Core Unit 2 – Regulation of Retirement Provision

Assignment 2 Notes

*(Part 2 – Trust Law, The Role of Trustees and Establishing a Trust-Based Pension Scheme)*

*Recommended Time: 2 Hours*

# Describe the key statutory duties imposed on trustees by trust law, noting the legislation applicable to each, and list seven additional statutory duties.

**15 marks**

Answer should cover:

* Key duties and legislation – short description of each, including applicable legislation (8 marks):
  + Duty of care – Trustee Act 2000;
  + Payment of tax – Finance Act 2004;
  + Disclosure - Section 41 of the Pensions Act 1995, Section 113 of the Pension Schemes Act 1993, Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013;
  + Notifiable events – no specific legislation but a duty to report to TPR;
* Other statutory duties – list 7 from the following (7 marks):
  + maintain a statement of investment principles (where the scheme has 100 or more members);
  + DB schemes - prepare actuarial valuations at least once every three years (and actuarial reports for the intervening years);
  + ensure that a payment schedule is prepared (DC scheme) or a schedule of contributions (DB scheme) and ensure that payments are made in accordance with that schedule;
  + put in place a recovery plan where a DB scheme has a deficit on a statutory funding objective basis);
  + ensure that at least one third of the trustees are member-nominated trustees (or member-nominated directors where there is a corporate trustee);
  + put in place and operate an internal dispute resolution procedure;
  + operate a bank account separate from that of the employer;
  + pay cash equivalent transfer values to members entitled to them; and
  + report material breaches of law to TPR.

(Relevant section of the manual is Part 2 Chapter 2.7.2)

# List the information that must be included in an annual benefit statement for a defined contribution pension scheme.

**5 marks**

Answer should cover:

* a statement of contributions paid;
* details of the accrued fund;
* the transfer value, if less than accrued fund;
* the options available at normal retirement age; and
* wording that states that a member’s benefit will depend on several factors including the amount of

contributions paid, investment performance and the cost of converting pension into an annuity.

(Relevant section of the manual is Part 2 Chapter 2.8.2)

# Where schemes choose to insure scheme benefits, outline the key provisions of the insurance contract and the typical specifications of the insurance policy.

**10 marks**

Answer should cover:

* Contract will consist of:
  + the proposal form completed by the trustees or employer;
  + the acceptance document issued by the insurance company; and
  + the terms referred to in the proposal form and acceptance document;
* Policy should specify:
  + to whom the benefits are payable;
  + circumstances in which they are payable and any conditions to which payment is subject;
  + the amounts payable;
  + In addition, a group policy should include:
    - the rates of premium to apply and the terms on which the insurance company can revise them;
    - the terms on which the insurance company will include further members;
    - the terms on which the insurance company will grant further increases in benefits;
    - provisions dealing with payments of benefits other than at normal retirement date (i.e., on early or late retirement);
    - details of pension (or cash) options; and
    - where the policy participates in profits, details of bonus distributions.

(Relevant section of the manual is Part 2 Chapters 3.3.1 and 3.3.2)

# List the circumstances which commonly give rise to trustees having a “Conflict of Interest”, and outline the potential solutions to managing these as set out in the Pension Regulator’s guidance.

**15 marks**

# Answer should cover:

# Circumstances (5 marks):

# negotiations over scheme funding;

# corporate transactions involving a scheme’s sponsoring employer;

# making changes to a scheme’s benefit structure;

# the exercise of discretions as to early/late retirement;

# scheme mergers.

# Solutions to be considered (10 marks):

# management of the conflict is scheme specific;

# depends on the particular circumstances in each case;

# seeking independent legal advice;

# the conflicted trustee not taking part in the decision-making process;

# delegating decisions to a sub-committee;

# the appointment of an independent trustee - this is becoming increasingly common and it is an option favoured by TPR;

# the trustees making an application to court to seek directions on a particular decision - this is an expensive option, but may be appropriate in particular circumstances;

# the use of confidentiality agreements;

# resignation of the conflicted trustee — in TPR’s guidance this is seen as a last resort; and

# amending the scheme rules to reflect the trustees’ procedures for conflict management –still some doubt over the effectiveness of an amendment which would allow trustees to take part in decisions even where there is a conflict.

# (Relevant section of the manual is Part 2 Chapter 2.19)

# Describe the main features and classifications of a trust, including the certainties that validate it, and outline the following;

# what constitutes a breach of trust;

# the possible methods for amending the provisions of a trust; and

# the circumstances where a trust may be terminated.

**20 marks**

Answer should cover:

* 4 main features:
  + separation between the legal owner of the trust property and the person or persons who

have the benefit of it ; i.e., the trustees are the legal owners of the trust property and the beneficiaries under the trust have the benefit of it;

* + trustees must use the trust property in accordance with the purpose for which the trust was created, according to the terms of the trust (the purpose of a pension scheme often being described as the provision of retirement benefits);
  + trust property is separate from both the trustees’ private property and the property of the person who created the trust (the “settlor”); and
  + A trust can be enforced only by the beneficiaries unless the settlor specifically reserves the right to enforce the trust when it is created.
* Classifications:
  + Private trusts - trusts for the benefit of an individual or class of persons;
  + Public trusts - trusts established for some charitable purpose.
* 3 certainties:
  + certainty of intention - the settlor must show a clear intention to create a trust;
  + certainty of subject matter - the trust property must be clearly identified or identifiable; and
  + certainty of ‘objects’ - the beneficiaries of the trust and the benefits that they are to receive must be certain.
* Breach of trust occurs when a trustee:
  + acts outside the terms of the trust;
  + exercises his power for an improper purpose;

fails to discharge his legal duties.

