

Pension Scheme Trustee Training

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WELCOME & INTRODUCTIONS



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AGENDA - ESSENTIALS TRUSTEE TRAINING

Today Part 1 –

- **Background to Irish Pension Provision**
- **Legal Issues**
- **Essentials of Trustee Governance**
- **Essentials of Investment**
- **Data Protection**

Part 2 –

- **Pensions Regulation and Compliance**
- **Disclosure of Information**
- **Pensions Authority Codes of Governance**
- **IORP II – Pensions Authority Guidelines**
- **Essentials of Actuarial Practice**

BACKGROUND TO IRISH PENSION PROVISION

PROVISION FOR SECURITY IN RETIREMENT

- Social welfare
- Occupational pension schemes / PRSA's / RAC
- Personal savings



TYPES OF OCCUPATIONAL PENSIONS

- **Defined Benefit**

- Members offered Pension equal to % of Salary for each year worked
- Employer pays “balance of cost”
- Financial and demographic risks lie with employer

- **Defined Contribution/AVC**

- Employer pays agreed amount into individual pension accounts
- Pension at retirement depends on value of account and cost of annuities
- Financial and demographic risks lie with members

- **Hybrid scheme**

Usually contains some DB & DC features in order to split the risks between the members and the employer

SOCIAL WELFARE DEVELOPMENTS



- **1908** - non contributory old age pension
- **1911** - compulsory insurance for certain workers
- **1947** - Dept. of Social Welfare established
- **1961** - old age contributory pension introduced
- **1970** - retirement pension to insured retired persons from age 65
- **1977** - old age pension payable from age 66
- **2014** - retirement pension now payable from age 66
- **2009-20** - current rates - single person €12,912 p.a. married person €24,481 p.a. (both over 66)

FINANCE AND PENSIONS ACTS

- **1918 Income Tax** - tax relief on premiums
- **1958 Finance Act** - allowed gross build-up
- **1967 Finance Act** - extended to self employed
- **1972 Finance Act** - basis for current Revenue practice
- **1974 Finance Act** - controlling directors could join
- **1990 Pensions Act** – protection for members
- **1997 Taxes Consolidation Act** - current approving act
- **1999 Finance Act** – ARFs/AMRFs for 20% directors
- **2000 Finance Act** – ARFs/AMRFs for AVCs
- **2002 Pensions Amendment Act** – PRSAs
- **2003 Finance Act** – increased contribution limits
- **2006 Finance Act** – restrictions on size of pensions
- **2011 Finance Acts (3)** – limits, levy, ARF, etc.



WHAT NOW?

- **July 2016 - The Pensions Authority Published Proposals for Pension Reform**
- **2016 - The Pension Authority published its Governance Codes to be adopted by DC Scheme Trustees**
- **GDPR May 2018**
- **January 2019 - IORP II Directive**
 - Agreement reached between the European Parliament and the European Council in June 2016
 - IORP II to take affect 13th January 2019 – not yet transposed into Irish Law – 2020?

BACKGROUND TO IRISH PENSION PROVISION

Q&A

Turn webcam & audio on (Bottom of your screen). Raise your hand. Chairperson will take note of your name and when ready will ask you by your name for your question. Please state who the question is for. Alternatively ask question via chat function directly to Ollie throughout the presentation.

LEGAL ISSUES

MAIN TRUSTEE DUTIES

- Act in accordance with the Trust
- Act prudently, carefully, honestly and in good faith
- Act in best interests of beneficiaries
- Take advice on matters where not experts
- Invest funds properly

AGENDA

- Background, care and liability
- Duties and powers
- Sources
- Delegation and decisions
- Employment law

BACKGROUND

Four basic concepts:

- Honesty
- Prudence
- Good faith
- Care

BACKGROUND

What is a Trust?

