Core Unit 2 – Regulation of Retirement Provision

Mock Examination Notes

*Recommended Time: 1 Hour*

# Under trust law, pension scheme trustees have an overarching duty to administer the pension scheme in accordance with the primary purpose for which the scheme was established (i.e., to secure the benefits).

# Name five of the additional duties pension scheme trustees have under trust law and give a brief statement to describe each.

**10 marks**

Answer should include any 5 of the following:

* Duty to act in accordance with the trust deed:

- a trustee must act in accordance with the provisions of the trust deed, except insofar as those provisions

are modified by the consent of all beneficiaries, overriding legislation or by the Court;

* Duty to act impartially:

- a trustee must be impartial in the execution of the trust and must consider the interests of all of the

beneficiaries (and of the different classes of beneficiary) when making decisions in respect of the trust;

* Duty to exercise reasonable skill and care:

- lay trustees should use such skill and care in the management of the trust as men of ordinary prudence

and vigilance would use in the management of the affairs of a third party for whom they felt morally bound

to provide.;

* Duty to act without charge:

- as a general rule a trustee must not delegate his duties or powers or the receipt of trust monies to a

co-trustee or to a third party unless authorised by the trust deed or by statute.;

* Duty to act jointly:

- in the case of a non-charitable trust (such as a pension scheme) if there is more than one trustee all must

act together in the management of the trust, with some exceptions;

* Duty not to profit from trust property:

- trustees must not use or deal with trust property for their own private advantage or they will be personally

liable to account for their profits;

* Duty to prepare and disclose accounts:

- a trustee must keep clear and accurate accounts of the trust property, and, at all reasonable times, at the request of a beneficiary, disclose full and accurate information as to the amount and state of the trust property, and permit the beneficiary or his solicitor to inspect the accounts and other documents relating to the trust property.

(Relevant section of the manual is Part 2 Chapter 2.7.1)

# In relation to DC investments, what are the key governance requirements for trustees set out in the Occupational Pension Schemes (Charges and Governance) Regulations 2015?

**5 marks**

Answer should include 5 of the following:

* core financial transactions must be processed promptly and accurately;
* the value of costs and charges borne by members must be assessed;
* a statement of investment principles governing decisions about investments for the purposes of the

default arrangement must be prepared;

* default arrangements must be designed in the members’ interests and kept under regular review;
* the scheme deed and rules must not restrict the choice of administrators, fund managers or advisers to

the scheme;

* a chair of trustees (the Chair) must be appointed with responsibility for signing off an annual statement

describing how the governance requirements have been met

(Relevant section of the manual is Part 5 Chapter 1.1.5)

# In relation to the Code of Practice issued by the Pensions Regulator (TPR ), list the circumstances where the TPR may expect to use the “material detriment test” .

**5 marks**

Answer should cover:

* the transfer of a scheme out of the UK;
* the transfer of a sponsoring employer out of the UK or the replacement of a sponsoring employer with

an entity that does not fall within the UK;

* sponsor support being removed, substantially reduced or becoming nominal;
* the transfer of the liabilities of a scheme to another pension scheme or arrangement which leads to a

significant reduction of sponsor support in respect of those liabilities or funding to cover those liabilities;

* a business model or the operation of a scheme which creates from a scheme, or which is designed to

do so, a financial benefit for the employer or some other person.

(Relevant section of the manual is Part 4 Chapter 1.8.2)

# List the Financial Conduct Authority’s Principles of Good Regulation.

**5 marks**

Answer should include 5 from the following:

* Efficiency and economy (FCA must use its resources efficiently and economically);
* Proportionality (any burden or restriction that imposed on a person or activity must be proportionate to the expected benefits, taking into account the costs to firms and consumers).
* Consumer responsibility (consumers should take responsibility for their decisions);
* Senior management responsibility (a regulated firm’s senior management is deemed responsible for that firm’s activities and is held responsible for the risk management and controls within the firm);
* Openness and disclosure (FCA should ensure that relevant market information about regulated persons is published, in order to reinforce market discipline and improve consumers’ knowledge about their financial matters);
* Transparency (FCA should exercise its functions as transparently as possible).

(Relevant section of the manual is Part 1 Chapter 3.5.1)

# In relation to the Proceeds of Crime Act (POCA), outline the two important features of money laundering offences and the three main money laundering offences.

**5 marks**

Answer should cover:

* Features:
  + the offences involve some dealing in “criminal property” - broadly defined to include any funds that constitute a person’s benefit from criminal conduct or represent, even indirectly, such a benefit;
  + there is no requirement for actual knowledge of another’s wrongdoing - suspicion is enough;
* Offences:
  + It is an offence to conceal, disguise, convert or transfer criminal property.
  + It is an offence to enter into or become concerned in an arrangement if you know or suspect this

facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on

behalf of another person. Arguably this may present the most risk for those in the pensions industry.

* + It can be an offence to acquire, use or simply possess tainted funds.

(Relevant section of the manual is Part 3 Chapter 1.6)

# What are “authorised payments”, and what tax charges “unauthorised payments” attract?

**10 marks**

Answer should cover:

* Finance Act 2004 prescribes certain payment that can be made without a tax charge (over and above normal Income Tax on pensions);
* Types of authorised payments:
  + pensions and pension death benefits;
  + lump sums and lump sum death benefits;
  + transfers to other registered pension arrangements or to a ‘qualifying recognised overseas pension

scheme’ (QROPS);

* + certain ‘scheme administration’ payments;
  + payments pursuant to a pension sharing order.
* Unauthorised payments can generate up to four tax charges:
  + Unauthorised payments charge — a tax charge at a rate of 40%, based on the value of the

unauthorised payment

* + Unauthorised payments surcharge — where 25% or more of the value of a member’s benefits is paid out in the form of an unauthorised payment an additional tax charge at a rate of 15% will be due, based on the value of the unauthorised payment;
  + Scheme sanction charge — a tax charge on the Scheme Administrator. The scheme sanction charge

is due on most unauthorised payments and the tax rate is normally 15% of the value of the payment, but this increases to 40% if HMRC have been unable to recover the unauthorised payments charge from the recipient.

* + Deregistration charge (rare) — if a scheme pays out more than 25% of its assets in the form

of unauthorised payments in any year then it may have its registration withdrawn and a

deregistration charge will be applied equal to 40% of the value of the scheme’s assets.

(Relevant section of the manual is Part 1 Chapter 1.5.1)

# In relation to the cessation of contracting-out, outline how the increase in National Insurance Contributions (NICs) can be recovered by an employer.

**10 marks**

Answer should cover:

* Some employers have provisions in their scheme rules to enable them to amend their schemes to recover
* this additional cost:
* Others will be prevented from making such changes by their scheme rules or the
* Statutory override :
  + Pensions Act 2014 S24(2) gives employers sponsoring CORS schemes power to amend scheme rules to adjust for the increased NIC liability;
  + Changes may be made either to increase employee contributions or reduce the future accrual of benefits in respect of the scheme members;
  + Actuarial certificate required to reduce future accrual;
  + Extent to which employer can amend the scheme rules using the statutory override limited to that estimated as matching the amount of increase in the employer’s NICs;
  + Applies regardless of scheme rules and trustee consent not required;
* New Regulations:
  + The Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2015, effective 6 April 2015;
  + The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations, effective 6 April 2016;
* Most employers will seek to offset the extra cost or implement wider scheme changes to reduce scheme costs.

(Relevant section of the manual is Part 6 Chapter 1.2.1)