



INFORMATION NOTE FOR TRUSTEES ON THEIR SERVICE PROVIDERS & ADVISERS

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1. About this information note

This Information Note sets out some key issues for Trustees to consider in their relations with advisers and service providers. It focuses in particular on registered administrators.

The Information Note's aim is to help Trustees make the best use of the considerable expertise that advisers and service providers can bring to their occupational pension scheme or trust based retirement annuity contract scheme. It is not intended as legal advice or as a check-list. There may be other considerations relevant to individual schemes which may not be covered here. Rather, it is hoped that it will aid Trustees in their knowledge and understanding of the relationship they will have with their advisers and service providers and in particular with their administrators.

2. Trustees' relationship with Advisers and Service Providers

The relationship between Trustees of occupational pension schemes or trust based retirement annuity contract schemes, and their advisers and service providers is very important to the successful running of the scheme.

The level of involvement by Trustees with their advisers and service providers will vary from scheme to scheme. Scheme size and scheme events will have an influence.

It is important to establish an excellent working relationship with your advisers and service providers. Characteristics of such a relationship are mutual trust, respect and good communication.

3. Trustee responsibility for delegated functions

Trustees employ advisers and service providers to help them in the running of their scheme. It is a legal requirement for some types of advisers and service providers to be appointed to schemes. Trustees may only delegate to the extent permitted by their governing Trust Deed and Rules. Even if Trustees can delegate to their advisers and service providers, they remain responsible for the work carried out on their behalf.

4. Types of advisers and service providers

Trustees should also refer to the Pensions Board's Trustee handbook in relation to advisers and service providers. Those commonly used include an administrator, actuary, investment adviser/investment manager, auditor, a legal adviser, and a benefit consultant.

The actuary

An actuary will advise Trustees of a defined benefit scheme on financial risks associated with the scheme and other matters that potentially could affect the scheme. Generally, the actuary will evaluate if the scheme's assets are sufficient to cover its potential liabilities. The actuary will report to the Trustees and sponsoring employer on the valuation with a recommendation as to contribution rates.

Factors to consider in choosing an actuary will include:

- conflicts of interest if the Trustees are using the same actuary as the sponsoring employer;
- the actuary's experience and qualifications;
- whether the actuary will also advise in relation to investment and strategic asset allocation;
- the actuary's ability to explain the assumptions and actuarial advice; and
- the actuary's level of service and familiarity with the scheme.

The auditor

An auditor reviews and reports on the accounts of the scheme. This is not a requirement for all schemes.

It is important for Trustees to provide as much information as possible in advance of a scheme audit. Trustees should agree the timetable for the audit and how the auditor will deal with problems that may be encountered.

Legal advisers

Legal advisers will perform various tasks of an advisory, documentation or transactional nature for the Trustees. Typical work includes:

- establishing schemes and drafting and amending the scheme's Trust Deed and Rules and dealing with issues generally;
- harmonising schemes perhaps after a corporate transaction involving a number of legacy schemes or dealing with scheme conversions;
- advising on balance of powers issues;
- advising on the impact on a scheme of new pensions legislation;
- recommending a course of action for Trustees in relation to claims from members and their dependants;
- assisting Trustees through a sale or bulk transfer; and
- advising Trustees about winding up, surplus or deficit situations.

The legal advisor's knowledge of the scheme, their qualifications and experience in the area and their methods for managing conflicts of interest are important. It is important to engage legal counsel with an expertise in the area.

Investment manager and investment advisers

Under their governing trust deed, Trustees should have broad investment powers and be able to delegate the investment of scheme assets to investment managers.

Trustees may also have an investment adviser to guide them in their choice of investment manager(s) or particular investment funds or investment strategy. Very often this role may be performed by specialist staff within the employer's company. The availability of such expertise to the Trustees and sponsoring employer can be very beneficial to the scheme.

Registered administrators

Under the Pensions Act, Trustees must appoint a registered administrator to perform 'core administration functions'. These functions are the preparation of the trustee annual report and annual benefit statements and maintaining accurate member records to prepare and deliver the report and statements. In practice, the role of the administrator may be wider than providing the core administration functions.

In house or third party

Administrators may be either in house administrators within the sponsoring employer's group or external third party administrators. A trustee may register with the Board as a registered administrator, where they are competent to perform the core administration functions for the scheme.

5. The role of an administrator

The role of the administrator is to ensure that the scheme is run properly and effectively on a day-to-day basis. An administrator will keep records, pay benefits and provide information. They will deal with all aspects of running the scheme from processing benefit payments to dealing with claims and responding to queries from beneficiaries. During the course of discharging their duties, the administrators must ensure that the scheme complies with statutory and regulatory requirements under the Pensions Act and such bodies as the Pensions Board, the Pensions Ombudsman and the Revenue Commissioners.

