

Trustee Legal Responsibility at Point of Retirement

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Overview

- Defining trustee responsibility
- Limits of responsibility
- Some practical issues
- Lessons from abroad?

Legal Responsibility - Sources

- Pensions Act / Regulations
- Pensions Authority Guidance
- Trust Law

Pensions Act

- Make arrangements for payment of benefits as provided for under the rules of the scheme as they become due

Disclosure Regulations

- Furnish as soon as practicable but within 2 months of benefit becoming payable
 - Amount of benefit and how calculated
 - Benefit options and procedures for exercise

Pensions Authority – Trustee Handbook

- Ensure members receive necessary information and given reasonable time to exercise options
- Exercise of options recorded in writing

Pensions Authority – Trustee Handbook

- Trustees “should” encourage members to seek advice on retirement options, especially ARF
- Value, security and suitability of annuity provider should be considered and evaluated

Trust Law – Fiduciary Duties

- Primary duty – fulfil purposes of the trust – relevant benefits
- Act in members' best financial interests
- Act prudently, carefully, honestly & good faith
- Take advice where lack expertise

Trust Law – Trust Deed

- Implement retirement options at direction of member – passive role
- Retirement options based on trustee determination – active role

Limits of Trustee Responsibility – Investment Advice

- “... information is either accompanied by a comment or value judgement on the relevance of that information to the client’s investment decision, ... so that the information will tend to influence the decision of the recipient” – Rubenstein v HSBC [2011] EWHC 2304 (QB)
- Provision of investment advice – generally requires Central Bank authorisation – criminal offence if not properly authorised

Some Practical Issues

- Financial advice
 - When and paid for by who?
- Retirement planning and education
 - When and paid for by who?
- Default investment strategy
 - Should tail wag the dog?

Some Practical Issues

- Discharge and indemnification
- Duty to protect members from themselves?
- Preferred ARF/Annuity provider?

Lessons from Abroad?

- Pension Freedoms - UK Pensions Regulator
 - Educate members on retirement options, shopping around and lifestyling
 - Retirement wake-up pack
 - Pension Wise and/or financial advice
 - Option form with generic risk warnings

Thank You

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