

COVID-19 Pandemic – Impact on Pension Schemes

Scheme Governance

Scheme Governance and internal controls are a key characteristic of a well run scheme and a key component in the role of the trustee. As the UK is in ‘lock down’ and the pensions industry workforce is, where possible, working from home, the coronavirus pandemic is also impacting on how schemes are governed on a day to day basis. This briefing covers a few key governance areas that trustees may need to consider.

Trustee Meetings

Trust Deeds and Rules detail how a scheme is to be governed and provide instructions on the frequency of meetings, how those meetings must be organised and on what basis trustees can make important decisions about the running and payment of benefits from the scheme. However, these documents have often been executed more than 15 or 20 years ago and do not always reflect more up to date practices and technologies.

It is recommended therefore that trustees check the relevant provisions of the Trust Deed and Rules of their schemes to ensure they can continue to make valid decisions in the present circumstances.

These are a few examples:

- What is the necessary frequency of meetings
- Can notice of a meeting be sent electronically
- How many trustees constitute a quorum
- Do trustees have to be physically present at a meeting for it to be valid
- Do both employer nominated trustees and member nominated trustees have to be present at a meeting.

Do trustees have an explicit power to make decisions:

- by signed resolution
- by telephone conference
- by video conference
- by electronic means such as an email document

and

- would such decisions be valid in law.

If a decision is made electronically or by other means and the Trust Deed and Rules do not specifically allow for this, a pragmatic solution may need to be found. For example, a decision may be ratified at a future physical trustees meeting or by a formal written minute or resolution executed very quickly thereafter. We strongly recommend however, that legal advice is obtained from the scheme’s legal advisers regarding these issues.

Electronic Signatures

A report issued by the Law Commission in September 2019 (and endorsed by the UK Government Ministerial Statement of 3 March 2020) stated that generally electronic signatures can be used to execute documents, including Deeds, provided:

- There is an intention to authenticate the document, which means that there is an intention to sign and be bound by the document being signed, and
- Any execution formalities are satisfied, such as witnessing or the signature being in a specified form (i.e. handwritten).

Valid forms of electronic signature can include:

- Typing a name at the bottom of an email
- Clicking an “I accept” box on a website
- A scanned manuscript signature
- Typing your name or pasting an image of your signature into the signature section of a document
- Clicking to have your signature inserted into a document through an e-signature platform.

There are circumstances where electronic signatures may not be acceptable, for example:

- for documents to be filed with UK tax authorities
- for transfers of rights in intellectual property
- for agreements which specify that they can only be varied by agreement “in writing and signed by hand”.

In these exceptional circumstances where trustees and other individuals in the industry may need to find alternative ways of signing important documents, electronic signatures may be a method that should be considered.

Risk register and internal controls

The additional risks to the governance of a scheme which have been highlighted as a result of the COVID-19 pandemic, should be added to trustees risk registers together with details of the measures being taken to mitigate them.

Conclusions and Cartwright views

These are challenging times, trustees should carefully consider the implications of any actions they take and note that this briefing is not a complete list of governance issues to consider in the context of the COVID-19 pandemic. Before making any decisions or changes to current practices and procedures or making changes to any legal documents it is recommended legal advice is taken.

If you would like to discuss any of these matters further, please get in touch with your usual contact at Cartwright.

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