ACTING AS A TRUSTEE FOR THE PENSION FUND OF YOUR EMPLOYER

This technical release is designed to assist members who hold a financial role within their Employer and also act as a trustee to the corresponding pension scheme

Contents

Introduction 1 - 6

General considerations
Training/competence 7
Employment protection 8 - 13
Governance and good practice

Conflicting duties – Director v Trustee 15 - 18

Managing conflicts
Clarifying roles and limitations 19
Agreeing up front 20
Information sharing principles 21
Confidentiality agreements 22
Steps for reacting to conflict situations 23
Resignation as a last resort 24

Specific areas
What to do in respect of reportable breaches of law? 27 - 32
Notifiable events generally 33 - 35
Trustees’ obligations v directors’ obligations 36 - 38
Notifiable events - possible insolvency of sponsoring employer
Knowledge of financial difficulties 40 - 41
When is a possible insolvency situation notifiable? 42
What if there is a disagreement about the facts? 43 - 44
Negotiating for funding of defined benefits funds 45 - 46
Clearance procedures 47
Basic points 48 - 51
Disclosure in the context of clearance 52 - 54
Conclusions
   Stay competent 55 - 56
   Be prepared 57
   Introduce a confidentiality agreement 58

Sources of advice
Appendix A – Breaches of Law – points for FD/Trustee dual role
INTRODUCTION

1. The content of this technical release has been developed to offer, primarily, members in business holding a financial role, such as finance director and trustee to the corresponding pension fund, advice and practical guidance. It addresses possible or actual conflicts members may encounter as a result of holding the dual role of finance director (or equivalent) and trustee to the employer sponsored pension fund.

   It will be particularly useful to members in smaller pension funds. The content will also be useful to member nominated trustees (MNTs).

   It is designed to alert members to important issues of general application. It is not intended to be a definitive statement covering all aspects of conflict.

2. The Pensions Act 2004 made fundamental changes to the regulation of work based pensions. It saw the creation of a new body, The Pensions Regulator, to replace the Occupational Pensions Regulatory Authority (OPRA). Another key feature of the Act was the extent of new powers made available to The Pensions Regulator.

3. These new powers, or regulatory tools, may be used in circumstances where serious failings occur and include:

   - Issuing improvement notices to individuals or companies;
   - issuing third party notices to individuals or companies for an action to be completed within a specific time; and
   - imposing fines for failure to comply with such notices.

4. Like OPRA, the Regulator also has a power of appointment of trustees (including independent trustees). However, it is important to note that the Pensions Regulator's principal aim is to prevent problems from developing and, where possible, it will endeavour to provide support and advice to trustees where potential problems are identified.

5. This technical release does not attempt to be a comprehensive guide to trustees’ duties, to the law or to the requirements of the new regime. However, there are a number of areas where the Regulator is paying closer attention and this includes managing conflicts of interest. The Regulator has previously commented that it would not wish for all those trustees, where potential conflicts have been identified, to simply resign from post. Clearly there will be circumstances where a conflict puts you in an untenable position. However the majority of situations benefit from considering the potential for conflict in advance and recognising where it may be detrimental in a given situation.

6. As an employee of the sponsoring entity, you will be party to confidential information which your employer may not wish you to disclose in your capacity as scheme trustee. Given the duality of roles, you may find it increasingly more difficult to take balanced and unbiased decisions. You may also find yourself under undue pressure not to report certain matters to the Regulator as well as to withhold materially significant information from your fellow trustees. The question is - what can you do to manage conflict when occupying a senior position within the employing entity/ies as well as trustee of the pension fund and/or as a member of the fund too?
GENERAL CONSIDERATIONS

Training/Competence

7. Training and knowledge are fundamentally important, especially with regard to good scheme governance. In addition you have obligations under the CPD regime to be competent to carry out your professional duties. Make sure you are up to date with trustee’s responsibilities and the law and ask your employer for appropriate time to undertake training. Also be aware of the Regulator’s own online e-learning toolkit.

Employment Protection

8. Employees may be afforded protection under employment rights legislation if they are penalised for carrying out the duties as trustee contrary to the employer’s instructions and/or for reporting matters to the Regulator. It would be prudent therefore to be clear as to your responsibilities and ensure your employer understands the need for you to discharge the duties of your roles.

NB: The following is not a comprehensive guide to employment law and should be considered only as helpful information. Members considering making a disclosure against an employer’s wishes should consider their legal position and consider taking legal or other professional advice before acting.