* Methods for amending the provisions of a trust:
  + exercising a power of amendment contained in the trust deed, subject to its precise terms;
  + obtaining the consent of all the beneficiaries, provided they are not minors or suffering from incapacity;
  + exercising a statutory power to amend the trust; or
  + obtaining a Court order or other authorisation from the Court to modify the terms of the trust.;
* Termination of a trust:
  + where the trustee has distributed its proceeds to the beneficiaries; or
  + where there are express terms under the trust deed which bring the trust to an end.

(Relevant section of the manual is Part 2 Chapters 1.1, 1.2, 1.4. 1.6, 1.7 and 1.8)

# Outline the main features of the process to register a pension scheme with HMRC.

**5 marks**

Answer should cover:

* the Scheme Administrator (usually the trustees or an agent for the trustees) must register with HMRC as

a user of its Pension Schemes Online Service;

* once this registration process is complete the Scheme Administrator applies online to register the

scheme, giving details about the scheme and who set it up and making a declaration that:

* + the scheme meets the Finance Act 2004 criteria for a pension scheme (e.g., it provides benefits on

retirement, death, reaching a particular age or incapacity);

* + the information on the form is correct;
  + the scheme documents do not entitle any person to unauthorised payments;
  + the Scheme Administrator is a fit and proper person.

(Relevant section of the manual is Part 2 Chapter 3.2)

# Name five types of trustee who may be involved in running a pension scheme and state the key feature applicable to each.

**10 marks**

Answer should cover any 5 of:

* Individual Trustee – any person over age 18, with some specific exceptions;
* Corporate Trustee – a company which is formed to act as a trustee with its powers in constitutional/governing documents;
* Trust Corporation – a corporate trustee formed under UK or EU law, and meets certain minimum statutory requirements;
* Custodian Trustee and Committee of Management – trustee functions may be separated and Custodian Trustee holds the scheme assets while a committee of management has responsibility for the administration of the scheme;
* Pensioner Trustee - pre-6 April 2006, HMRC required a SSAS to have one pensioner trustee;
* Independent Trustee – a trustee with no connection with the employer or the scheme;
* Member-nominated Trustee – nominated and selected using a process involving some or all of the scheme members;
* Professional Trustee – an individual who is an expert or considers themselves an expert in general trustee matters, and who is remunerated.

(Relevant section of the manual is Part 2 Chapter 2.1)

# List five provisions relating to the administration of a pension scheme that would typically be found in the Definitive Trust Deed of a scheme, and five categories that would be found in a scheme’s Rules.

**10 marks**

Answer should include:

* Definitive Trust Deed – administration - any 5 of the following:
  + provisions relating to periods of absence;
* giving notices to beneficiaries;
* mechanics of payment of benefits;
* what happens to unclaimed benefits;
* incapacity of beneficiary;
* employer’s lien or set off (i.e., ability for employer to recover moneys owed to it by a member of the

scheme (usually) due to the member’s criminal, negligent or fraudulent act);

prohibition on the assignment of benefits.

* Categories in the Rules – any 5 of the following:
  + Membership;
  + Contributions;
  + Benefits on retirement;
  + Benefits on death;
  + Leaving service and preservation of benefits;
  + Tax issues;
  + Contracting out;
  + Pension sharing on divorce.

(Relevant section of the manual is Part 2 Chapter 3.1)

# Describe the circumstances where the Participating Employers of a scheme may change and the processes required to admit or remove a Participating Employer from a scheme.

**10 marks**

Answer should include:

* new participating employer if new company acquired and its employees join the scheme;
* or if new employer created due to corporate restructuring;
* power to admit new employers usually included in the Definitive Trust Deed;
* the Definitive Trust Deed may need to be amended to include such a power;
* deed of participation - new employer will authorise the principal employer to act and make decisions on its behalf in relation to the scheme, including:
  + decisions regarding member-nominated trustees;
  + funding agreements;
  + consultation on the statement of investment principles.
* scheme rules may require new employer to be associated in business with the principal employer
* participating employer ceases to participate in a pension scheme - deed of cessation may be adopted, but this is usually not required under the Definitive Trust Deed;
* Definitive Trust Deed generally provides that participation ceases on the happening of certain triggering events without the need for a formal deed of cessation;
* Keep a record of the date from which an employer has ceased to participate.

(Relevant section of the manual is Part 2 Chapter 3.6)