

DUTIES OF THE MODERN TRUSTEE

Anne Taylor

PRE-1995 TRADITIONAL DUTIES

- Act in accordance with the law and the scheme's Trust Deed and Rules
- Act prudently, conscientiously, and honestly in good faith
- Act in the best interest of the scheme's beneficiaries

PENSIONS ACT 1995 – ADMINISTRATIVE DUTIES

- Separate bank account
- Whistle-blowing duties
- Scheme funding (MFR)
- Scheme accounts
- Keep accurate records



PENSIONS ACT 1995 – NEW DUTIES

- Disclosure
- MNTs
- Internal dispute resolution procedure
- Appointing professional advisers
- Fund investments
- Compliance with legislative requirements



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Making Your Pension Work for You

MYNERS' REVIEW 2001 - RECOMMENDATIONS

- Investment objective for the fund
- Performance measurement for the fund
- Performance measurement of advisers
- Investment performance information to members
- Shareholder activism
- Enhanced duty of care for trustees



The Act of Pensions
Making Your Pension Work for You

MYNERS' REVIEW

- Trustees to be accountable
- Need for corporate governance targets
- Trustees to be viewed as managers/directors
- The pension scheme viewed as a business
- Internal and external corporate governance



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TRUSTEES UNDER THE PENSIONS ACT 2004

- Bankers
- Businessmen
- Corporate advisers
- Risk analysts
- Quasi experts – legal/actuarial/investments



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PENSIONS ACT 2004 – TRUSTEE KNOWLEDGE AND UNDERSTANDING

- Areas for conversance
 - The law generally relating to trusts
 - The law relating to pensions
 - Investment for final salary schemes
 - Investment in money purchase arrangements including AVCs
 - Funding final salary occupational arrangements



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PENSIONS ACT 2004 – TRUSTEE KNOWLEDGE AND UNDERSTANDING

- Areas for conversance (cont'd)
 - Contributions to final salary occupational arrangements
 - Strategic asset allocation
 - Funding money purchase arrangements
 - Investment choices in money purchase arrangements
 - Fund management both final salary and money purchase arrangements



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INTERNAL CONTROLS AND GOVERNANCE

- Arrangements and procedures to be followed in administering and managing the scheme
- Systems and arrangements for monitoring administration and management
- Arrangements and procedures to be followed for the custody and security of the assets of the scheme

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PENSIONS ACT 2004 – TRUSTEES AS BANKERS

- An underfunded pension scheme is like an unsecured loan to a bank
- Scheme specific funding
- Moral hazard (corporate transactions)
- Credit risk analysis – ongoing basis
- Pro-active negotiations with sponsoring employer
- Notifiable events
- Managing conflicts of interest

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CONFLICTS OF INTEREST

- Conflicts
 - Existed before the Pensions Act 2004
 - Advise where an individual has more than one duty
 - Scheme rules and company's Articles of Association
 - An issue for employers too



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CONFLICTS OF INTEREST – SOLUTIONS?

- Stepping out of trustee meetings
- Conflict registers
- Independent advisers for company and trustees
- Independent trustees
- Trustee sub-committees
- Trustees resign
- Employer Information
 - Separate channel of communication
 - Agreements with trustee/directors
 - Confidentiality



The Act of Trustees
Making Trusts Work for the Future

MODERN TRUSTEE DUTIES

- Pension Ombudsman – Maladministration
 - Disclosure of minutes
 - Reasons for decisions
 - Other advisers' documents

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Making Trusts Work for the Future

MODERN TRUSTEE DUTIES (CONT'D)

- Annual report – new information about:
 - Scheme investments and performance
 - Individual benefits on retirement



The Act of Trustees
Making Trusts Work for the Future

MODERN TRUSTEES – THE FUTURE

- Knowledge of:

- Actuarial
- Legal
- Funding
- Risk Analysis
- Administrative



- Likelihood of further duties being imposed

- Growth of independent trustees?

The Act of Parliament
making Trusts of Land