9. Employees have protection where they make a ‘protected’ disclosure under the Employment Rights Act 1996 (ERA). The ERA refers to ‘workers’ and ‘employees’. Different protection is afforded to each so you should consider clarifying your employment status, for example, as a director, are you a ‘worker’ or an ‘employee’? ‘Employees’ under the ERA have protection against unfair dismissal and detriment, ‘workers’ have protection from detriment.

10. A report, which does not disclose information subject to legal professional privilege, under Section 70 (breach of law) of the Pensions Act 2004 is likely to be a protected disclosure. Therefore an employee dismissed or suffering detriment as a result of making such a report may seek the protection offered by the ERA.

11. Where a trustee has reasonable cause to believe that:

   • A duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and

   • The failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,

he must give a written report of the matter to the Regulator as soon as reasonably practicable.

12. If a trustee has reasonable cause to believe that there has been a breach of law of material significance to the Regulator, he has a duty under section 70 to make a report as soon as reasonably practicable. Provided the report does not disclose information subject to legal professional privilege, any other duty a trustee may have is not breached by virtue of making the report.
13. Whilst there may be circumstances in which a report to someone other than the Regulator will be protected as a qualifying report members should exercise great caution before disclosing confidential information.

**Governance and good practice**

14. Members should promote good governance and encourage the adoption of good practice for the pension schemes in which they are involved. Tools such as risk management processes, risk registers, conflicts declarations and agreed processes for information sharing can assist in identifying and preventing insurmountable conflicts from arising.

**Conflicting duties – Director v Trustee**

15. When you act as a director you have a fiduciary duty to the company, its board and shareholders. As a director you are bound to act in good faith in the best interest of the company. Section 8.1 of the Members’ Handbook sets out the roles and responsibilities of directors. Members are encouraged to refer to Section 8.1 if in any doubt. Reading the following summary is not a substitute for fully researching the duties of a director.

16. When you act in the capacity of a pension scheme trustee you accept fiduciary responsibilities and duties to act in the best interests of the scheme members, to act impartially, to act in line with the trust deed and rules and to act prudently, responsibly and honestly.

17. Although there is a duty, as a director, not to place yourself in a position which would cause conflict with the discharge of those duties, the Institute takes the view that there is no presumption that you should not act as a trustee for the pension fund. Indeed it is not in the interests of the profession as a whole to deprive pension schemes of the skills and knowledge of members who are directors or otherwise hold financial positions within the sponsoring employer – as indicated earlier in this document, this would also appear to be consistent with comments previously made by the Regulator, recognising that this does need to be managed.

18. Clearly there will be instances when the interests of the company and the pensions fund diverge. So is there a clear primacy of role which enables you to determine to whom you owe the greatest duty? Unfortunately not – there is no clear authority which gives primacy to either role. However members should be aware that in some circumstances – for example a requirement to report to the Regulator a breach of law under section 70 of the Act - legislation overrides the other duties of a trustee. It is important that you do give thought to possible conflict situations and agree, where possible with all stakeholders, what you will do when such a conflict arises.

**MANAGING CONFLICTS**

19. The key to successfully managing conflicts of interest is the ability to identify when a conflict may exist and to prepare in advance of a problem occurring. Recognising the potential for conflict is paramount. There is nothing improper in a member holding more than one position, which has the potential to conflict with other responsibilities/duties, provided that thought is given to how to manage conflicts which might arise. This may, in some situations, require temporary exclusion from certain trustee responsibilities or decision making – exclusion from
certain meeting and abstaining from voting for example. It should also be recognised that in more extreme cases, resignation as a trustee may be considered as the only appropriate course of action.

Clarifying roles and limitations

20. Most conflicts can be managed through transparency and clarity. If all relevant parties are clear as to the competing capacities in which you act and the steps which will be taken in the event of identifying a conflict (e.g. to absent yourself from certain decisions), it is less likely that you will be criticised for failing to act impartially.

Agreeing up front

21. The following suggestions are not binding or exhaustive. They are put forward to assist in your management of most potential conflicts:

22. Information sharing principles

Set out the categories of information to which you are privy in your role as director or manager of the sponsoring employer and/or connected companies.

Agree, preferably in writing, with your employer the categories which they are always happy for you to share (subject to observance of confidentiality by the trustees), those which are under restricted circumstances where the employer is happy for you to share and those where they are not happy for you to share.

Notify your fellow trustees, preferably in writing, of the terms of your agreement with the sponsoring employer. If there is any disagreement as to your position, review it and take advice as appropriate.

