

Skottowe & Associates

APPOINTING A PROFESSIONAL TRUSTEE?

SOME THINGS TO THINK ABOUT

WHY APPOINT A PROFESSIONAL TRUSTEE?

There are a variety of reasons for appointing a Professional Trustee:

- **Expertise:** You may wish to add expertise and experience to the management of your scheme. This might be generally, such as a knowledge of how other pension arrangements are run, or in a specific area. The latter might include someone with investment expertise to serve on an investment sub-committee.
- **Objectivity:** A Professional Trustee will generally not be as involved in the operation of your company as employees who act as trustees. This can bring objectivity to the way in which the scheme is run.
- **Conflicts of Interest:** The appointment of a Professional Trustee can ensure that conflicts of interest, either real or perceived, are recognised and dealt with appropriately.
- **Reassurance:** The appointment of a Professional Trustee can provide reassurance to members of the scheme and outside bodies, such as shareholders, that the scheme will be run in a professional manner.
- **Lack of Volunteers:** Many employees are reluctant to serve as trustees of occupational pension schemes. The appointment of a Professional Trustee can help overcome this problem. In the extreme case, the Professional Trustee can act as a Sole Trustee (see below).
- **Efficiency:** A Professional Trustee can ensure that decisions are made more efficiently. This is partly due to his knowledge and experience, but also by ensuring that decisions are made in a timely manner.
- **Costs:** A Professional Trustee can ensure that unnecessary professional advice is reduced and that advisers, when instructed, are given a precise remit. A Sole Trustee (see below) can significantly reduce the amount of management time needed for the scheme.

POSSIBLE WAYS OF ACTING AS A PROFESSIONAL TRUSTEE

A Professional Trustee can be appointed on a:

- **Collegiate Basis:** the Professional Trustee will serve as one of several trustees or trustee directors. As such, decisions will continue to be made by all of the trustees. Provided the existing trustee arrangements operate in an efficient manner, this is often a simple and quick way to achieve your objectives.
- **Sole Trustee Basis:** all the existing trustees resign and a corporate trustee replaces them. This can lead to very efficient decision-making. However, careful consideration needs to be given to the message that is given to employees and other parties at the time of the appointment. There are also certain legal issues that need to be considered (see below).

In some circumstances, due to either internal politics or for other reasons, it is not possible to appoint a Professional Trustee. However, the Professional Trustee may agree to act as:

- **Secretary to the Trustees:** in this position, he may be able to advise and guide the trustees on the issues they face.

THE APPOINTMENT IN PRACTICE

A Professional Trustee can act in either a personal capacity or as director of a corporate trustee.

- **Personal Capacity:** most Professional Trustees would be unwilling to be appointed in a personal capacity, i.e. he or she is appointed directly as a trustee. There are a number of reasons for this, but the principal reason is to minimise any personal liability.
- **Director Of A Corporate Trustee:** in practice, a Professional Trustee will act as a director of a trustee company. Where a scheme already has a corporate trustee, the Professional Trustee can become a director of the corporate trustee. However, a personal appointment as a director makes covering for holidays and allowing other people to attend meetings slightly difficult. For this reason, a Professional Trustee may sometimes ask that his trustee company is appointed as a

director as this allows more flexibility as to who can attend meetings etc. In practice, the Professional Trustee would attend meetings and make decisions as a representative of his trustee company.

Where a scheme does not have a corporate trustee, the Professional Trustee will usually ask that his trustee company is appointed as a trustee. This can either be on a collegiate or sole trustee basis (see above).

In either case, a Professional Trustee will usually enter into an agreement with whoever is responsible for appointing trustees or trustee directors for the scheme. This will cover issues such as the basis of any charges, who will pay these (the sponsoring employer or the scheme), how they will be monitored, and the circumstances under which the Professional Trustee, or his trustee company, will cease to act as a trustee or a trustee director.

WHO WOULD ACT IN PRACTICE?

When a Professional Trustee acts via a trustee company, decisions will be made by the directors of this company. You need to understand how the decision-making process works within the trustee company and who, in practice, will be making the decisions on a day-to-day basis.

You need to be satisfied that the people who will be making the decisions fully understand your scheme and will be attending trustee meetings.

WHAT ABOUT MEMBER NOMINATED TRUSTEES/DIRECTORS?

Where a trustee is appointed on a collegiate basis, the appointments of the existing trustees should not be affected in any way. In particular, any member nominated trustees should continue in office.

Under existing legislation, member nominated trustees cannot be forced to retire. However, they may, if they feel that it is appropriate, relinquish their appointment. This would be necessary in order to enable the appointment of a sole trustee. Provided the trustee company that will act as sole trustee is independent from the sponsoring employer, it will be exempt from the requirement to have member nominated directors.

SMALL VERSUS LARGE FIRMS

There are a variety of trustee firms. The larger firms employ a variety of professionals, including actuaries, lawyers, accountants and investment managers. Smaller firms do not have the same breadth of staff that these larger firms have.

You need to consider:

- **Expertise:** Do you need the wider expertise provided by a variety of professionals or the more general service provided by a small firm?

In many ways, a Professional Trustee carries out an analogous role to a Non-Executive Director of a company. There are very few Non-Executive directors who are part of a larger organisation; he or she is recruited for his or her particular skill set, not that of a wider organisation.

- **Duplication:** Where a larger firm has a variety of professionals, there will be an incentive for them to “sell” the services of these additional professionals. However, there is a degree of duplication as, under legislation, the scheme has to appoint its own solicitors, accountants, actuaries, and investment managers. You therefore need to consider whether these additional professionals would duplicate the statutory appointments and, if so, be an additional cost.
- **Cost:** Larger firms have higher overheads and, as such, will generally charge significantly more than smaller firms.
- **Proportionality:** The size and complexity of your scheme will determine the size of firm you need. Costs needs to be proportionate to the size of the scheme.

FURTHER QUESTIONS

If you have any questions, please feel free to contact Skottowe & Associates:

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