

# Member Nominated Trustees (MNTs) and Member Nominated Directors (MNDs)

## What Are the Legal Requirements?

Most trust-based occupational pension plans are required by law to have a written policy in place (the MNT arrangement) under which at least one-third of the trustee group is:

- **Nominated** through a process that involves the pension plan's active members and pensioner members (or an organisation which adequately represents them), and
- **Selected** by some or all of the members.

**Note.** Trustees/trustee directors should consider the extent to which it is practical and reasonable to include deferred members in the nomination process.

The MNT arrangement is designed and approved by the trustees/trustee directors. The legislative requirements are not very prescriptive and so it is up to each trustee group to ensure that the MNT arrangement is suitable for their pension plan, taking into account the Pensions Regulator's expectations that the arrangement will be fair, proportionate and transparent.

**Note.** Methods of selection can vary. For example, this may be a ballot of members or a selection panel which includes some members.

Where a pension plan has a sole corporate trustee, an individual nominated and selected under the MNT arrangement becomes an MND of the corporate trustee. Where the trustee board is made up of both individuals and companies, advice should be sought on the application of the legislation. Where the trustees are all "independent", there is no requirement for MNTs/MNDs to be appointed.

**Note.** After the nomination and selection process, an individual needs to be formally appointed before his or her term of office as an MNT/MND commences.

Some pension plans are exempt from the legislative requirements – these include plans established under statute, unregistered pension plans and those with fewer than two members.

## Can a Pension Plan Have a Greater Number of MNTs/MNDs?

Yes, if the documents governing the pension plan provide for more than one-third MNTs/MNDs. The MNT arrangement can also provide for a greater number if this is approved by the employer.

## Do MNTs/MNDs Have to Be Members of the Plan?

No, but the employer can require that it needs to give approval for the selection of a non-member. If non-members are to be eligible, trustees/trustee directors should discuss this with the employer and build this into the MNT arrangement. MNTs/MNDs have a right to take a reasonable amount of paid time off work for undertaking trustee duties (including trustee training) but this only applies where they are employed by an employer that participates in the pension plan. The MNT arrangement should also cover the circumstance where an elected MNT/MND ceases to be in employment or ceases to be a member of the plan.

## What is the Term of Office for an MNT/MND?

Legislation does not set a period of office – this should be contained in the MNT arrangement designed by the trustees/trustee directors.

## Are MNTs/MNDs There to Represent the Workforce?

No, but this is a common misconception. MNTs/MNDs have the same duties under law as trustees/trustee directors who are appointed by the employer and their fiduciary duty is in respect of the membership as a whole.

**Tip.** Trustees/trustee directors can help potential candidates by providing information about the trustee role or by putting in place a mentoring system.

However, MNTs/MNDs may have knowledge of the workforce that will be useful to the rest of the trustee group when deciding for example which forms of communication are most likely to capture member attention.

## Do Potential Candidates Need Any Specific Qualification or Experience?

No, but the Pensions Regulator expects new trustees/trustee directors to be compliant with Trustee Knowledge and Understanding requirements within six months of appointment.

**Tip.** New MNTs/MNDs are likely to be on a steep learning curve and a structured induction process should be in place.

## Can an MNT/MND Resign or Be Removed as a Trustee?

A trustee/trustee director can resign from office. If an MNT/MND is to be removed from office against his or her will, this requires the agreement of all the other trustees/trustee directors.

## What are the Consequences of Failing to Comply?

Any trustee who fails to take all reasonable steps to ensure that an MNT/MND arrangement is put in place (and followed) can be fined up to £5,000 (for an individual trustee) and £50,000 (for a corporate trustee).

Failure to comply with the MNT requirements does not, however, invalidate any decisions taken by a board of trustees.

## What About MNT/MND Vacancies?

The MNT arrangement must provide for vacancies to be filled within a reasonable period. Where a vacancy is not filled because insufficient nominations are received, the nomination and selection process must be repeated at reasonable intervals until the vacancy is filled.

**Tip.** Where the number of nominations exceeds vacancies, the MNT arrangement could provide that nominees will be held on a "waiting list" in case of a further vacancy arising in the short term.

## Can the MNT Arrangement Be Amended?

Yes, by agreement of the trustees/trustee directors. The MNT arrangement should be routinely reviewed every three to five years, or earlier if the pension plan has a material change affecting its membership, such as a large redundancy exercise or a merger with another pension plan.

## Contact

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