- Trustee
- Assets
- Beneficiaries
- Employer



BACKGROUND

The Need for a Trust

- Tax Incentives
- Security
- Beneficiaries Rights to Enforce



THE ROLE OF A TRUSTEE

- **Duties (must do's)**
- **Powers (rights)**
- **Discretionary Powers (choices)**



MAIN DUTIES

- Act in accordance with the Trust
- Act prudently, carefully, honestly and in good faith
- Act in best interests of beneficiaries
- Take advice on matters where not experts
- Invest funds properly
- Confidentiality
- Not for Profit from the Trusts
- To act personally and independently
- Not to fetter discretion



COMMON POWERS

- Amendments
- To make augmentations
- To admit new employers
- To award pensions increases
- To appoint/remove Trustees
- To terminate/wind-up the scheme

section 2.1.1, 2.4

THE BALANCE OF POWER

- Powers divided primarily between Trustees & Employer
- Differs from one deed to the next
- Who ever can exercise holds the balance of power

SOURCES

1. General trust law (duties)

2. Your trust deed and rules (powers)

3. Legislation - Pensions Acts 1990 - 2020



THE TRUST DEED & RULES

- The Deed Powers
 - To administer the scheme funds
 - To delegate
 - To invest Trust Funds
 - To employ an accountant to produce accounts

- The Rules – Powers
 - To pay benefits

PENSIONS ACT 1990 - 2020

- Disclosure requirements
- Funding requirements
- Preservation/transfer requirements
- Equal treatment requirements
- Reporting requirements
- Registered Administrator Requirements

GENERAL STANDARD OF CARE

“Operate the fund in accordance with your Rules using the same degree of care as a prudent man of business would in the operation of his own affairs”

HIGHER DUTY OF CARE FOR INVESTMENTS

*“an ordinary prudent person would take if
making investments for the benefit of
someone for whom he or she felt morally
obliged to provide.”*

Trustee responsibilities under trust law

- Carry out the trust in accordance with the law and the terms of the trust deed and rules
- Act in the best interests of the beneficiaries
- Treating all beneficiaries fairly
- Act prudently and diligently
- Exercise care and good faith when carrying out your duties
- Supervise delegated functions
- Be aware of possible conflicts of interest
- Treat all information in the strictest confidence and using it only for its intended purpose
- Seek professional advice if necessary
- Do not profit from the trust

PERSONAL LIABILITY



- Wrongful act
- Negligence
- Improper use of power
- Trust law protects trustees who carry out their duties and responsibilities and act diligently and in good faith. Trustees are generally only liable in the case of fraud, wilful default or gross negligence.

PRINCIPLES OF TRUST LAW

A Trustee is:

- Is not liable for breaches of a co-trustee
- Is not liable for breaches prior to appointment or after resignation
- Is liable for own breaches after resignation

PROTECTION FROM LIABILITY

- **Exclusion Clause**
- **Indemnity Clause**
- **Insurance**
 - **Insurance policies will typically cover costs such as:**
 - reimbursement for mistakes made in good faith
 - the cost of mounting a legal defence in cases taken against the trustees
 - the cost of defending regulatory proceedings.

DECISIONS

- In accordance with the Trust Deed and Rules
- In the members' best interests
- Act fairly between competing interests



DISCRETIONARY POWERS

- Read your rules
- Check all documentation
- Gather evidence
- Record decision
- Act – Reasonably & In Good Faith

SCHEME AMENDMENTS

- In accordance with the Trust Deed and Rules
- Check for restrictions
- Check who has the power to exercise
- Check who is affected
- If in doubt take advice

SEEKING PROFESSIONAL ADVICE

Good Practice & Legal Requirement

- Trustee Training
- Legal Advice – Vast List
 - Scheme Amalgamation
 - Augmentation
 - Payment of Death Benefits
 - Rule Amendments



EMPLOYMENT LAW

There is significant overlap regarding pensions

- Scheme overridden by contractual promises?
- Depends on a number of factors.

EMPLOYMENT
LAW



SUMMARY

What is a Trustee?