23. Confidentiality Agreements

It may be possible to share confidential and sensitive information with the trustees without the worry that it will become public. Confidentiality agreements, where the trustees agree not to share the information they receive in order to discharge their obligations and duties as trustee with third parties, are helpful in encouraging openness and cooperation between the pension scheme and the sponsoring employer.

However, the trustees cannot maintain confidentiality if to do so would be a breach of trust or contrary to pension legislation. It is therefore prudent to seek legal advice and professional input into the drafting of such agreements and to recognise their limitations. Generally speaking, trustees can agree to comply with the requirements of a confidentiality agreement but only to the extent that it will not be overridden by a statutory duty, for example the duty to report certain breaches of law to the Regulator.

Steps for reacting to conflict situations (e.g. abstaining from specific issues)

24. It helps to set out those circumstances in which you are likely to be conflicted and your proposed action if this conflict arises. Set out below is a table of suggestions. It is neither binding or exhaustive nor in any order of priority but provides a range of possible options which will be appropriate dependent on the size and make up of the scheme and its trustees.
<table>
<thead>
<tr>
<th>CONFLICT</th>
<th>OPTIONS/SUGGESTED RESPONSE</th>
</tr>
</thead>
</table>
| Negotiations for funding scheme deficits                               | Trustees appoint an independent trustee  
FD abstains from discussions/decisions  
If any disputes arise, consideration of Alternative Dispute Resolution processes                                                                                                                                 |
| Dispute between scheme member and employer                              | Declaration of conflict  
Trustees appoint an independent trustee  
Trustees and/or employer obtain independent advice                                                                                                                                                                        |
| Calculation of technical provisions                                     | Declaration of conflict  
Seek input of independent trustee  
Seek input of independent professional  
Conflicted trustee abstains from decision making process                                                                                                                                                               |
| Deciding whether to report to regulator?                                | See Guidance notes for regulatory code of practice no. 1 issued by the Pensions Regulator.                                                                                                                                                                                               |
| Instructions to withhold information from Regulator which FD believes to be a breach of law or where there is a difference of opinion as to the significance of the breach. | Refer to code of practice No.1 – is it ‘serious’?  
What are consequences of not reporting?  
Try to persuade the employer as to legal requirements.  
Can independent legal advice be taken for employer?  
Is there legal protection if choose to disclose?  
Seek independent legal advice which considers personal position.  
Resign as trustee with advice.  
See also Breaches of Law below and Appendix A                                                                                                                                                                         |
| Funding and investment strategy                                         | Trustees appoint an independent trustee  
Trustees and/or employer obtain independent advice  
Conflicted trustee abstains from decision making process (because there will be negotiations taking place and the conflict will be insurmountable)                                                                                      |
| Proposals to modify member’s benefits                                   | Declaration of conflict  
Conflicted trustee abstains from decision making process  
Seek input of independent trustee  
Seek input of independent professional                                                                                                                                                                              |
| Applications for clearance                                              | Declaration of conflict  
Conflicted trustee abstains from decision making process (because there will be negotiations taking place and the conflict will be insurmountable)  
Seek input of independent trustee  
Seek input of independent professional                                                                                                                                                                              |
| Scheme mergers                                                          | Declaration of conflict  
Conflicted trustee abstains from decision making process  
Trustees appoint an independent trustee  
Trustees and/or employer obtain independent advice                                                                                                                                                                     |

**Resignation as a last resort**

25. As already mentioned, there are some situations where your position (as director and trustee) becomes untenable, for example where your employer has

---

1 The presence of an actuary or other professional advisor may be a suitable alternative to appointing an independent trustee for some schemes
instructed you not to report to the Regulator or share information with fellow trustees in respect of a serious breach of the law. In such a situation the conflict between the two roles is not your principle concern but rather that as a director you have been instructed to act contrary to the law. You should seek advice from the Ethics Advisory Services as soon as possible. Also refer to “other sources of advice”

SPECIFIC AREAS

26. The following specific areas build on the principles set out above and seek to give guidance on the particular points on which members have enquired of the Institute. They are not a substitute for relevant guidance notes and codes developed by the Regulator.

What to do in respect of reportable breaches of law?

27. It is impossible to identify all problems and possible variations which could give rise to a dilemma for you. There may be a disagreement between what your employer and the trustees would like to do in response to a possible breach of the law and your dual role may render any representations made as potentially conflicting. Set out below are some comments which may assist. In addition a decision tree has been developed and is attached at Appendix A. This aims to complement the decision tree contained in ‘guidance notes for regulatory code of practice no 1’ issued by the Regulator rather than attempting to cover the same territory.

