

### Why Is the Administration Function So Important?

Trustees have a fundamental duty to administer a pension scheme in line with the scheme rules and the law. Trustees normally delegate the day-to-day administration of a scheme to third-party service providers (but sometimes the function may be carried out by an in-house team). The precise nature of the delegated administration work will be agreed upon in a contract, but commonly includes matters such as: maintaining scheme records, collecting and investing contributions, dealing with transactions (including transfer requests), paying pensioner benefits, scheme communications and responding to routine member questions. An accurate and efficient administration process facilitates the smooth running of the scheme and is crucial for good member experience.

Trustees remain responsible for the administration of the scheme even if they have delegated the function and should receive regular reports on how their administrators are performing against agreed service level standards.

This guide focuses on administration, but the general messages apply to all service providers.

### If Trustees Are Receiving Poor Service, What Should They Do?

Pension scheme trustees often have long-standing relationships with the administrators who manage the day-to-day scheme activity on the trustees' behalf. It can be difficult to address unsatisfactory performance if improvements are promised by a trusted contact. Poor performance might be short-term – for example due to unexpected absences of key staff. In this instance, in addition to checking the contractual documentation, trustees should increase the frequency of monitoring service levels until performance returns to satisfactory levels (for example, weekly or fortnightly catch-up calls). However, short-term problems may be indicative of more serious issues (such as a high turnover of staff, under-resourcing or insufficient training).

Trustees should not allow underperformance to continue as it is likely to result in member complaints and Pensions Ombudsman determinations against the scheme. Longer term problems could lead to intervention from The Pensions Regulator (TPR) and reputational damage. In the general code of practice, TPR says that trustees should “constructively manage issues with administrator performance and consider using any contractual terms to drive improvements.”

### When Should Trustees Adopt a Formal Approach and What Options Are Open to Them?

Trustees should consider bringing in a contentious pensions lawyer at an early stage when service expectations are not being met. This will not necessarily result in a formal dispute resolution process (such as litigation) being commenced but will put the trustees on a much stronger footing if it later becomes necessary to start a formal process. More often than not, however, the contentious lawyer's advice enables the issue to be resolved amicably at an early stage before any significant damage has been done to the relationship or member outcomes generally. Trustees can also be made aware of the relevant limitation periods which may be a bar to any legal claim they might want to bring in the future and can make sure that appropriate steps are taken to preserve their rights in such circumstances. Early advice from a contentious pensions lawyer can ensure that notification periods for schemes that have trustee indemnity insurance in place are not missed and that an accurate explanation of the potential insurance claim is given. The cost of any advice may itself be recoverable under a policy of insurance.

### How Can a Contentious Lawyer Help?

A contentious lawyer can help trustees in their discussions with the service provider in a number of ways, including:

- Advising trustees on their legal position and the scope of recoverable losses. This helps trustees understand their options and the commercial impact of those options on the scheme.
- Advising on the likely response of the service provider (and any insurer) to any issues raised based on their experience of dealing with similar issues. This assists the trustees in assessing how best to approach the service provider to suggest a resolution which is likely to be acceptable to both sides.
- Preparing a formal complaint letter to the service provider's management team outlining the agreed contractual terms and the trustees' expectations. This may produce better results than continued discussions with administration team leaders, who are unlikely to be the decision makers in the business.
- Leading formal negotiations about service improvements, which may produce results that the trustees are unable to achieve by themselves.
- Engaging in a mediation process or without prejudice settlement discussions with a view to avoiding formal court action.

Handled correctly, all parties can move forward without permanent damage to the relationship. If improvements cannot be made, it may be necessary to consider terminating the contract and moving service providers. Trustees should understand the termination and handover provisions in advance of giving any termination notice so that they can attempt to agree any bespoke provisions as a consequence of termination (although it is always better if trustees have taken legal advice before signing any contract so that such provisions can be negotiated while relations are still good).

## Some Practical Points

| Do   | Don't   |
|--|---|
| Make sure that service expectations are clear so that underperformance can readily be assessed.  | Allow underperformance from service providers to go unchecked.  |
| Consult a contentious pensions lawyer at an early stage, as soon as it is clear that poor performance is not due to a short-term, easily surmountable issue. | Allow judgment of current poor performance to be clouded by previous good performance or by strong adviser relationships.   |
| Ensure that all interactions with the service provider on performance issues are documented, even early-stage discussions that may be informal.              | Omit to check trustee insurance policies and make timely notifications if appropriate.  |
| Make sure any agreed variation to service level provisions or any fee rebate is documented in line with contractual provisions.                              | Accept a service provider's reassurances about improvement without taking steps to formally protect the trustees' position if a limitation period is close to expiry. |

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