Failure by the registered administrator to perform the core administration functions under the Pensions Act in time is a statutory offence and may result in prosecution by the Pensions Board. Other sanctions may include refusal to renew registration or the attachment of conditions to renewal.

Failure by the administrator to perform both core administration functions and non core administration functions, will be regulated by the service level agreement between the Trustees and administrator.

6. Discussion points with the administrator

Before selecting an administrator, Trustees may wish to ask the following questions about the administrator's:

- work methods, including any outsourcing arrangements;

- experience and knowledge of schemes of a similar size and type to the Trustees' scheme;
- technology including how interaction between systems of the administrator and sponsoring employer will work, how security of the computer system is assured and tested;
- systems for checking data;
- turn-around times;
- delivery methods;
- quality control procedures;
- reporting;
- professional indemnity insurance and any proposed cap on the administrator's liability;
- compliance by the administrator in relation to its business with all applicable legislation and how this is monitored; and
- capability in anticipating, identifying and/or handling risks including internal control systems for detecting fraud either within the administrator in the internal administration of schemes or in the information and documents received by the administrator from external sources.

If Trustees are reviewing a current administrator, they may wish to consider whether or not:

- the administrator has been pro-active enough in educating itself about the scheme;
- the Trustees are satisfied with the level of communication;
- the administrator is easily contactable;
- the administrator is meeting all deadlines under the Pensions Act;
- the Trustees are comfortable with the level of technical language used by the administrators; and
- the Trustees have received feedback from the sponsoring employer or scheme beneficiaries that needs to be addressed by the administrator.

7. Service Level Agreements

Although not compulsory, service level agreements (“SLAs”) are a good method of ensuring clarity on what is expected from the administrator in terms of their performance.

However, even with an SLA, administration of the scheme will not work properly, if systems are not put in place to deliver the required standard of administration.

Advice should be taken, when drawing up an SLA, to ensure that the SLA is tailored to meet the specific requirements of the scheme. The size and nature of the scheme will determine the terms of the SLA. Each SLA should include core provisions, which for the purpose of this Information Note are grouped under the following headings; services, computer systems, compliance, liability, information, disputes, conflicts of interest, amendment and termination of the SLA. However, this is not an exhaustive list of provisions as depending on scheme design/structure, Trustees may include other provisions in the SLA to meet the specific needs of their scheme. The SLA should contain details of effective commencement date, duration and renewal date for the SLA.

A. Services

The SLA should outline the services to be performed by the administrator and a timeframe for delivery of these services. This will enable the administrator and Trustees to keep track of what needs to be done and when.

The standard of care that will be expected from the administrator while performing their duties will be set out in the SLA. Trustees need to be satisfied, if necessary by seeking legal advice, that this standard is reasonable for their scheme. If an administrator presents themselves to the Trustee as being capable of administering a scheme, this should mean that they have the resources and technological capabilities to administer the scheme to which the appointment is made, and not merely that they can administer pension schemes generally. A guarantee of the level of performance to be provided by the administrator should be included under the SLA.

Usually, the Trustees will delegate formally to the administrator under the SLA whatever functions, powers and discretions are necessary to enable the administrator to comply with the SLA. The agreement should also contain procedures on how delegated powers and discretions are to be exercised.

There needs to be clarity as to who is authorised to give the administrator instructions on behalf of the Trustees. Depending on scheme size, there may be different authorised persons for different functions.

B. Computer systems

Trustees need to find out what systems are used by the administrator and to enquire whether these systems allow the administrator to be flexible and to adapt to reflect technological, regulatory or scheme specific changes.

Trustees will need to establish that the administrator can ensure safe transfer of scheme data into its system.

Administrators should have a method of backing up scheme information, or a process of recovering data should it be deleted or destroyed accidentally.

In order for the administrators to comply with the SLA, the administrator's information systems will have to hold data, records, documents, files, and other items relating to the scheme. If the contract with the administrator is terminated, the Trustees will need to ensure that these will be released to the new administrator as the property of the Trustees.

The Roadmap: It is important for the Trustees to set out a timetable of tasks to be carried out by the administrator during the course of a scheme year, and the timing of each task – see table 1 appended below showing examples of key tasks to be carried out by the administrator. Such a roadmap helps the Trustees and administrator to focus on managing the scheme. The detailed steps involved in the more important elements of the work can help to monitor progress and identify problem areas as they arise. This can help prevent similar issues arising in the following year.