28. You should establish whether you have reasonable cause to believe there is a breach. Unlike the money laundering regime suspicion is not enough. You need to be able to consider the documents and information you have and determine that reasonable cause exists. Without it, there is no reporting requirement although you may still have questions of conflict to consider such as confidentiality, whether to share the information with the trustees etc.

29. Are the trustees aware? If they are not you may need to establish whether the employer is happy for this information to be shared. Is it covered by a pre-agreed confidentiality statement?

30. Where the breach is one which requires reporting under statute because it is likely to be of material significance to the Regulator and the trustees are aware of the breach there would appear to be no obvious risk to you in reporting. In the event of an employer, in such circumstances, indicating that you cannot make a report, you should point out to your employer that as the trustees are aware of the breach, a report will be sent on behalf of the trustees irrespective of the employer's wishes (see also ‘resignation as a last resort’ above).

31. If your fellow trustees are unaware of the breach, you are presented with a dilemma. If the information has come to you as a trustee you should be free to inform your fellow trustees. If you have received the information in your capacity as financial director of the employer (FD) you will need to consider your employer’s reaction to reporting. If the employer is not content or in agreement that the matter should be reported, try to establish why. Is there a difference of opinion as to whether the matter is of material significance? Is it because the information is privileged or indeed price sensitive? Could it be that the employer does not understand the reporting regime and is unclear about the obligations?
Remember that the Regulator has issued guidelines (see Code of Practice 01 – Reporting Breaches of Law) and this is underpinned by detailed guidance.

32. The duty to report does not override legal professional privilege. Therefore, if the employer has not agreed with the decision to report you will need to consider whether their reason is that the information is covered by legal professional privilege. (Remember that information received by the trustees might also be subject to legal professional privilege). If this is the case, you may want to get legal advice supporting the company’s and your own position. Consider your personal position too, seeking advice where appropriate – this is something both the ICAEW and the Regulator recommend. Information not subject to legal professional privilege, which indicates the duty to report a breach has been triggered, needs to be discussed with your employer. If you cannot persuade them as to the prudence of sharing the information and/or reporting to the Regulator you should take steps to protect yourself and identify whether you are covered by any whistleblowing provisions.

Notifiable events generally

33. All trustees and employers are obliged to notify certain events to the Regulator where the duty to notify has been triggered. Such events will be scheme related events (where the trust is obliged to notify) or employer related events (where the employer is so obliged).

34. This regime was set up as an early warning notice to identify cases where the deterioration in the strength of the employer covenant or deterioration in scheme funding level may result in a claim on the Pension Protection Fund (PPF). The fact that the need to notify has been triggered and notification has occurred does not necessarily indicate any wrongdoing on the part of the employer or the trust. It may be important for directors to bring this to the attention of the sponsoring employer. If the employer does not understand why an event must be notified or how information will be treated they may erroneously believe that damage to the employer will follow.

35. The Regulator has developed ‘the notifiable events framework’ and ‘table of conditions’ which provide comprehensive guidance. Members are referred to this source of information for detailed advice. Members requiring more information on notifiable events generally should visit the Regulator’s website (www.thepensionsregulator.gov.uk) or refer to the trustee toolkit (www.trusteetoolkit.com)

Table of conditions and notifiable events framework are available at (http://www.thepensionsregulator.gov.uk)

Trustees’ obligations v Directors’ obligations

36. Trustees must take all reasonable steps to comply with the notifiable events regime. Employers likewise have a duty to notify. Employers may avoid sanction for not reporting if they can demonstrate, by way of a defence, that they had a reasonable excuse for not identifying the notifiable event.

37. However, the existence of a reasonable excuse does not remove the duty to report, it merely mitigates any sanction the Regulator may feel appropriate for not reporting the event as soon as reasonably practicable – by not reporting in accordance with the requirements of the code the employer runs the risk of the
Regulator not agreeing that the excuse is objectively reasonable. Thus it looks backwards at a failure to report and not forwards as justification for a decision not to report. Whilst the non-FD trustees from whom information is withheld by an employer may have the benefit of the defence that they took “all reasonable steps to secure compliance with that subsection”, the conflicted FD/trustee cannot “unknow” this information and therefore continues to have a duty to report.

