

Core Unit 2 – Regulation of Retirement Provision Examiners' Report

APRIL 2019

The scores for the multi choice questions for this paper were good, with a high proportion scoring 40+. The candidates who failed the exam were let down by their answers in the short form questions. Some of the short form questions could be answered from a working knowledge of pension but it was evident that there was insufficient study time applied by a number of candidates. As there are only between 5 to 10 marks available for each of the short form questions, the scope of the question will only cover a small part of the manual, but then the 6 or 7 questions set are aimed at testing a wide area of the syllabus. Candidates therefore need to study the whole manual to be able to pick up marks for each question.

Q1 .Explain the role of a Corporate Trustee

(8 marks)

The relevant part of the manual was part 2, chapter 2.1.2.

This was an easy question to test knowledge of one of the most common types of Trustee for a pension scheme. Most candidates were able to write something about Corporate Trustees, mainly that they are a Company formed to act as a Trustee and that it provides its directors with additional protection from potential personal liability. Most candidates also identified that the same Laws and Regulations apply as do to individual trustees and many included examples such as the requirement for one third member nominated trustees/directors and requirement for Trustee Knowledge and Understanding. The least mentioned points were that the employer sometimes establishes a company with a small paid up share capital to act as a corporate trustee of its pension scheme and that the trustee directors' primary fiduciary duty, and any liability in respect of breach of duty, is owed to the corporate trustee rather than directly to members.

A few candidates incorrectly wrote about professional trustees.

Q2. Outline the four main points that will be stated in the power of amendment in a Definitive Trust Deed and Rules.

(5 Marks)

The relevant part of the manual was Part 2, Chapter 3.5.1.

Most candidates scored average or higher marks on this question and marks could have been obtained from a general knowledge of the layout of a Scheme Trust Deed and Rules if the facts in the manual could not be recalled. A number of candidates incorrectly listed different powers that might be contained in the Trust Deed and rules, for example power to appoint and remove trustees and a few candidates did not attempt an answer at all. The four points the question was aimed at were; 1) who has the power to amend the rules, 2) how an amendment can be made e.g by resolution or deed 3)if the trustees need to consult or take advice and; 4) the extent to which amendments can be retrospective.

Q3 Outline the role of the Financial Ombudsman Service (FOS).

(5 Marks)

Part 1, chapter 3.8.

This question tested on the Regulation and member protection section, which covered a number of schemes and bodies set up to investigate complaints and pay compensation. It was well answered with a high proportion of candidates being able to identify the specific role of the FOS and obtaining high or full marks. Most candidates were aware that FOS investigates and decides on complaints and disputes between consumers and businesses regarding financial services and products and were able to give examples. Most also stated that the FOS decision is only binding and enforceable once the consumer accepts the FOS decision; if they don't accept their statutory rights are not affected and they may pursue in court. Less mentioned was that FOS's decisions are based on principles of fairness and reasonableness relevant to the circumstances of the complaint.

Q4 Under the Pensions Act 2004 and related regulations, there is an employer duty to consult on changes that affect future pension arrangements. Write brief notes on the potential implications if an employer fails to comply with any of the requirements in connection with this duty.

(6 marks)

Part 3, chapter 1.5.2

This was the worst answered question with generally low marks across all papers. There were some high marks from candidates who studied well and were able to recall the facts in the manual. The question tested on the duty to consult on changes that affect a pension scheme, but specifically about the implications of failing to comply. Most candidates did show some knowledge about the duty to consult, but did not answer the specific question. Instead some wrote incorrectly about the requirements and steps of the consultation process itself or about implications of changes to accrued or future benefits. The points the question was looking for is that if the employer fails to comply with their duty to consult, members can make a complaint to TPR. TPR has two discretionary enforcement powers 1) to issue an improvement notice directing the person who has contravened the Regulations to take steps to remedy the contravention and 2) can impose fines. An important point is that the validity of the change is not affected by failure to comply with the consultation requirements.

Q5 Outline the differences between a Share Sale and a Business Sale.

(7 marks)

Part 4, chapter 1.1

Historically, as you will read in previous examiners reports, questions about corporate transactions and differences in share sales and business sales have tended to be badly answered. This time however, this was one of the better answered questions and the majority of candidates were able to identify the differences. The main point is that in a Share sale the buyer is buying shares in a Company (the target) so there is no change in the direct ownership of the target's business. In a Business sale the buyer acquires the assets of the business, so for example the machinery, customer lists and product lines. Some or all of the employees will transfer to their employment to the buyer.

Marks were also available for mention of the treatment of pension arrangements in both circumstances and of details being contained in the Sale and Purchase agreement.

Q6. Under the Occupational Pension Schemes (Charges and Governance) Regulations 2015, which apply in relation to Defined Contribution governance and the charges levied on default arrangements:

a) list the key governance requirements that apply to trustees (5 Marks)

b) list what can be defined as core financial transactions. (4 Marks)

(total 9 marks)

Part 5, chapter 1.1.5

There was a wide range of marks obtained for this question. DC governance is a topical subject with a number of governance requirements introduced over the last few years. In part a) of the question many candidates confused the various governance requirements.

In part a) most candidates referred to the requirement for a Chair of Trustees to be appointed and the responsibility for an annual statement to be signed stating how governance requirements had been met. Some of the points to mention that were not particularly picked up were ; that transactions must be processed promptly, value of costs and charges borne by members must be assessed, a Statement of Investment Principles governing decisions about investments for the purpose of the default arrangements must be prepared.

Part b) was better answered and most of the marks overall for this question were picked up in this part of the question. The points to cover were, investment of contributions, transfer of assets in and out of the Scheme, transfer between different investments and payments to scheme members.

Q7. Under “Transitional Arrangements” introduced on 6 April 2006 (A Day), individuals were given the chance to protect rights they had built up which may exceed the Lifetime Allowance. Explain the difference between Primary Protection and Enhanced Protection.

(10 Marks)

Part 5, chapter 1.1.5

This was the best answered question and most candidates scored high marks. It is a topic most candidates will be familiar with in their day to day work. Those that scored lower marks mixed up the primary and enhanced protection or did not fully understand the circumstances in which an individual could register.

For Primary protection, this could be applied for only if the value of all pension rights at A Day exceeded the standard Life Time Allowance (LTA) at A Day of £1.5m. It allows members to take benefits equal to the value of what they had built up at A day. Points were available for reference to the Life Time Allowance enhancement factor calculated as $1 + \text{Lifetime Allowance enhancement factor} = \text{value of benefits at A Day} / £1.5\text{m}$ and then how this is applied at a Benefit Crystallisation event. Further accrual of benefit is allowed

Enhanced protection could be registered for regardless of size of pension at A Day. Defined Contribution rights can grow without limit or tax and Defined Benefit rights can grow with inflation within certain limits, but there is to be no more contributions to a DC scheme and no DB accrual after 5 April 2006.

A final point is that an individual can register for both Primary and Enhanced protection.