A GUARDIAN OF THE FUND

Trustees

- **Can delegate the work**

BUT

- **Cannot delegate the responsibilities**

LEGAL ISSUES

Q&A

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ESSENTIALS OF TRUSTEE GOVERNANCE

APPROPRIATE TOOLS OF GOVERNANCE

1. Information
2. Advice
3. Guidelines

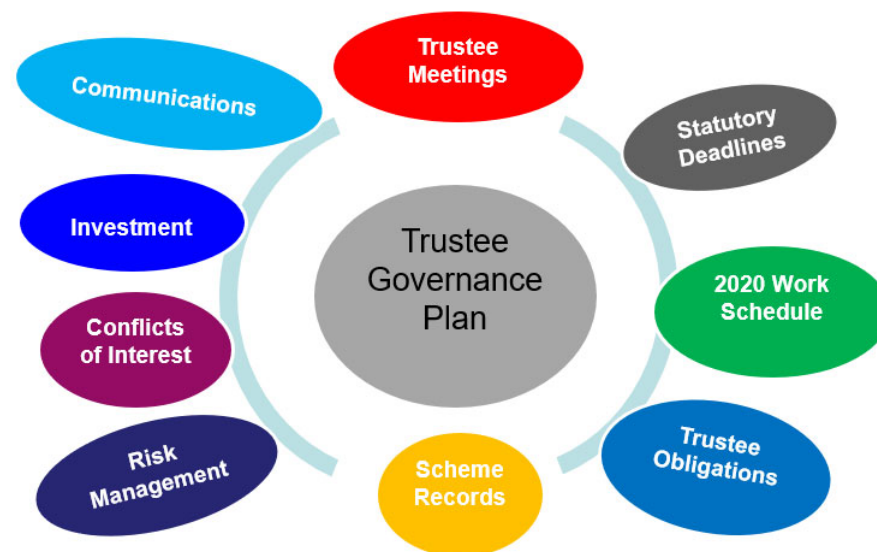
GOVERNANCE MODEL

Key Areas

- Legal
- Compliance
- Regulatory
- Insurance
- Administration
- Actuarial Issues

PENSIONS AUTHORITY DC CODES OF GOVERNANCE 2016

- Governance Plan of Action
- Trustee Meetings
- Managing conflicts of interest
- Collection and remittance of contributions
- Investing scheme assets
- Paying benefits
- Keeping Records
- Data protection
- Risk management
- Member Communications
- Value for money



TRUSTEE MEETINGS

Frequency?

- Size and type of scheme
- Manner of administration
- Size and nature of assets under investment



TRUSTEE MEETINGS

Organisation

- Appoint Chairman and Secretary
- Notice period
- Quorum
- Decision – making
- Circulation of Papers
- Attendance by – conference call
- Written resolutions
- Confidentiality
- Signatory mandate

TRUSTEE BOARD STRUCTURES

Many Options

- Employer as Trustee
- Individual Trustees
- Corporate Trustees
- Professional Trustees
- Member Selected Trustees
- Sub-committees
- Pension committees



EMPLOYER AS TRUSTEE

Practical?

Or

Conflicts of Interest

INDIVIDUAL TRUSTEES

- Effective?
- Require Trustee Training
- Onerous on small schemes
- Obligations
 - Confidentiality
 - Manage conflicts
 - Not for profit
 - Act without bias



CORPORATE TRUSTEES

Advantages:

- Less Formality
- Execution of Documents - Simplified
- Not Personally Liable to Scheme - Beneficiaries and/or Creditors

Disadvantages:

- Prepare Accounts and File Annual Returns
- Separate Trust Accounts
- Memo & Arts