38. Members may wish to clarify this position with their employer if it appears that a report continues to be withheld on the grounds of reasonable excuse. Members whose employers continue to refuse to report on the grounds of reasonable excuse, despite representations that a report is required, should recognise that their position may become untenable. Such members are strongly recommended to seek independent legal advice on their personal position. Further support and advice may be available from the ICAEW’s Ethics Advisory Services.

Notifiable events – possible insolvency of sponsoring employer.

39. Members have expressed concern about balancing the need to seek independent advice on the financial position of the business, the need to avoid wrongful trading and the interplay with the requirement to notify the Regulator. The following seeks to address this concern and clarify the position.

Knowledge of financial difficulties

40. As a director of the sponsoring employer you will be party to detailed information on the financial performance of the company and ideally placed to identify whether the employer is experiencing financial difficulties.

41. The circumstances in which information will be shared about the financial performance of the sponsoring employer with the trustees should be pre-agreed. A general principle to be adopted should be that if contributions into the pension scheme are materially threatened, this should be shared with the trustees.

When is a possible insolvency situation notifiable?

42. If you consider the notifiable events framework provided by the Regulator, it indicates that notification must occur upon receipt of advice that the sponsoring employer is trading wrongfully. The acid test is therefore whether or not the employer is actually trading wrongfully and if so, this has been brought to the attention of the employer by an advisor, for example. If advice indicates the employer is not wrongfully trading then the requirements of the Act are not triggered. In such circumstances, you should consider whether there are matters which are properly brought to the attention of others. Remember that the purpose of the notifiable events regime is to limit the risk to the Pensions Protection Fund, therefore consider:

- Have all contributions been maintained?
- Is the scheme at least at PPF buyout levels (at the most recent valuation) or Minimum Funding Level (as appropriate).
- Has there been any decision to withhold debt payment from the scheme?
What if there is a disagreement about the facts?

43. FD/trustee members may wish to take legal advice if they do not share the employer’s assessment of the insolvency risk or if the employer believes reasonable excuse not to notify exists. Such legal advice may need to cover separately duties which arise in the role as trustee and those that arise in the role of FD as you will not be able to unknow that which you already know and the defence of reasonable excuse does not appear for trustees.

44. If there is disagreement between the FD and the fellow trustees, likewise it may be prudent to seek independent legal or professional advice.

Negotiation for funding of defined benefits funds

45. Funding defined benefits schemes is a complicated area and therefore impossible to summarise comprehensively in this document. Members are referred to the Regulator’s Code of Practice 03 for more detailed information, as well as the Regulator’s statement “How the Pensions Regulator will regulate the funding of defined benefits”.

46. The following is guidance in respect of managing the conflict for a member in dual roles when funding for the scheme needs to be negotiated:

- Write a letter to the employer and trustees indicating that technical, mechanical information can be provided to both parties;
- The conflict presented by the negotiations is too great to be overcome by way of safeguards and therefore that you will absent yourself from discussions and decisions;
- The appointment of an independent trustee or seeking of independent advice could assist;
- It would be prudent to identify Alternative Dispute Resolution (ADR) processes to apply in case of a dispute; and
- Should the conflict still be untenable even taking the above courses of action, the only course of action given the circumstances would be resignation as a trustee.

CLEARANCE PROCEDURE

47. Members have expressed uncertainty as to the need for disclosure where the clearance procedures could apply. The following sets out some basic points and the relevance to disclosure.

Basic points

48. Clearance is the term used to describe the voluntary process of obtaining a statement from the Regulator that it will not exercise its anti-avoidance powers to issue a contribution notice or financial support directive in relation to a defined benefits scheme as a result of a specific event which could threaten the scheme’s funding, provided the terms of the application are complied with in all respects.
49. Applications are optional but have the benefit of affording certainty for those who could be liable to receive such notices or directions.

50. Clearance should only be sought for events which are financially detrimental to the ability of the scheme to meet its liabilities. Thus clearance may be appropriate for events occurring in respect of schemes where the employer has an FRS17 or IAS19 deficit.

51. For more information on clearance procedures members are referred to the Regulator’s website (specifically “Clearance Statements: Guidance from the Pensions Regulator”). If in doubt as to whether an application for clearance should be made, the Regulator is happy to take enquiries on a “no names” basis. Members are encouraged to use this facility if they believe an event may occur which could call for clearance.

Disclosure in the context of clearance

52. Conflict can arise if the employer does not wish to share information with the trustees or takes the view that clearance should not be sought from the Regulator, particularly where trustees are of a different view. It is prudent to encourage open information exchanges with the trustees. Confidentiality agreements with trustees can assist in handling sensitive data which may give rise to the specified event.

