

Module Descriptor – Law and Governance for Trustees (QPT)

3.1 Module Title

Law and Governance for Trustees (QPT)

On successful completion of this module, learners are able to:

1. demonstrate the nature and structure of trusts, trust law, the relationship between the parties and the application of trust deeds and rules
2. evaluate the role and duties of trustees imposed by equity and legislation and the corresponding trustee liabilities
3. demonstrate identify and research the legislation pertaining to pension schemes and the ability to research, interpret and apply the legislation in structured situations
4. problem solve and work as part of a team by exercising the duties and powers of a trustee, to critically analyse and develop appropriate decisions for given contemporary problems and scenarios
5. expertly advise trustees on the legislative provisions, range of options and their corresponding duties, on the discontinuance of a pension scheme using appropriate technical language
6. critically assess the principles of pension scheme governance and articulate effective governance mechanisms to trustees.

3.3 Module Content

Introduction

- What is expected
- Dealing with queries
- Outline of topics
- Introduction to trusts
- Types of trustees

Role and Responsibilities of trustees

- Duties in Trust Law
- Pensions Act duties
- Taxes Acts duties
- Scheme management
- Compliance
- Discretions
- Appointment and dismissal
- Member nomination
- Delegation and supervision

- Social context

Legal Basis

- Good faith
- Due diligence
- Independence
- Pensions Authority guidance
- Conflicts of interest
- Trustee liability
- Protection
- Court cases
- Decision taking

Documentation

- Legalese
- Trust deeds
- Rules
- Contracts
- Member communication
- Declaration of Trust
- Letters of exchange

Legislation

- Pensions Act
- Regulations
- Amendments
- Taxes Act
- Finance Acts
- Protection of Employees Acts
- Family Law Acts
- Directives

Equality

- Part VII and VIIA of Pensions Act
- Employment Law
- Labour Relations Commission/Equality Tribunal
- Lessons from Europe
- Irish cases
- Areas of uncertainty

Financial Services and Pensions Ombudsman

- History
- Legislation
- Pensions and financial products
- Jurisdiction
- Financial loss
- Maladministration
- Disputes of fact or law
- Mediation
- Redress
- Procedures
- Enforcement
- Appeals
- Cases

Family Law

- Separation and Divorce
- Civil Partnerships
- Financial provision
- Disclosure of information
- Pensions Adjustment Orders
- Options under PAOs
- Amendments to PAOs
- Contingent benefits
- Role of the Trustee

Amendments and Winding Up

- Causes of winding up
- Procedures and formalities
- Importance of Trust Deed provisions
- Pensions Act obligations
- Outstanding contributions
- Expenses
- Securing benefits
- Legal requirements
- Insolvent scheme
- Insolvent employers

- Benefit reductions
- Amendments

Governance as a Discipline

- What is Governance
- Requirements of section 59AB
- Fit and Proper requirements
- Training, education, CPD
- Risk assessment
- Risk register
- Scheme calendar
- Register of interests
- Internal audit
- Pensions Authority codes
- Developing a governance plan
- Myners Principles

Trustee Meetings

- Frequency
- Convening a meeting
- Schedule of meetings
- Organising meetings
- Quorum
- Attendance
- Agenda and documents
- Conduct
- Voting
- Chair
- Secretary
- Corporate trustee
- Minutes
- Resolutions
- Delegated actions
- Records
- Effective meetings

Compliance and Communications

- Registration and Fees

- Preservation
- Whistleblowing
- Registered Administrator
- Trustee Report and Accounts
- Annual Benefit Statement
- Disclosure of Documents
- Communication Strategies

EU Directive IORP II

- Transposition
- Regulator powers
- Supervisory Review, Advisory Notice, External Review
- Annual Governance Compliance Statement
- Trustee Boards
- Policies
- Key Function Holders
- Own Risk Assessment
- Internal Audit
- Accountability of Board
- Guidance Notes

Other Regulation

- GDPR
- Money Laundering
- Shareholders Rights
- Sustainable Finance Disclosure Regulation

Financial Governance

- DB funding
- Role of Actuary, Trustees, Employer
- Actuarial Assumptions
- Solvency
- Funding Reserve
- Employer Covenant
- Funding Proposals
- DC Projections
- Investment principles
- Asset types

- Risk and Reward
- DB considerations
- DC choice
- Investment Regulations
- ESG considerations

Culture

- Definition
- Analysis
- Relevance
- Improvement

Ethics

- Definition
- Identifying challenges
- Ethics and the Trustee

Conflicts of Interest

- Definition
- Conflict Situations
- Recognising Conflicts
- Declaration
- Register
- Abstention, withdrawal
- Resignation
- Application to Court
- Relevant case law

3.2 Summative assessment strategy

The module is assessed via assignments (60%) and exam (40%). The standard we require is that of the well informed, aware, judicious and self-assured trustee or advisor, and someone who would stand up to rigorous scrutiny by the regulator.

We are looking for proof of knowledge, comprehension and ability to analyse.

Candidates are required to achieve a minimum of 50% in each of:

Exam: Two hours, answer three questions from five, requiring application of knowledge to practical situations (40% of total)

Written Assignment: Group endeavour, involving research and further learning, dealing with an issue of importance, either generally, or to a specific problem (30%)

Group Presentation: Explain and analyse a given topic in a way that is accurate, detailed and comprehensible (30%).

Repeat assessment strategy:

Griffith College regulations state that learners must pass all component elements of the programme to be deemed to have passed the programme. In the event of a learner failing the assignment element of this programme, a new individual repeat assignment will be made available on Moodle to learners which must be submitted as per faculty instructions. In the event of the learner failing the exam, learners will take the re-sit exam at the next available sitting, details of which will be made available to learners via Moodle.

3.3 Reading Lists and other information sources

Primary Reading

Irish Institute of Pensions Management 2010, Governance & Compliance

The Pensions Authority 2018, Trustee Handbook. 5th Ed.

Finucane, K., Buggy, B and Tighe, U. (2006) Irish Pensions law and practice, 2nd Ed. Thomson Round Hall Ltd.

Delaney H. (2016) Equity and the Law of Trusts in Ireland, 6th ed. Round Hall Ltd.

Kennedy D. and Maguire E. (2016) Irish Family Law Handbook, 5rd Ed. Bloomsbury Professional

Duffy D.W. (2014) A practical guide to Corporate Governance. Dublin, Ireland: Chartered Accountants Ireland (CAI)

National Association of Pension Funds (2005) Pension Scheme Governance fit for 21st Century. UK: NAPF

International Organisation of Pension Supervisors (IOPS) Principles of Private Pension Supervision [online] available at: <http://www.iopsweb.org/principlesguidelines/#d.en.192277>

Secondary Reading

Solomon J. (2016) Corporate Governance & Accountability, 4th Ed. New York, USA: John Wiley & Sons Inc

McLoughlin, A., Reynolds, C., Murray, P. and Dolan, M. (2014), Pensions Revenue, Law and Practice Finance Act 2013. Dublin, Ireland: Institute of Taxation

Faulkner, M. (2018) Essentials of Irish Labour Law, 3rd Edition. Dublin, Ireland: Clarus Press Ltd.

Forde M. & Byrne P.A. (2009) Employment Law, Roundhall