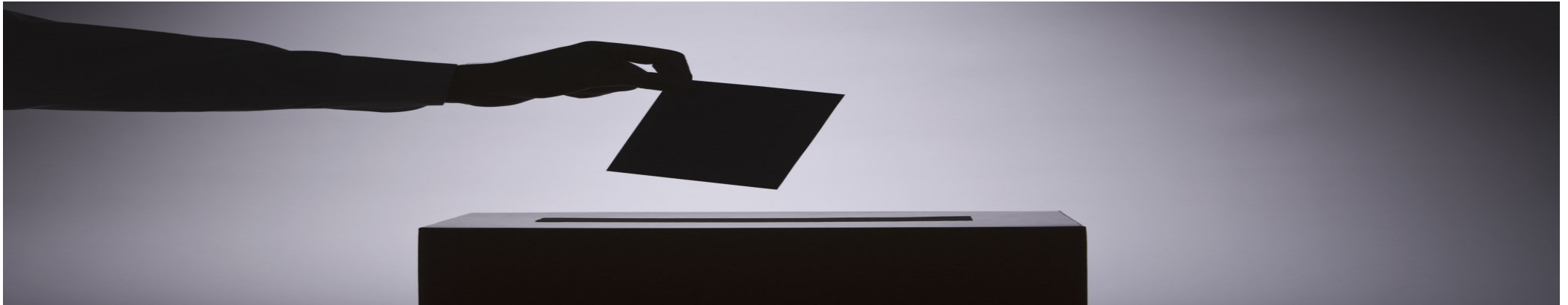
PROFESSIONAL TRUSTEES

Why?

- Reduce employer risk
- Employer more time
- Enhance governance structures
- Guidance to Trustees



MNT'S: MEMBER NOMINATED TRUSTEES



- Pensions Act 1990
(as amended)
- Over 50 actives- member involvement in Trustee selection
a requirement

SUB-COMMITTEES

- Investigate specific issues
- Report to main Board
- Terms of reference
- Rotate membership

PENSIONS COMMITTEES

- If membership has sub-groups
- Liaison between employers and members
- Contact points

PENSIONS ENVIRONMENT

- Trust Deed & Rules
- Statute
- Pensions Authority / Revenue
- Trust Law
- European Law

TRUSTEE DECISIONS



- Personal Role - Duties and Obligations
- However Appointed - Whatever Background
- Must Act Equitably and Impartially
- Benefit the Beneficiaries

THIRD PARTY RELATIONSHIPS

Should be formalised

- Investment Managers
- Custodians
- Scheme Administrators
- Benefits Consultant
- Investment Consultant
- Scheme Actuary
- Legal Advisors
- Scheme Auditor

CONTRACTUAL RELATIONSHIPS

Investment Management Agreements

- Roles and responsibilities
- Investment policy and objectives
- Mandate and benchmarks
- Performance objectives
- Fees
- Reporting services

CONTRACTUAL RELATIONSHIPS

Administration Service Agreements

- Assignment of responsibilities
- Compliance monitoring
- Reporting obligations
- Fee basis
- Service
 - Timing
 - Delivery

CONTRACTUAL RELATIONSHIPS

Administration Services

- Appoint Registered Administer for core outputs
 - Benefit Statements
 - Statement of Reasonable Projections
 - Trustee Annual Report and Accounts
- Record Keeping
 - Maintain accurate records to produce core outputs
- Payment of Benefits
 - Retirement / Death / Pension Adjustment Order / Leaving Service
- Preserved Benefits
 - < 2 years service – Refund of members contributions
 - >2 years service – Preserved benefit or transfer of both employer and employee contributions

CONFIDENTIALITY

- Adoption of Policy Statement
- Interests of Employers
- Interests of Members
- Data protection laws - GDPR



CONFLICTS OF INTEREST

Trustees must not:

- Benefit from trusteeship
 - impairs judgement
 - impairs independence

Trustees must:

- Recognise conflict
- Acknowledge it
- Seek guidance

Always read your deeds & rules



ESSENTIALS OF TRUSTEE GOVERNANCE

Q&A

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ESSENTIALS OF INVESTMENT

DB & DC

PRESENTER

Ollie Fahey FCCA FIIPM APA

Chairman Investment Strategy Group –

APT Workplace Pensions Ltd.

