

Registered Administrators

The Pensions Act 1990 (as amended) was the first real means by which occupational pension scheme members were provided any protection under the form of specific legislation specifically drafted for occupational pension schemes.

Up to the introduction of the Pensions Act occupational pensions were governed by a number of different documents, rules, specific pieces of legislation or general legal principles:

- The trust deed and rules of the scheme
- Tax legislation
- Revenue practice and precedent
- Trust law

Not all of these provided a specific platform for the protection of occupational pension scheme members and their rights, the general principles of trust law would have provided a certain level of protection however it was decided that specific legislation needed to be introduced to provide specific protections to members and give them rights to certain information etc.

Hence the introduction of the Pensions Act 1990, which, amongst other things, provided for the right to preserved benefits for scheme members with greater than 5 years pensionable service, (subsequently reduced to 2 years), the obligation on the trustees to make available the annual report of the scheme and member benefit statements within 9 months of the scheme year end and the obligation on the trustees of the scheme to arrange for actuarial reviews of the scheme on a periodic basis to ensure the schemes assets sufficiently meet its liabilities.

An element of a 'gap' existed in the legislation however, a gap which may have become more apparent in the last number of years, certainly from my experience the gap was apparent. The 'gap' I refer to was where the trustees of a scheme outsourced (which is typical) the administration of the scheme to a third party pension scheme administrator, and the obligations to provide information, e.g. annual accounts, member benefit statements in a timely manner were not met..

Let me give you an example;
Up to now where the administration of a scheme and the production of scheme annual accounts, member benefit statements was outsourced to a third party pension scheme administrator

and the administrator of the scheme breached the Pensions Act requirements to make these available within the prescribed time limits, the Pensions Board had no right to pursue the administrator of the scheme for the breach of the legislation, the first and only port of call for the Pensions Board was the trustees of the scheme.

Now it is a general principle of trust law that you can delegate authority but not responsibility, therefore the Pensions Board were right in their pursuit of the trustees of the scheme, the trustees of the scheme were legally obliged to ensure the production of this information, regardless of whether it was outsourced or not, they delegated authority to produce the necessary information for the scheme but did not delegate responsibility to produce same. The trustees of the scheme should have a right of recourse under law to take a claim against the third party administrator but it would be the trustees of the scheme that would be prosecuted by the Board, and if the Board was successful, fined and have their name and details of the offence and penalty published.

The third party administrator in this case could potentially get away scot free, and even if the trustees of the scheme took an action against the administrator and were successful in their action its unlikely you would read about it in the papers.

This gap has now been closed by the introduction of the concept of 'Registered Administrator' in the Social Welfare and Pensions Act. The Social Welfare and Pensions Act became law in March of 2008. The provisions relating to Registered Administrators became law in November 2008.

From the 1st November 2008 the trustees of every scheme (one member and multi member occupational pension scheme, insured and non-insured, and trust based Retirement Annuity Schemes) must have appointed a registered administrator to provide 'core administration functions' to a scheme.

The core administration functions in respect of a scheme are;

- The preparation of annual reports and annual benefit statements for the trustees of the scheme, and
- The maintenance of sufficient and accurate records of scheme members and their entitlements to discharge these functions.

Under these provisions existing pension scheme



administrators and trustees of a scheme and new entrants providing these services to the 'pension scheme administration' market are required to register with the Pensions Board. In the case of existing administrators and trustees of schemes providing this service this registration must have been completed and with the Pensions Board at latest by the 1st November 2008 along with details of the schemes of which these core administration functions were or were being proposed to be provided. In the case of new entrants registration is required before any core administration services can be provided.

Failure to register with the Pensions Board is an offence under the legislation that can lead to prosecution, a fine and potentially the removal or refusal by the Board to renew the 'licence' to act as a pension scheme administrator.

The registration process is somewhat a self assessed system, the proposed registered administrator confirms the details of the schemes they are providing or will be providing core administration functions to and self certifies to the Pensions Board that they have the requisite competencies to provide such an administration service. The plus is it doesn't cost anything to register.

There is an annual renewal requirement thereafter. So set your reminders!!

So is there a need for Registered Administrators and are there any benefits of having Registered Administrators?

Well the answer in my opinion is yes and yes.

NEED

As mentioned in my example a gap existed whereby although a third party administrator could be responsible for breaches in pensions legislation it was the trustees of the scheme that would be potentially held liable and prosecuted for the breach. Now as mentioned above, while this is the correct legal route for the Pensions Board to pursue in such a situation it seems a little unfair that the Pensions Board could not conjoin the administrator in taking responsibility for the breach. Going forward in such a situation it is still the trustees of the scheme that will be prosecuted for the offence, as it is legally their responsibility. Now however the Pensions Board will have a level of recourse to the administrator for their part in any breach.

ACCOUNTABILITY

Going forward the level of accountability of third party administrators has risen significantly; the threat of a withdrawal of the ability to trade should get minds focused!!

This hopefully should lead to greater communication between the trustees of a scheme and third party administrators. Both parties are now very much obliged to communicate with each other to ensure that neither party pulls the other one down, to be able to maintain 'sufficient and accurate records of scheme members and their entitlements to discharge these functions' requires the trustees of the scheme to provide the administrator with timely and accurate information.

POLICING

Even before the introduction of the Act the Board had details of the administrators of an occupational scheme (all schemes are registered with the Board and details of the administrator of the scheme is provided), however the Board had no power to effectively sanction an administrator of a scheme.

Going back to the above example, even if the administrator of the scheme was a serial offender, i.e. breaching the requirements of the legislation on many schemes, the Board had no recourse to them and couldn't sanction or restrict their ability to trade and/or take on new business.

At least now with the introduction of 'licensing' of Registered Administrators, the Board has the ability to sanction poor performing administrators.

OPPORTUNITY

The legislation provides for compulsory on-going trustee training for all trustees of occupational pension schemes and Trust based Retirement Annuity Contracts (in the case of a company appointed trustee of a scheme the legislation requires all directors of the company to receive trustee training). Failure to meet the trustee training requirements can lead to a fine under the legislation.

For advisors this creates a real opportunity to develop a trustees training programme that can be offered to all pension scheme clients at a reasonable cost.

It also provides advisors the opportunity to discuss with their clients converting insured arrangements, particularly one member schemes where the employer was appointed trustee under a letter of exchange, to self administered pension schemes. In the case of a self administered pension scheme the pension scheme member can be appointed as a trustee along with the pensioner trustee, thus ring fencing any exposure of the company/company directors from the provisions of the legislation and the ire of the Pensions Board.