

Statement

# Prohibition orders

July 2016

The Pensions  
Regulator

## Introduction

The Pensions Regulator (TPR) has the power to prohibit a person from being a trustee of a trust-based occupational pension scheme (a 'trust scheme') if our Determinations Panel is satisfied that they are not a 'fit and proper' person. This statement explains the policy we will adopt in:

- ▶ exercising the power to prohibit a person from being a trustee of a trust scheme
- ▶ revoking such prohibitions

This revised statement replaces the statement previously issued on 25 June 2013.

Where an individual is prohibited<sup>1</sup> and they are at that time a director of a company or a partner in a Scottish partnership, that company or partnership is now<sup>2</sup> automatically prohibited from being a trustee. In this statement such prohibitions are referred to as 'automatic corporate prohibitions'. This statement also explains the policy we will adopt in relation to the power to waive automatic corporate prohibitions.

## Legislative provisions

For Great Britain, our power to prohibit is set out in section 3 of the Pensions Act 1995, as amended by the Pensions Act 2004. The corresponding power for Northern Ireland is found in Article 3 of the Pensions (Northern Ireland) Order 1995. In Great Britain, automatic corporate prohibitions and our power to waive these, are set out in section 3A of the Pensions Act 1995 as inserted by the Pensions Act 2004. In Northern Ireland, the corresponding provisions (which do not refer to Scottish partnerships) are set out in Article 3A of the Pensions (Northern Ireland) Order 1995 as inserted by section 45 of the Pensions Act (Northern Ireland) 2015.

The register of prohibited trustees is kept by us in accordance with section 66 of the Pensions Act 2004 (and, in Northern Ireland, under Article 61 of the Pensions (Northern Ireland) Order 2005).

1  
After 11 September 2014.

2  
As a result of the Pensions Act 2014.

## What is a prohibition order?

A prohibition order may prohibit a person from acting as a trustee of:

- ▶ a particular trust scheme
- ▶ a particular description of trust schemes
- ▶ trust schemes in general

A prohibition order takes effect from the date specified in the order. Where a prohibition order is made against someone in respect of one or more trust schemes of which they are a trustee, the order has the effect of removing them. In the case of automatic corporate prohibitions, where a company or Scottish partnership which is a trustee of a trust scheme becomes prohibited, this has the effect of removing the company or partnership as a trustee.

## What happens if a person who is prohibited acts as a trustee?

If someone prohibited by a prohibition order breaches that order, they commit a criminal offence. On conviction they could be liable to a fine and/or imprisonment. Similarly, a company or Scottish partnership which acts as a trustee while prohibited commits an offence and on conviction is liable to a fine.

### Prohibition proceedings

When we become aware of matters concerning a trustee's fitness and propriety, we will consider whether prohibition proceedings are appropriate.<sup>3</sup> We will follow our published Case team procedure and Determinations Panel procedure.<sup>4</sup>

In most prohibition proceedings, the standard procedure will be used. In standard procedure cases the directly affected parties are told of the action we propose taking and invited to make representations. Once these representations have been considered we then decide whether to refer the matter to the Determinations Panel. If the matter is referred, the Determinations Panel takes the decision on prohibition either after a paper or oral hearing.

As and when a prohibition order is made, we will notify the trustee and place the trustee on the register of prohibited trustees which we are required by law to maintain. We also publish a summary of the register on our website.

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Where we are considering prohibition proceedings, we may seek an order suspending a person from acting as a trustee pending consideration being given to a prohibition order. Like prohibition orders, a suspension order may prevent a person from acting as a trustee of a particular trust scheme, a particular description of trust schemes or trust schemes in general.

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These procedures apply to 'reserved regulatory functions', which are powers that are exercised by the Determinations Panel and which include prohibition orders. Both procedures can be found at [www.tpr.gov.uk/procedures](http://www.tpr.gov.uk/procedures).

If a prohibited person applies for entry onto the register of independent trustees, the application will be declined. If the person is on the register of independent trustees, we will take steps to remove them.

## Who can be affected by a prohibition order?

Any person can be subject to a prohibition order. Prohibition orders can apply to corporate trustees and trust corporations as well as to individual trustees, and can apply both to member-nominated trustees and to employer-appointed trustees.

Additionally, as described in this statement, automatic corporate prohibitions will apply to a company of which the prohibited person is a director or a Scottish partnership in which they are a partner.

## Automatic disqualification

A person is automatically disqualified<sup>5</sup> from being a trustee on certain events, including where:

- ▶ a trustee has been convicted of any criminal offence involving dishonesty or deception (unless the conviction is spent)
- ▶ any company director has been disqualified from being such a director
- ▶ any person is subject to certain personal insolvency proceedings (eg an undischarged bankrupt)

## Criteria for a 'fit and proper person'

When considering whether a person ought to be prohibited, we will investigate whether a trustee is a 'fit and proper person' to be a trustee of a trust scheme by looking at all the relevant information.

In particular we will consider any information which concerns the trustee's:

- ▶ honesty
- ▶ integrity
- ▶ competence and capability
- ▶ financial soundness

<sup>5</sup>  
Section 29 of the Pensions Act 1995 and Article 29 of the Pensions (Northern Ireland) Order 1995.