AGENDA

- Trustee responsibilities
- Asset Classes
- Asset Characteristics
- Types of investment management
- Investment Styles
- Investment Management Structure
- Investment Framework
- SIPP



TRUSTEE RESPONSIBILITIES

- Invest in accordance with the powers vested in them under the trust deed
- Subject to a duty of care (prudent person) to members and to sponsoring employer
- Requirement to obtain expert advice

STATUTORY INVESTMENT RESPONSIBILITIES

- “to provide for the proper investment of the resources of the scheme in accordance with regulations...and the rules of the scheme”
- Regulations prescribe rules to be followed by trustees consistent with requirements of EU Directive (IORPS)

INVESTMENT REGULATIONS 2005

- Ensure the security, quality, liquidity and profitability of the portfolio...having regard to the nature and duration of the expected liabilities of the scheme
- Similar to trust law obligation
- Invest *predominantly* in regulated markets
- Assets must be properly diversified
- Investment in derivatives only allowed if it reduces risk or contributes to efficient portfolio management
- Prohibition on borrowing
 - Exemption for one member arrangements only

Additional requirements to be introduced under IORP II.

TRUSTEES INVESTMENT DUTIES

Trustees are responsible for the investment of scheme assets. This can be undertaken directly by the Trustees but must have a “Suitably Qualified” individual on Trustee Board.

Typically Trustees appoint fund managers who have been selected from a list or “Beauty Parade” put together by their Investment Consultants or use the Delegated Services provided by their Investment Consultants.

Under either option Trustees remain responsible for Investment of assets under their stewardship.

ASSET CLASSES

- Equities
- Bonds
- Property
- Cash
- “Alternatives” including:
 - Diversified Funds
 - Liability Driven solutions
 - Hedge funds
 - Venture capital
 - Derivates
 - Commodities



EQUITIES

- Company shares
- Income – share of profits
- Capital growth – no capital guarantee
- Capital value highly volatile
- Have given best long term return
- Offer protection against inflation



BONDS

- Issued by governments or companies
- Fixed income stream – paid annually
- Capital guarantee – repaid at maturity, however can default
- No inflation protection
- Unless index-linked – less common
- Value changes with interest rate expectations – similar to annuity costs



PROPERTY

- Income in form of rent
- No capital guarantee
- Expectation of returns above inflation
- Relatively Illiquid
- Not a regulated market



ALTERNATIVES

Alternatives include:-

- Diversified Funds
- Liability Driven solutions
- Hedge funds
- Forestry
- REITs
- Venture capital
- Derivates
- Commodities



TYPES OF INVESTMENT

- **Direct investment in Equities, Bonds, Property etc - Segregated investment**
 - an individual portfolio of securities managed directly on behalf of the trustees and held by custodian.

