

Trustee Knowledge and Understanding – the dawn of a new era

One of the headline issues emerging from the Pensions Bill is the proposed requirement for all scheme trustees to have “knowledge and understanding” across the full range of their responsibilities. (This is set against the backdrop of the Government’s desire for half of trustees to be member-nominated.) What does this mean for trustees?

The Bill

New statutory duties

- The Pensions Bill will impose new statutory requirements of “knowledge and understanding” on all trustees¹ of occupational pension schemes.
- The new provisions will overlay (but not replace) existing non-statutory requirements, such as general trust law duties.
- There are two essential categories – scheme-specific knowledge and a broader knowledge and understanding of the law and principles affecting pensions.

The requirements

Know your scheme

- Trustees will be required to be “conversant with” the following scheme documents:
 - trust deed and rules;
 - statement of investment principles (if relevant);
 - statement of funding principles (if relevant);
 - any other document recording the trustees’ administration policy (e.g. an ill-health early retirement procedure?).

The requirements

Know your law and principles

- Trustees will also need to have “knowledge and understanding” of:
 - the law relating to pensions and trusts;
 - the principles relating to funding and investment; and
 - any other issues which may be set out in regulations.
- But this does not mean that all trustees will need to be experts in all matters relating to pensions.

1 Whether directors of trustee companies or individual trustees

Standard required?

Appropriate for exercising functions

- The degree of knowledge and understanding should be “appropriate for the purposes of enabling the individual properly to exercise his functions as trustee”².
- This is likely to mean that trustees sitting on specific sub-committees (such as investment) will be tested at a higher level than those who do not.
- To supplement the legislation, a Code of Practice will be issued by the new Pensions Regulator.

Code of Practice

Opra’s preparations

- Opra has recently published “informal pre-consultation” documents and questionnaires setting out what trustees “might need to know and understand” to satisfy the statutory requirements.
- Trustees and pensions professionals are invited to provide feedback.
- A Code of Practice will be published for formal consultation in 2005.

Demonstrating knowledge

Period of grace

- It is unlikely that trustees will have to sit formal exams to demonstrate their knowledge.
- But it is likely that there will be some system for recording what areas they consider themselves to be competent in.
- There will also probably be a “period of grace” within which existing trustees (and new trustees coming on board) can bring themselves up to speed.

Conclusions

Get training

- Trustees will still have the option to delegate various powers and functions, for example, to an investment manager.
- But the overall emphasis of the proposals is that trustees should be competent to fulfil their crucial role in occupational pensions.
- A regular programme of education and training will therefore be vital.

² Directors of corporate trustees will only have to satisfy this test in relation to any individual function they deal with

This edition of Sackers Extra News is designed to help clients understand the training requirements of trustees, particularly in light of new legislation contained in the Pensions Bill. We are continuously developing our range of trustee training material which can be easily adapted to meet specific client needs. To find out more about **tailored trustee training**, please speak to your usual Sackers contact.

SACKER^S
& PARTNERS

Solicitors specialising in pensions law

29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sacker-partners.co.uk
www.sacker-partners.co.uk

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners October 2004