

What Are the Legal Requirements?

The legal requirements for running a trustee meeting derive from various sources, including legislation, case law, the Pensions Regulator's codes of practice, the trust deed and rules of a plan and (if there is a sole corporate trustee) the articles of association. The Pensions Regulator's guidance on meetings and decision making, published as part of its 21st century trusteeship programme, should also be taken into account.

- **Chair** – ensure there is a Chair for the meeting. Trustee boards of DC plans have a statutory duty to appoint a Chair.
- **Notice** – 10 business days' notice is generally required for a trustee meeting. The notice must specify the date, time and venue.
- **Quorum and voting rights** – Check the rules of the plan or constitution of a sole corporate trustee. A decision is only valid if the meeting is quorate. If a trustee has to leave part way through the meeting, check there is still a quorum.
- **Conflicts** – Trustees should declare any potential conflicts of interest and these will need to be managed appropriately. Corporate trustees should also ensure compliance with the requirements of the Companies Acts.
- **Record keeping** – There are various matters that legislation requires to be recorded in minutes (see below).
- **Identify key risks and issues** – For DC plans, the Pensions Regulator expects trustee boards to regularly discuss key risks and issues, including topics on which they must report in the annual chair's statement, and the extent to which the plan is meeting the standards set out in the new DC Code of Practice.

Corporate Trustees....

Where there is a sole corporate trustee the format for the running of the meeting will be determined by the articles of association of the trustee company.

In particular, check the articles of association for:

- Notice requirements
- Quorum
- Decision making process

The interaction between plan rules and articles of association can be complicated and you may need to seek legal advice.

Minutes

By law, trustee minutes must contain the following information:

- The date, time and place of the meeting
- The names of the trustees invited to the meeting
- The names of the trustees who were present at the meetings (including by telephone where permitted) and those who did not attend
- The names of any professional advisers or any other person who attended the meeting
- Any decisions made at the meeting
- Whether, since the previous meeting, there has been any occasion when a decision has been made by the trustees and if so the time, date and place of such a decision and the names of the trustees who participated in the decision

Additionally, it is good practice to:

- Take quality minutes that concisely record issues discussed and clearly record decisions taken – not a "he said/she said" style of minutes
- Make a separate record of action points
- Keep and update a running record of the exercise of discretions

The ABC pension plan
Trustee meeting to be held at the offices
of ABC Limited on 20 December 2018
Agenda

	Topic
1	Apologies for absence
2	Introduction of guests
3	Declaration of any conflicts of interest
4	Approval of minutes of previous meeting
5	Admin report – including transfer requests, member activity, data cleansing, requests for information from members/beneficiaries
6	Update on any member complaints
7	Member engagement
8	Quarterly investment report and strategy
9	Funding update
10	Consideration of employer covenant and business update presentation from Mr F. D. of ABC Limited
11	Legal update
12	Update on trustee training undertaken since last meeting
13	Risk register
14	Update from the sub-committees on decisions taken
15	Trustee and adviser fees and expenses
16	Business plan
17	Notifiable events
18	Any other business
19	Date for the next trustee meeting

What Are the Consequences of Failing to Comply?

Failure to comply with any requirements that are set out in legislation (such as the contents of trustee minutes) could result in a fine of up to £5,000 per individual trustee and £50,000 per corporate trustee.

Additionally, failure to comply with certain requirements can have individual consequences. For example:

- Failure to comply with quorum requirements (whether under the trust deed where there is more than one trustee or under the articles of association of a sole corporate trustee) can render any decision invalid
- Failure to manage any potential conflicts of interest can result in an actual conflict arising and a consequent breach of trust, in respect of which members can take action against a trustee for any losses suffered by the fund

Some Practical Points

Do...	Don't...
<p>Do plan ahead. Prepare an agenda and check whether the other trustees wish to add an item for discussion. Arrange for the agenda to be issued prior to the meeting, along with relevant papers – have a covering note that briefly explains the purpose of each paper and what action the trustees need to take. Note that the Pensions Regulator expects trustees to consider administration as a substantive item at every trustee meeting. If your plan has mixed benefits make sure that sufficient time is devoted on the agenda to DC benefits.</p>	<p>Don't allow last minute papers to be added to the meeting packs – give advisers strict deadlines for submission of papers.</p>
<p>Do decide in advance which advisers you wish to invite and give them reasonable notice. Note that in the Pensions Regulator's DC code of practice it states that it expects trustees to "regularly communicate with representatives from service providers carrying out key elements of the day to day running of the scheme and, where appropriate, to invite them to attend trustee board meetings".</p>	<p>Don't assume that telephone meetings are permitted or that decisions can be made by email – check the rules of the plan or constitution of a sole corporate trustee, which could be amended to allow this if required.</p>
<p>Do decide whether to invite a representative from the sponsoring employer to present on developments in the employer's business.</p>	<p>Don't assume that advisers can speak on any topic without advance warning – let them know whether you wish them to address a particular topic and check whether there will be a fee for any background work required and for their attendance.</p>
<p>Do understand which issues on the agenda require the exercise of a discretion. Where trustees have a discretionary power they have a trust law duty to exercise it, even if the outcome is that they choose to do nothing in the particular circumstances.</p>	<p>Don't assume that a majority of trustees present can reach a decision. What do the rules of the plan or constitution of a sole corporate trustee require? Must all decisions be unanimous or can they be taken by a majority of trustees/directors present? Does the Chair have a casting vote?</p>
<p>Do take advice. Make a note of items that require professional advice and seek advice promptly after the meeting.</p>	<p>Don't let the discussions go off at a tangent. Consider appointing a sub-committee if a decision can't be reached without further thought or investigation. The terms of reference for a sub-committee should be documented and ensure that they are consistent with the plan rules (or constitution of a sole corporate trustee).</p>

Contact

Clifford Sims

Partner, London

T +44 20 7655 1193

E clifford.sims@squirepb.com