

Changes to our Trustee Register

Guidance – Key Persons and Officers

For corporate applicants only

For the purposes of regulation 3(c) and in order to assist non-individual applicants (eg partnerships, limited liability partnerships (LLPs) and companies), the regulator sets out below how it intends to interpret the defined terms 'Key Person' and 'Officer'.

Note that it is not necessarily the case that a non-individual applicant will only have one Key Person or one Officer. The regulator envisages that many non-individual applicants have more than one Key Person or more than one Officer.

Corporate applicants should note that, in accordance with the regulations, if any Officer of the applicant fails to satisfy the conditions in 3(a) and (b)(ii), or, if any Key Person of the applicant fails to satisfy the conditions in 3(a) and (b)(i) and (ii), then this will result in the regulator refusing to register the applicant or applying to removing it from the Register (as the case may be).

The Pensions
Regulator

Officer

This is:

- any person whose signature may authorise (in part or in full) a transaction involving the assets of any scheme for which the applicant acts as trustee; or
- every director¹, member of the committee of management, chief executive, designated member in relation to a limited liability partnership or partner who has 'significant influence' over the management of the pension trustee work²; or
- an individual who is a shareholder with 10% or more of the shares in the applicant, where this affords that shareholder 'significant influence over the management of the applicant'.

In relation to the first bullet point above, low-level administrative staff, who deal with the payment of benefits, will not be classified as Officers if the transaction is subject to sign-off at a higher level. Nor will the regulator treat third-party administrators as Officers if they have authority from the trustee to do this. However, where the applicant has delegated authority to process or authorise transactions involving scheme assets to third-party administrators, the regulator considers that the individual(s) who are responsible for monitoring compliance with the terms of the authorisation within the applicant will be Officer(s).

In relation to the second bullet point above, in the regulator's opinion, what constitutes 'significant influence over the management of the pension trustee work' will be a question of fact and degree. The regulator's view is that individuals will have 'significant influence' in this sense if they have responsibility for one or more of the following matters within the applicant's business, by themselves or as part of a larger group:

- setting business targets (including for new business, profits, profitability and cross-selling);
- making decisions about the allocation of resources to the trustee work;
- the setting of fee levels/hourly rates for trustee work;
- providing instructions to cross-sell to other areas of the business or the setting of targets in this regard;
- in the setting of 'house views' on the most appropriate way to approach taking strategic decisions about the investment or allocation of scheme assets and other elements of the trustee business;
- in the setting of 'house views' on the most appropriate way to approach the identification, monitoring and management of conflicts of interest.

In relation to the third bullet point above and those individuals who hold 10% or more shares in the applicant's trustee business, the regulator will assume that any such individual, by virtue of this shareholding, exercises 'significant influence' over the management of the applicant's business, unless that individual can show otherwise.

More generally, in light of the definition of Officer in the regulations, the regulator will expect each Officer to have some understanding of the nature of trusteeship (eg by completing the regulator's Trustee toolkit). However, if any Officer does not have any experience of acting as a trustee, this will not result in that individual automatically failing Condition 3(b)(ii) (Fit and Proper) provided they can demonstrate this mentioned understanding.

¹ The regulator, for the purposes of the Trustee Register, interprets director in the regulations consistently with the definition of director (including 'shadow' directors), as contained in sections 250 and 251 of the Companies Act 2006: a director is 'any person occupying the position of director, by whatever name called' and a shadow director is 'a person in accordance with whose directions or instructions the directors of the company are accustomed to act'.

² Pension trustee work is broadly defined, as all of the work 'carried out... (as trustee)... by the applicant in relation to trust schemes', see regulation 1(2).

Key Person

This is someone who has 'overall management responsibility' for the applicant's pension trustee work.

It is the regulator's view that a Key Person is the individual (or individuals) with overall responsibility or accountability for all the pension trustee work undertaken by the applicant. The regulator considers that the use of the word 'overall' in the regulations indicates that, in the case of an applicant organisation that is hierarchical, the Key Person is likely to be the individual who has ultimate responsibility or accountability, ie the managing director or chief executive. In organisations where the management responsibility for all the applicant's pension trustee work is truly collective in the sense of there being no one individual who sits at the top of the organisation, then there will be more than one Key Person.

The regulator also includes within its interpretation of the definition all those persons, of which the applicant is aware, as at the date of the application, might have this role temporarily. For example, if the Key Person(s) was to become unable to fulfil their duties, either on a short or long-term basis (eg as a result of illness or a holiday where they are un-contactable), which individual(s) would step into that role(s)? The regulator would consider this individual(s) to be a Key Person(s) and would wish them to be identified as such by the applicant.

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