

Group Briefing

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Pensions Update

KEY CONTACTS

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

KEY POINTS

For DB trustees: The Pensions Authority will be focusing on underfunded DB schemes and on a programme of compliance activity.

For DC trustees: It would be prudent for DC trustees to carry out an audit against the first three Codes of Governance and to develop a risk register where one is not already in place and to consider how it will be maintained and developed.

1. PENSIONS AUTHORITY – 2016-2020 OBJECTIVES

The Pensions Authority (the “Authority”) has published its strategy for 2016-2020. The strategic objectives of the Authority for the period are:

- » to monitor and supervise occupational pension schemes and PRSAs to ensure they continue to be, or will be, well managed by competent trustees, providers and administrators;
- » that scheme trustees, the pensions industry and employers can rely on the Authority for guidance and support on what the Authority expects;
- » that the Authority will be well known as an accessible, relevant and practical source of information for the public, members, contributors and beneficiaries; and
- » that the Authority will be a valuable

source of technical pensions advice, knowledge, information and support to the Department of Social Protection.

2. CODES OF GOVERNANCE FOR DEFINED CONTRIBUTION PENSION SCHEME

The Authority intends to publish a series of Codes of Governance (the “Codes”) over the course of 2016, with the aim of helping trustees of occupational defined contribution schemes to meet the standards of practice which it is believed form the basis of good governance and administration of their pension schemes.

On 27 January 2016, the Authority published the first tranche of Codes:

- » Governance plan of action;
- » Trustee meetings; and
- » Managing conflicts of interest.

The Codes are not a statement of law but rather they are intended to supplement the Authority’s Trustee Handbook and to communicate to trustees the standards of behaviour that are expected of them, with the overall objective of ensuring that trustees are cognisant of their duty of care to act in the interests of members.

Governance plan of action

The Authority expects that a governance plan of action be drawn up by the trustees to ensure consistency in the development

of policies, processes and controls for the management of a scheme. The development of a risk management plan should form part of the governance plan of action. A risk register should be maintained by all schemes.

A properly considered and effectively drafted governance plan of action should highlight statutory timeframes and deadlines and build processes and control procedures designed to meet statutory deadlines.

The Authority advises that one person be nominated to take ownership of each individual task.

Trustees should have a good working knowledge of the relevant scheme documentation in order to be aware of what they are or are not permitted to do in certain circumstances.

Trustee meetings

The Authority has advised that trustees hold formal meetings which follow a set agenda and that all decisions made are properly recorded. The frequency at which meetings are held is at the discretion of the trustees, subject to compliance with the governing documents of the scheme, and having regard to the nature and size of each individual scheme. The timing of meetings is often influenced by the issuance of reports such as the annual report, members benefit statement and investment management report, as these reports often require discussion and decisions to be made as to how best to proceed in light of information provided by such reports.

It is important to be aware of the need to consult the Trust Deed and Rules (or indeed the Memorandum and Articles of Association in the case of a corporate trustee) to ensure that requirements as to quorums for meetings are being met and that meetings are being held

in accordance with the rules set out in these governing documents.

Managing conflicts of interest

Trustees have a duty to act in the interests of members. In order to comply with this duty, trustees must be cognisant of the importance of avoiding or managing conflicts of interest. This is especially important for trustees who perform a dual role as a director of a corporate trustee and as an employee of the employer company or as a member of the relevant scheme, as they are required to ensure that their holding of a second role does not place them in a position of conflict of interest. The Authority advises that the following steps are taken in order to ensure that a conflict of interest is managed:

» **Identify a potential conflict**

Conflicts of interest can arise where a trustee has undertaken more than one role, but trustees should also be aware that advisers to a scheme may be conflicted and so it is important that this is considered carefully in respect of each adviser.

Specific training should be afforded to every new trustee to ensure that all trustees are able to recognise potential conflicts of interest and consider whether such a potential conflict of interest will affect the duty of the trustees to act in the interests of the members.

The Authority recommends that a register of actual, potential or perceived conflicts of interest is established and updated on a continuous basis.

» **Monitor conflicts**

Trustees should review their conflicts of interest policy on a regular basis (and on the occurrence of a change in circumstances in which the scheme operates) and revise it as required.

» **Manage conflicts**

Every identified conflict of interest must be considered carefully, having regard to the nature and circumstances of each individual scheme and to the nature and scale of the conflict of interest. Conflicts of interest should be managed on an ongoing basis to ensure that there is no adverse effect on a trustee carrying out his duty to act in the interest of members.

3. COMPANIES ACT 2014 (THE "2014 ACT")

The form of private company limited by shares which existed under the Companies Acts 1963 to 2014 (the "Companies Acts") will cease to exist at the end of the transition period on 30 November 2016 (i.e. 18 months after the commencement of the 2014 Act).

A company which existed as a private company limited by shares under the Companies Acts and which has not yet converted to either a limited company or a designated activity company (DAC) under the 2014 Act by the deadline (which is on or before 31 August 2016 if the company is converting to a DAC by way of ordinary resolution) will become a limited company by default at the end of the transition period.

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