



Core Unit 2 – Regulation of Retirement Provision

Assignment 3 Notes

(Part 3 – Other Relevant Areas of Law and Part 4 – Corporate Transactions)

Recommended Time: 1 Hour

1. **Give an example of when trustees are likely to encounter sensitive personal data and outline four of the data protection principles.**

5 marks

Answer should cover:

Trustees are most likely to encounter sensitive personal data when reviewing medical records or reports (generally in the context of ill health pension applications)

The eight principles are broadly as follows:

- personal data shall be processed fairly and lawfully (including in certain circumstances a requirement for data subject consent);
- personal data shall be obtained only for one or more specific and lawful purposes, and shall not be further processed in a manner which is incompatible with that purpose or purposes;
- personal data shall be adequate, relevant and not excessive;
- personal data shall be accurate and, where necessary, kept up-to-date;
- personal data shall not be kept for longer than is necessary;
- personal data shall be processed in accordance with the rights of data subjects under the Data Protection Act 1998;
- appropriate technical and organisational measures shall be taken against unauthorised processing of personal data and against accidental loss, destruction of or damage to such data; and
- personal data shall not be transferred to a country outside the European Economic Area, unless that country ensures an adequate level of protection.

(Relevant section of the manual is Part 3 Chapter 1.1.3 and 1.1.6)



2. **Outline how the principle of equal pay for equal work for men and woman has impacted on UK occupational pension provision.**

5 marks

Answer should cover:

The principle of equal pay for equal work for men and women has impacted on:

- access for men and women into occupational pension schemes; and
- benefits provided by schemes to male and female members.

The principle of equal treatment for men and women was incorporated into UK law by the Pensions Act 1995 and is now reflected in the Equality Act 2010. This Act provides that each occupational pension scheme must have read into it a non-discrimination rule and a sex equality rule.

Relevant section of the manual is Part 3 Chapter 1.4.3 and 1.4.5

3. **Distinguish between a “pension sharing order” and an “attachment order”.**

10 marks

Answer should cover:

- A pension sharing order is an order which may be made by the courts in respect of divorces on or after 1 December 2000. The effect of a pension sharing order is that the capital value of the pension is divided between the parties, with the rights of the member being reduced by way of a “pension debit” and the ex-spouse being granted a “pension credit” of the same amount.
- The courts have been able to make attachment orders in respect of an individual’s pension benefits in respect of divorce proceedings started on or after 1 July 1996. An attachment order enables the courts to earmark some or all of an individual’s pension benefits to provide maintenance or a capital sum to an ex-spouse. However, the benefit will only become payable when the member’s entitlement to benefits arises under the scheme.
- The main advantage of a pension sharing order over an attachment order is that pension sharing orders offer the opportunity for a clean break, on the basis that the ex-spouse obtains a right, which is independent of the member.

(Relevant section of the manual is Part 3 Chapter 1.2)



4. **The Bribery Act 2010 created four criminal offences. Outline the offences which are potentially relevant for trustees of pension schemes and the penalties for breaching the Act.**

5 marks

Answer should cover:

Three offences are potentially relevant for trustees of pension schemes:

- giving a bribe;
- taking a bribe; and
- the failure of a corporate organisation to prevent bribery by someone associated with it.

The penalties for breaching the Act are:

- for an individual on conviction, up to 10 years imprisonment or an unlimited fine or both; or
- for a company, unlimited fines which can be imposed on both the company and its individual directors.

Relevant section of the manual is Part 3 Chapter 1.7

5. **Distinguish between a share sale and a business sale.**

10 marks

Answer should cover:

The key features of a share sale are:

- a seller sells, and a buyer buys, shares in a company;
- the sale and purchase agreement is made between the buyer and the owner(s) of the Target's shares;
- there is no change in the direct ownership of the Target's business; and
- the buyer may be an individual or another company.

The key features of a business (or asset) sale are:

- a buyer acquires the assets that make up the business, for example plant and machinery, customer lists or particular product lines;
- the sale and purchase agreement is made between the buyer and the owner of the business, who may be an individual or a company; and
- as a result of the sale, some or all of the employees employed by the business transfer their employments to the buyer.

(Relevant section of the manual is Part 4 Chapter 1.1)



6. **Distinguish between a warranty and an indemnity.**

10 marks

Answer should cover:

Warranties

- A warranty is a binding statement of fact given by the seller about a particular aspect of the Target company or business.
- Warranties serve two main purposes:
 - (i) they provide the buyer with a remedy if the statements made about the Target prove to be incorrect.
 - (ii) they encourage the seller to disclose known problems to the buyer. Such disclosures would normally be set out in a separate document known as a “disclosure letter”.

Indemnities

- An indemnity is an undertaking by a party to meet a specific potential legal liability which another party may incur as a result of a specific event.

Distinguishing warranties and indemnities

- One of the primary advantages of an indemnity over a warranty is that it will be easier for a buyer to make a claim under an indemnity.
- A claim for breach of a warranty or an indemnity will normally be subject to limitations which will be included in the sale and purchase agreement.
- A claim for breach of warranty is also subject to the legal duty for the buyer to ‘mitigate’ its losses.
- It is commonly thought that the party with the benefit of an indemnity does not need to mitigate its losses. However, the law is not clear on this point.

(Relevant section of the manual is Part 4 Chapter 1.3)

7. **Outline what type of pension arrangement a purchaser must provide to transferring employees following a business sale where the seller provided a defined contribution occupational pension scheme.**

5 marks

Answer should cover:

On a business sale, the buyer has to provide a certain minimum level of future service pension benefits for transferring employees, where the transferring employees were members of an occupational pension scheme prior to the transaction taking place. In these circumstances, the Pensions Act 2004 requires the buyer to put in place either:

- an occupational defined benefit pension scheme which meets certain minimum criteria; or
- a defined contribution arrangement (which can be an occupational pension scheme or a group personal pension scheme) under which the buyer must match employee contributions up to 6% of pensionable pay (or the level of contributions made by the seller if less) and, where the buyer’s staging date has passed comply with the automatic enrolment requirements.

(Relevant section of the manual is Part 4 Chapter 1.5.1)