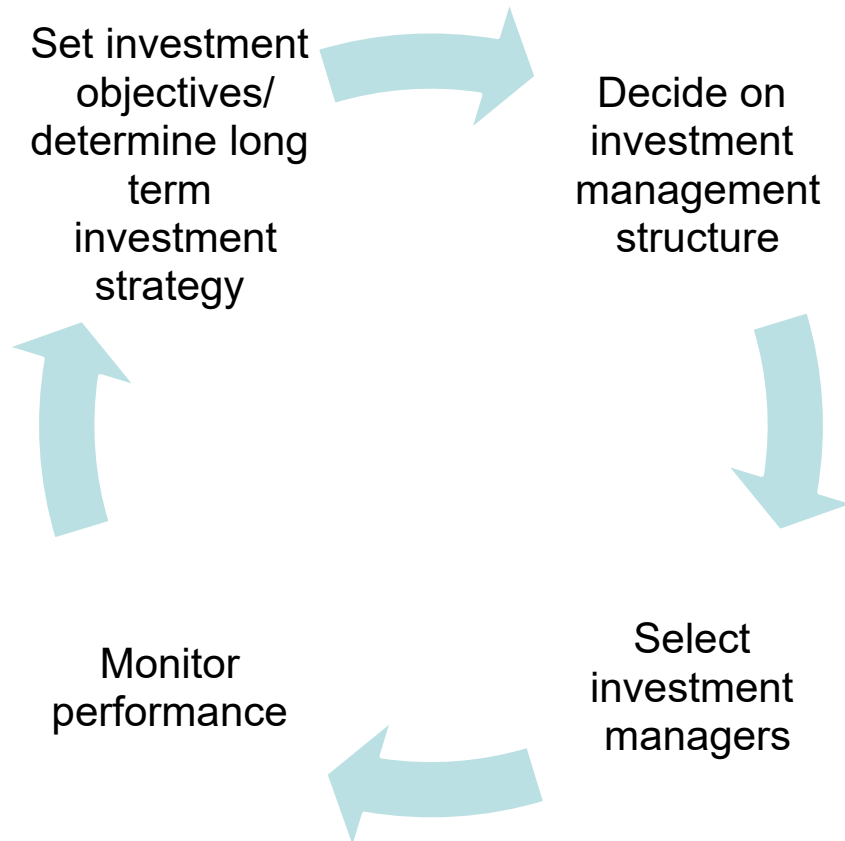
Used in some large DB Schemes

- **Managed Funds – Mutual Funds / Unit Linked Funds**
 - Portfolio of assets selected and managed by investment managers
 - Equities / Bonds / Property / Mixed / Diversified
 - Trustees appoint Managers
 - Used in both DB and DC – can be Active or Passive management
Volatility / risk depends on asset class and diversification.

TYPES OF INVESTMENT

- **Multi-Asset Funds / Risk Tolerance Funds**
 - Made up of a combination of asset classes and are designed with different asset allocations to create a range of low-to-high risk offerings.
 - Equities / Bonds / Property / Alternatives
 - Trustees appoint Managers
 - In DB mainly used to implement Funding Proposals
 - In DC used to provide member choice and for 'glide path'
 - Usually blends both Active and Passive styles of management – volatility risk depends on asset class and diversification.

Traditional Trustee Driven Investment Process – Trustees make investment decisions with assistance of investment Consultants



Delegated Investment

- Delegated investment management combines strategic advice and implementation.
- Trustees appoint a Delegated Manager to undertake the day to day decision making and oversight of the scheme assets.
- Ongoing management of Scheme assets and the decisions and timing of manager / asset mix are delegated to the investment consultants / delegated manager.
- Objectives and risk level set and monitored regularly by the Trustees.
- Historically used in DB scheme to add efficiencies in decision making and timing of investments, now becoming common in DC.

TYPES OF INVESTMENT MANAGEMENT

- Active management
- Passive Management
- Socially Responsible Investing
 - ESG
 - Environmental
 - Social
 - Corporate Governance



Active Management

The fund manager chooses securities to invest in and strategically decides when to buy and sell them

Aims to outperform market average / index

- Various active manager styles
 - Growth manager
 - Value manager
 - Thematic manager
 - Small Cap
 - Income Investing

- Top Down
- Bottom up
- Contrarian



Active Management

- Analysis
 - Fundamental
 - Quantitative
 - Technical
- Can outperform benchmarks however also a risk of underperformance
- Greater volatility of returns
- Key skills:
 - effective research capabilities
 - stock selection skills
 - Conviction

Passive Management

The **fund manager** builds a portfolio whose holdings mirror the securities of a particular **index**.

- Types of passive or index funds:-
 - Global Equities
 - Regional Equities (eg US, UK, Eurozone)
 - Emerging markets Equities
 - Eurozone Bonds
 - Quality, Values, Low Volatility, RAFI
- Aims to match a specific index return
- Minimises risk of underperforming the benchmark
- Lower charges
- Key skills:
 - technical capabilities
 - efficient management of cash flows



Environmental, Social and Governance - ESG

- Growing evidence that ESG factors, when integrated into investment analysis and decision making, can offer investors potential long-term performance advantages.
- An investment methodology which uses ESG factors as a means of helping to identify companies with superior business models.
- Does not just mean excluding securities but also as a process to identify winners in the changing investment and environmental universe.
- Incorporates ‘Responsible Investing’ or ‘Sustainable Investing’ or perhaps ‘Ethical Investing’.
- IORPS II focuses with incorporating ESG factors in decisions

ESG and IORP II

- Article 19 of the IORP II Directive will add a further element for trustees to consider in making an investment decision.
- The Article provides that pension scheme investments should be made in accordance with the ‘prudent person’ rule.
- Within that rule, pension schemes are permitted to focus on the long-term impact of their investment decisions on ESG factors.

