

Do Trustee Changes Need to Be Documented?

The requirements of the scheme rules and/or the Trustee Act 1925 will need to be complied with when there is a change of trustees, and this will require documenting. It will be important to ensure that assets vest in the new and continuing trustees properly. This can sometimes be complicated, so advice might be required. Changes to the board of directors of a trustee company need to be in accordance with its articles of association and recorded at Companies House.

Who Can Be a Trustee?

Some people are disqualified from acting as pension trustees, such as undischarged bankrupts, persons with unspent convictions for offences involving dishonesty and people prohibited or suspended by The Pensions Regulator (TPR), so some due diligence may be required before making an appointment. Subject to that, anyone over the age of 18 can be a trustee; but trustees are mainly current sponsor employees and/or pension scheme members. Many schemes also have an independent/professional trustee in place. Additionally, it makes good sense to think about the mix of skills and backgrounds among the trustees. For instance, TPR is encouraging schemes to achieve greater diversity and inclusion on trustee boards.

Do Special Rules Apply for Member-nominated Trustees and Directors?

The basic rules are that at least one-third of the trustee board should be member-nominated and a member-nominated trustee or director cannot be removed without the unanimous consent of the other trustees or directors. Please refer to our separate [Quick Guide](#) on member-nominated trustees and directors for further information.

Who Do I Need to Tell About a Change of Trustee(s)?

Changes to a trustee board (but not to the board of directors of trustee companies) need to be notified to TPR via Exchange as soon as reasonably practicable. Failure to do so risks civil fines/penalties. Trustees are also likely to have contractual requirements or best practice expectations to notify numerous other parties, including:

- Scheme actuary, auditor and administrator
- Fund managers and custodians
- Banks
- AVC providers
- Members

What Else Do I Need to Think About for a Trustee Appointment?

Some of the things that will make the change work smoothly include:

- Make sure the new trustee is invited to future meetings
- Help them get up to speed. TPR expects trustees to meet the “knowledge and understanding” requirements within six months – this means being conversant with the law relating to pensions and trusts and the principles relating to scheme funding and investment. Trustees are also required to be conversant with their own scheme’s policy documents. Using the [trustee toolkit](#) is a good starting point but other more bespoke trustee training may assist.
- Consider also scheme specific onboarding, e.g. current/future issues, access to trustee portals with key scheme legal, funding, investment and policy documents, etc.
- Provide data protection and cybersecurity training
- Complete the scheme’s conflicts register
- Update authorised signatory lists and the list of those trustees who can give instructions (with administrators, fund managers, banks, custodians and others as necessary)

What Else Do I Need to Think About for a Former Trustee?

Apart from thanking them for their service, some important things not to forget include:

- Ensure they are removed from email circulation lists
- Update scheme documents as necessary, e.g. the conflicts register, privacy notice and other policy documents that name the former trustee
- Update authorised signatory lists
- Securely retrieve and destroy scheme papers, especially those containing member data
- Update scheme passwords
- Is there any property held in the name of the former trustee that will need to be assigned?

What if the Sole Corporate Trustee Changes?

If Trustee Company A is replaced by Trustee Company B (not just a change to the board of directors), the key additional issue will be novation of contracts. This will apply to all scheme investments, bank accounts and other contractual relationships, e.g. with advisers. This can be a major project so needs careful thought in advance. It is also a change that needs to be reported to TPR and HMRC’s Pension Schemes Online/Manage a Registered Pension Scheme service will need to be updated.

What Are the Consequences of Failing to Comply?

Where the failure involves a regulatory breach, trustees are liable to civil fines/penalties (up to £5,000 for individuals; and £50,000 for corporate entities).

Schemes that have not correctly documented trustee changes have often encountered significant problems later on, for instance, where deeds of amendment (which typically need to be signed by all trustees) have not been signed by the right parties, potentially making them invalid. This is especially the case with trustee boards. You may wish to check past changes so any anomalies can be addressed now rather than derail a future de-risking project, for example.

Schemes that fail to maintain tight control of trustee circulation lists and signatory lists face enhanced risk of confidentiality breaches (potentially including reportable breaches to both TPR and the Information Commissioner's Office (ICO) if member personal data is involved) and exposure to cybersecurity events. It may seem unlikely, but do not run the risk of former trustees theoretically misappropriating scheme assets.

Some Practical Points

Do...	Don't...
Do update the list of personal information relating to the trustees that is held in order to comply with the trustees' record-keeping duties under anti-money laundering legislation.	Don't forget to check whether other regulatory bodies need to be notified, such as the ICO. Which trustee is listed as the "Administrator" with HMRC – does this need changing?
Do remember that if a member-nominated trustee or member-nominated director is being removed from office, the removal must be agreed to by all other trustees/directors.	Don't delay in completing the formalities for removal of a trustee – retrospective removal can create ambiguity in respect of the period before the trustee is formally discharged.
Do run an election/selection process for a new member-nominated trustee/director if the proportion will fall below one-third.	Don't forget to update any member websites that identify individual trustees.

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