When considering the above criteria, we may take account (where relevant) of:

- ▶ any attempt to deceive
- ▶ any misuse of trust funds
- ▶ any breaches of trust or pensions law, particularly if these are significant, persistent, deliberate or contrary to legal advice received
- ▶ whether a trustee's professional charges constitute a breach of trust or demonstrate a lack of internal controls
- ▶ criminal convictions<sup>6</sup>, not limited to those involving dishonesty or deception, so including (for example) money laundering, violence or substance abuse

This is not a comprehensive list of the factors we will look at when considering whether to prohibit, but it is indicative of what may be relevant. One of our statutory objectives under the Pensions Act 2004 (and corresponding Northern Ireland provisions) is to protect the benefits of members of occupational pension schemes, and we will take such actions as are necessary and proportionate to meet that objective.

## What standards do we expect of trustees?

### Honesty/integrity

Trustees are placed in charge of large amounts of members' money, and this often has to be invested for long periods of time. Trustees are therefore expected to act with honesty and with integrity when discharging their trustee functions and to act in the interests of the members and beneficiaries of the scheme. We will investigate any matter which raises concerns about a trustee's honesty or integrity, including matters that arise outside of their trusteeship. In considering issues of honesty/integrity we will also give consideration to guidance given in relevant legal authorities, eg decisions of the Upper Tribunal.

We will consider all matters which might affect our view of a trustee's honesty and/or integrity. We do not consider that they always have identical meanings.

<sup>6</sup>  
So far as these are not spent under the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978.

## Competence and capability

The Pensions Act 2004 (and corresponding Northern Ireland legislation) contains provisions concerning the level of trustee knowledge and understanding (TKU) required of all trustees. Newly appointed trustees (other than professional trustees) have six months from their date of appointment to meet the requirements.

We have a separate code of practice about trustee knowledge and understanding, which can be found at [www.tpr.gov.uk/code7](http://www.tpr.gov.uk/code7).

Trustees who significantly or repeatedly fall below the appropriate standards of knowledge and understanding required may be prohibited, particularly if no attempt has been made to attain the relevant learning.

We expect professional trustees – trustees who charge for their services as trustees rather than just reclaiming necessary expenses, or who hold themselves out to be experts in trustee matters – to show a higher standard of expertise than lay trustees. A trustee, or firm of trustees, consistently falling short of the standards that we expect from pensions professionals could also be prohibited.

## Financial soundness

We will not generally make enquiries into the financial standing of trustees, although we might do so if events brought that trustee's financial soundness into question (eg if the trustee were declared bankrupt, or made an arrangement with his creditors). These and other prescribed events would be matters for disqualification under section 29 Pensions Act 1995 (or corresponding Northern Ireland provisions).

If we became aware that a professional trustee, while not insolvent, could not afford indemnity insurance, or was otherwise in severe trading difficulties, this might give rise to prohibition proceedings.

## Charging fees for trustee services

Trustees must be authorised, either by the trust deed or (if the trustee concerned is appointed by us, by our order), to charge fees for their services. If they do charge, we would be concerned if the fees charged were not reasonable for the work carried out, or where the work charged for was not done or was unnecessarily done.

We would also be concerned where there is any attempt to hide the real amount being charged by the trustee, for example, where the trustee uses a service company to do work which is charged to the scheme, but hides the fact that the company is owned by the trustee.

## Challenging prohibition orders

Where a prohibition order is made, parties who are directly affected may refer the decision to the Upper Tribunal. Further details are at <http://bit.ly/2a7TaHs>.

A prohibited trustee may also apply to the Determinations Panel for a prohibition order to be revoked. A prohibition order may be revoked for:

- ▶ a specific scheme
- ▶ a class of schemes
- ▶ for schemes in general

Before the Determinations Panel decides to revoke a prohibition order, it will consider all the facts of the case. This would include considering whether the person applying was a fit and proper person to be a trustee and whether the issue which led to the prohibition order being made had been resolved or was unlikely to recur.

## Applying to waive automatic corporate prohibitions

We can waive automatic corporate prohibitions<sup>7</sup> where we are satisfied that the applicant would be a fit and proper person to be a trustee of a scheme despite a prohibited individual being (or even if the individual were to become) a director of, or partner in, the applicant.

In order to waive an automatic corporate prohibition, an application must be made to us setting out why a waiver is sought and providing copies of all relevant evidence in support of its application. Such applications will be referred to the Determinations Panel (see our guidance on Third Party Applications at [www.tpr.gov.uk/third-party](http://www.tpr.gov.uk/third-party)).

In considering any application, the Determinations Panel would consider all the facts of the case, including whether the director or partner had been prohibited for reasons relating to:

- ▶ honesty
- ▶ integrity
- ▶ competence and capability
- ▶ financial soundness

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It is also possible to make an application to waive an automatic disqualification from acting as a trustee.

Before ordering the waiver of any automatic corporate prohibition, the Determinations Panel would consider whether waiver was appropriate in all the circumstances, including:

- ▶ whether waiver could involve a risk to members, benefits or the Pension Protection Fund
- ▶ whether such a risk had been, or could be, mitigated effectively
- ▶ why it was appropriate for the individual to remain as a director or partner while that company or partnership was a trustee



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