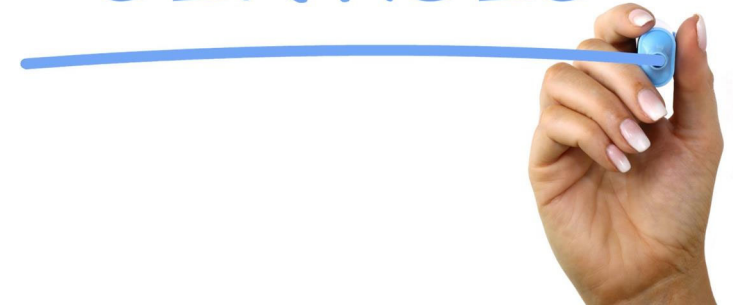
ESG and IORP II

- Article 19 requires that Member States do not ban the consideration of ESG factors when investment decisions are being made.
- The consideration of ESG factors is not mandatory. It is enough for trustees to explain in a scheme's statement of investment policy principles that ESG factors have not been taken into account and why that approach has been adopted.
- It can be stated, for instance, that those factors were simply not considered or that the costs of monitoring and reviewing ESG factors are disproportionate to the size of the fund.

CUSTODY

- Administration and safekeeping of investment assets
- Separation of ownership
- Unitised funds:
 - Custodian appointed by investment manager
- Segregated funds:
 - Company associated with investment manager, or
 - Independent external custodian

CUSTODIAL
SERVICES



STATEMENT OF INVESTMENT POLICY & PRINCIPLES (SIPP)

- A SIPP is a written statement
 - Prepared and reviewed at least every three years by the trustees
 - For pension schemes with more than 100 members (active and deferred)
 - Sets out the main investment objectives and strategies being pursued by the trustees.
- SIPP must include:
 - investment objectives
 - investment risk measurement methods
 - risk management processes to be used
 - strategic asset allocation with respect to nature/duration of liabilities (DB)
 - Member choice (DC)

SIPP

- Introduction
 - A brief synopsis of the Scheme
 - Statement that the SIPP is prepared in accordance with Section 59 of Pensions Act
 - Statement that the SIPP is consistent with the powers set out in the Trust Deed & Rules
 - Trustees' have obtained independent professional advice when reviewing investment objectives, strategy and managers, and in drafting the SIPP have retained XYZ Consulting
 - [DC –The Trustees wish to invoke the protection afforded by Section 59(2)of Pensions Act]

SECTION 59(2) -TRUSTEE INDEMNITY

“Safe Harbour”

- If Scheme rules allow member investment choice,

AND

- Trustees offer members a choice of appropriate funds,

AND

- Trustees have a default option in place,

AND

- Trustees provide sufficient information to members to enable them to make informed decisions,

THEN

- Trustees will be **exempt from any liability** for the consequences of the members’ investment decisions.

DB INVESTMENT JARGON

- Liability Driven Investment (LDI)
 - LDI is a framework for understanding the nature of liabilities and adopting an investment strategy with an overall objective linked to these liabilities.

DC INVESTMENT JARGON

- Investment Strategies
- Lifestyle Strategies
- Glidepath
- Default Strategy
- Member outcomes

Investment Strategies

An **investment strategy** is a set of rules, behaviours or procedures, designed to guide an investor's selection of an Investment Portfolio.

Individuals have different objectives and risk tolerances.

Investment strategies can take into account these requirements

By blending various funds and / or managers possible to create strategies appropriate to certain broadly defined risk categories – High / Medium / Low

An appropriate investment strategy enables DC members to select funds or eliminate the need for an individual to make an investment decision.