The Trustees should agree with the administrator how frequently the Trustees will receive reports and what format these reports should take. Such reports enable Trustees to monitor how work is progressing, and to assess what, if any, additional steps need to be taken. Reports also help to identify any risks or potential areas of risk so that they can be addressed in an efficient and effective way.

The Trustees must always remain aware that they retain responsibility for the duties carried out by the registered administrator. However, where the registered administrator has failed to carry out their duties, if the Trustees can show that this failure was caused by breaches by the registered administrator of its responsibilities under the Act and that they had taken reasonable steps to secure compliance by the registered administrator with the core administration functions, the Pensions Board will not hold the trustees of the scheme responsible. In order to fulfil the requirement of taking reasonable steps, there remains a practical obligation on the trustees to actively pursue the timely production of the annual report and annual benefit statements by the registered administrator.

C. Compliance

Trustees should seek assurances in the SLA that in performing their duties, the administrator will comply with:

- (i) the Trust Deed and Rules;
- (ii) the Pensions Act and other statutory and regulatory requirements;
- (iii) the terms of the Service Level Agreement;
- (iv) Pensions Board, Pensions Ombudsman and Revenue requirements; and

- (v) any other scheme specific guidelines (as amended over time) that the Trustees have put in place from a governance perspective for the running of their scheme.

Trustees and administrators will usually include in their SLA a template compliance certificate. The Trustees should agree how frequently the administrator should provide the Trustees with a compliance certificate. In this way, the administrator is able to certify that it has complied with the SLA, paid benefits as per the scheme Deed and Rules and collected contributions due to the scheme. If this is not the case, the certificate enables the administrator to disclose if the certificate is qualified and to give reasons for the qualification.

D. Liability

Liability is an important feature of SLAs. The Trustees need to ensure that the administrator is liable for its actions under the SLA and that they are covered in the event of maladministration. Administrators have started to impose a cap on their liability. The Trustees should discuss this in particular with the sponsoring employer and will need to clarify with the administrator the terms of its professional indemnity insurance. The minimum amount of such insurance is usually specified in the SLA. Trustees may wish to ensure that their liability under the SLA could not exceed scheme assets.

If the administrator outsources its obligations under the SLA to another party, the Trustees will want the administrators to remain liable to the Trustees for the obligations outsourced. Trustees may wish such outsourcing to be only with their consent. If there is such delegation by the administrator, the Trustees will wish to receive the same standard of performance as applies to the administrator.

E. Information

Trustees, sponsoring employers and administrators must comply with Data Protection laws. They must collect and process all data lawfully and securely and with the consent of the members concerned as appropriate.

Trustees should provide relevant information to the administrator in a timely manner. They should inform administrators of matters such as any changes or alterations to the Trust Deed and Rules, guidance on the meaning of certain provisions, details of any insurance taken out and notice of any changes to the basis of contributions. Trustees should try to ensure that the administrator has access to all appropriate information, instructions, documents and funds.

Likewise, administrators should provide the Trustees, their service providers and advisers with information relating to the scheme and with access to records, data, accounts and other documents or systems that relate to the scheme.

All information concerning the scheme and the individual members must be kept in the strictest confidence.

F. Disputes

It is important, in order to minimise disruptions, to establish at the outset what dispute resolution forum will apply, if any problems arise between the administrator and the Trustees.

It is advisable to have a clear method for detecting, recording and dealing with complaints from scheme members and other beneficiaries. Trustees may wish the administrator to report to the Trustees on member complaints of a certain nature, seriousness or magnitude either as part of an annual reporting event or more frequently.

The role (if any) of the administrator under the Trustees' internal dispute resolution procedures should be clear.

G. Conflicts of interest

It is important that where conflicts of interest arise, there are procedures in place to deal with them. Trustees should establish clearly their administrator's policy for managing any conflicts of interests.

H. Amendments and Termination of Service Level Agreements

The SLA may need amendment over time by agreement between the parties.

Corporate transactions may mean that the administrator's business is sold or assumed by another administrator. As regards the SLA, the Trustees will want to ensure that their consent is obtained, before an administrator can assign the SLA to another party.

The SLA will describe how both parties can terminate the SLA. In particular, attention should be paid to duties the administrator has to complete at the end of the SLA, such as the transfer of information and the completion of any tasks that had been already initiated.

Table 1

Roadmap for Administrators of Pension Schemes

Event	Timeframe
Annual Benefit Statements	Deliver annually within the scheme year and deliver to the trustees at least one month prior to the date trustees are required to issue them to the scheme members.
Trustee Annual Report	Deliver to the trustees within 8 months of the scheme year end. Trustees must make the annual report available to members and furnish to any relevant trade union within 9 months of the scheme year end.