.

For new as well as experienced trustees, the list of documents with which they are expected to be conversant may appear daunting.

Defining conversant

The code of practice sheds some light on this. It states: "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 required to do so in the course of carrying out their duties as trustees." This should give trustees some comfort that they do not necessarily have to read through and assimilate all of

the various scheme documents.

The code of practice also draws the distinction between having a working knowledge for routine matters and less common circumstances. For example, trustees may frequently refer to the eligibility requirements for early retirement, but will not need a detailed knowledge and understanding of their powers in the event of a wind-up unless they suspect that a wind-up is a possibility in the foreseeable future.

One way for a trustee to judge whether they are sufficiently conversant with their scheme's documents is to ask themselves practical questions, such as:

- Do I understand the areas of risk for a trustee and what protection is available under my scheme's trust deed and rules?
- Do I understand the funding position revealed in my scheme's latest actuarial valuation report and how this might be affected by the assumptions adopted and circumstances (eg. if the scheme is ongoing or if it were to wind-up)?
- Do I know my scheme's investment objective, including the reasons for it (if it is a defined benefit scheme) or the reasons for the range of funds offered (if it is a defined contribution scheme)?
- Do I know whether any of my scheme's benefits are insured (eg. death in service benefits or pensions in payment) and am I aware of the principal provisions of the insurance policies?

Taking the last item as an example, the code of practice is quite helpful in illustrating the depth of knowledge required. Although trustees should know broadly which risks are covered, they will only need to look at the detail if they need to make a claim. So in this respect they can behave as a responsible private individual would in respect of household or motor cover. However, like that individual, they will need to revisit the policy provisions from time to time, to ensure that the cover is still required and is still consistent with the latest trust deed and rules and current legislation.

Meeting the requirements

Many trustees do not have a clear idea of what is the best way to achieve the required conversance with their own scheme's documents. It is surprising how many do

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not have personal copies of their scheme's key documents, so the first step in any conversance programme must be to draw together all of the relevant documents. The objective of this exercise should be to provide each trustee with a clearly indexed file containing copies of the latest trust deed and rules, the latest statements of funding and investment principles, and all the other key scheme documents.

This is a useful exercise because it can also highlight areas where it might be appropriate for action to be taken. For example:

- Is it time for the various amending deeds to be consolidated into a new definitive trust deed and rules?
- Should the statements of funding and investment principles be reviewed or combined?
- Is there a more convenient way of recording the policy decisions and precedents noted in the minutes of trustee meetings?
- Is it time for the scheme's insurance cover to be reviewed or rebrokered?
- Are there clear terms of reference for any sub-committees or do they need updating?
- Does the scheme have a business plan that lists the matters to be cov-

ered in trustee meetings over the coming year, including an ongoing training programme?

● Do the trustees know where all the scheme's original documents are kept and are they satisfied with the arrangements for their safekeeping?

Knowing the documents

The next step is to achieve the necessary conversance with the various documents. This clearly cannot be covered by attending generic training courses or using the regulator's trustee toolkit – although both of these should help greatly to put the purpose of the scheme's own documents into context and to give an indication of the key matters to consider. One way might be for each trustee to take responsibility for one of the scheme's documents and to draw its key features to the attention of the other trustees.

In practice, trustees may not have the time or inclination to do this themselves, so they might turn to professional advisers for help. Some trustees prefer to use advisers other than their regular advisers for this because it exposes them to other points of view and ideas.

Open-mindedness

Whatever route is followed, it is most valuable if the trustees approach this aspect of their training with open minds about its purpose rather than with the limited view that it is simply an exercise to satisfy the legal requirements. If it is approached with an open mind, it can be found to be a very useful exercise.

When I was asked to help a new client to meet the requirement to be conversant with their own trust deed and rules, it came to light during the training that they had been paying benefits using the wrong definition of spouse for several years. My experience is also that when trustees have had some conversance training, they become much more confident in referring to their own scheme documents and challenging their professional advisers.

That can only be a good outcome for all involved in occupational pension schemes. **PM**

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OTHER RELEVANT SCHEME DOCUMENTS

- ▶ Scheme booklet, announcements and other member communications
- ▶ Actuarial valuation and advice, especially the key elements of the most recent actuarial valuation and subsequent advice
- ▶ Minutes of meetings, including their importance and policy decisions recorded in them
- ▶ Annual report and accounts
- ▶ Any significant insurance policy
- ▶ Any significant agreement or contract, including those with delegated authorities or professional advisers
- ▶ Any trustee approved procedures, including: the internal disputes resolution procedure; the appointment of all groups of trustees; the appointment of the chairperson
- ▶ Statement of compliance with the Myners' Principles (where appropriate)
- ▶ Terms of reference of any sub-committee (where relevant)
- ▶ Memorandum and articles of corporate trustee (where applicable)
- ▶ The scheme business plan, including a skills audit (where applicable) and/or training plan
- ▶ Trustees should be aware of where all original documents are kept and of the arrangements for their custody, safekeeping and access