Lifestyle Strategies

What are Lifestyle Strategies?

In addition to individuals having different objectives and risk tolerances, members also have different timelines to retirement – lifestyle strategies address this:-

- A life style strategy automatically moves members investments over time to ensure they are invested in appropriate funds as they get nearer retirement.
- Eliminates the need for the member to make an investment decision.
- Reduces risk.



Typically used as part of Default option

“Lifestyle glidepath”

Growth Phase

Consolidation Phase



From age 20 to age 55/60

From age 55/60 to retirement
Typically 5 to 10 years

Defined Contribution Default Investment Strategy

All DC Schemes must have a “Default Option”

The majority of DC members invest their Retirement Accounts via the Default Option

- By choice or
- By not making a choice

Trustees number one priority should be to ensure that the Default Option is fit for purpose

PA – Governance code: –

Particular emphasis is placed on the need to ensure that the default investment strategy is suitable based on the requirements and demographic profile of the members.

PA – Focused on member outcomes

Member Outcomes

- The way in which members will use their retirement account is an individual decision.
- It varies from person to person, depending upon length of service in employment and salary
- Many different outcomes can occur

Potential outcomes	Up to 1 ½ times final remuneration Tax Free Cash & balance buys Annuity
	25% Cash & 75% ARF
	Or Multiple other variations based on members circumstances. E.g. all as Tax Free Cash

} Depends on individual circumstances

Annuity as Default

- Assets move from growth phase to a glidepath that lands in a mix of Cash and Bonds
- Only option for DC Schemes prior to 2011
- Suitable where member wants guaranteed income at retirement – annuity purchase
- No decisions required by members post- retirement
- Very expensive currently
- Dies with the member / spouse

Approved Retirement Fund as Default

- Assets move from growth phase to a glidepath that lands in a mix of cash (25%) and multi-asset funds of an appropriate risk rating.
- Available in respect of DC Funds (incl. AVCs) since 2011
- Funds continue to grow tax-free post-retirement
- Funds can be drawn down at any time (subject to tax) but subject to annual imputed income by Revenue of 4% of ARF value
- Member retains responsibility for investment strategy & cashflow management
- Personal asset - balance forms part of estate on death
- When it's gone, it's gone !

Trustees role in decision making process

- Is advice available to members at retirement?
- Cost of advice ?
- Financial literacy of the member?
- Continuing competency of ARF holder
- Mix ARF & annuity?

Effective communication with members at all points of the retirement journey are critical.

ESSENTIALS OF INVESTMENT DB / DC

Q&A

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DATA PROTECTION

DATA PROTECTION

In order to provide the benefits under their scheme, trustees will be required to obtain, store and process personal data (including sensitive personal data) and will be the persons responsible for the control and use of that personal data i.e. the data controller.

As data controllers, trustees must ensure that they:

- Obtain and process personal data fairly;
- Keep it only for one or more specified, explicit and lawful purpose;



- Use and disclose it only in ways compatible with these purposes;
- Keep it safe and secure;
- Keep it accurate, complete and up-to-date
- Ensure that it is adequate, relevant and not excessive;
- Retain it for no longer than is necessary for the purpose or purposes; and
- Give a copy of his/her personal data to an individual, on request.

Trustees should also ensure that any agents processing personal data on behalf of the trustees (a data processor) are aware of and comply with the obligations outlined above.

GDPR



Relying on consent may not be appropriate – consider other legal grounds –

The following legal bases would appear to be most relevant for trustees:

- Necessary for the performance of a contract to which the member is a party
- Necessary for compliance with a legal obligation to which the trustee is subject
- Necessary for the purposes of the legitimate interests pursued by the trustee

When relying on legitimate interest, the processing must be necessary for those legitimate interests and the members' interests or fundamental rights and freedoms must be taken into account. In addition, legitimate interest is not a valid legal basis for processing sensitive personal data.

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