53. If the employer refuses to allow you to share the information with your fellow trustees you should point out to the employer that if the trustees become aware of the circumstances giving rise to the event, the trustees could notify the Regulator which may result in regulatory intervention. The 2004 Act has given the Regulator a number of powers to deal with these situations, including financial support directions and contribution notices, although these will only be issued in extreme cases and will, of course, take account of “reasonableness”. It is in the best interests of the employer to work with the trustees and reach agreement as to managing any events which could be prejudicial to the pension scheme.

54. As clearance is not a mandatory process members will not be penalised for an employer’s failure to seek clearance. However, the event itself may trigger notification requirements or amount to a breach of law (depending on the event) and in some cases may be considered as “avoidance”. Members should therefore consider the guidance given above in situations of conflict.

CONCLUSIONS

Stay Competent

55. Members have an ethical duty to ensure they are competent to undertake the work they do whether voluntarily or for some form of consideration. Acting as a trustee brings with it new additional responsibilities and duties. As a Chartered Accountant you will be expected to have up-to-date knowledge and a thorough appreciation of the requirements of the role. As a Chartered Accountant in a dual role expectations will be even higher.

---

2 Please note the Pensions Regulator issued a consultation paper and draft revised clearance guidance in September 2007. This document is written on the basis of the current guidance as at August 2007.
56. The CPD website contains information which can assist you with keeping up-to-date. Furthermore and as already mentioned, the Regulator has developed an online training programme called “trustee toolkit” which takes individuals through the various modules step by step and enables them to select their own level of knowledge to build upon, as well as various questions and answers sessions.

Be Prepared

57. Ensuring you are aware of all possible areas of conflict can help you avoid major problems. If you have not already done so, chat through the issues that holding the dual roles presents with both your employer and fellow trustees. Make sure that you are adequately prepared by putting in place procedures to deal with conflicts for any eventuality – advance planning cannot be over emphasised. Consider good governance and good practice, introducing such processes as conflicts registers and risk registers where absent. A little thought now could avoid discomfort and heartache in the future.

Introduce a confidentiality agreement

58. Whilst a confidentiality agreement has its limitations, it also has an important role to play. Agreeing the treatment of confidential information upfront should assist you and your colleagues, be they trustees or your employer, in knowing the boundaries of information sharing and can promote collaboration, openness and transparency.

SOURCES OF ADVICE

NAPF publications –www.napf.co.uk

www.trusteetoolkit.com

The Pensions Regulator resources include:-
Code of Practice 01 – Reporting Breaches of Law
Code of Practice 02 – Notifiable Events
Code of Practice 03 – Funding Defined Benefits
Code of Practice 09 – Internal controls

www.thepensionsregulator.gov.uk

Public Concern at Work (Whistleblowing helpline)

www.pcaw.co.uk

Email: youremail@icaew.com
APPENDIX A - Breaches of Law - points for FD/trustee dual role

1. Do you have reasonable cause to believe there is a breach? (Reasonable cause is more than suspicion. See Code of Practice 01 and supporting guidance published by the Pensions Regulator for further help).

2. Are your fellow Trustees aware?

3. Can you obtain more information?

4. Is the breach one which statute requires to be reported?

5. Has the information come to you in your capacity as FD or trustee?

6. Is your employer content to share the information/report?

7. Is the breach likely to be of material significance to the Regulator?

8. Is information being withheld or other inappropriate activity?

9. Has the information come to you in legally privileged circumstances?

Report – see code of practice 01 (Para 62-65)

NO REPORTING REQUIREMENT

NO

FD

TRUSTEE

YES

NO

DON’T KNOW

Discuss matters with Fellow trustees. This can assist in determining whether the breach is likely to be of material significance (Para 35 – 45 Code of Practice 01) to the regulator and avoid duplicate reporting. Also consider whether the information is subject to legal professional privilege. NB - you cannot necessarily rely on others to report. (see Code of Practice 01, paras 54 - 61)

Seek legal advice as to the employer’s position and consider seeking advice on your personal position. Do not inform fellow trustees or regulator without doing so.

Discuss matters with your employer again. Consider questions 4 and 7. Refer to Code of Practice 01. If your employer still is not content for information to be shared/reported, seek legal advice and consider whether you should blow the whistle.

Sources of advice :
www.pcau.org.uk
Ethics Advisory Services 01908 248258
Support Members Scheme 0800 9173526