



Negotiating the non-negotiable

Our Pensions Financial Services team

From time to time we hear that pension scheme trustees are given investment documents to sign which are said to be non-negotiable and therefore there is no need for a legal review. While it may be true that the documents are non-negotiable (and this is not always the case), this does not mean that trustees can dispense with a legal review.

Why should you get legal advice?

Many trustees now invest through pooled investment structures such as regulated funds or through investment linked life policies. In these forms of investment the terms are typically, but not always, non-negotiable. However, non-negotiable does not mean that the terms of the investment will be free from legal risks. A failure by trustees to familiarise themselves with the legal risks of an investment could lead to claims from members in the same way that a failure to take proper investment advice could expose the trustees.

Pooled vehicles are typically governed by lengthy documents which include provisions on the suspension of dealing in funds, gating on withdrawals, changes to funds including their withdrawal or merger and restrictions on in-specie redemptions. They may also contain specific representations and warranties which the trustees are required to give. All of these give rise to potential legal risks for the trustees in relation to the investment which the trustees are under a legal duty to understand and consider before making the investment.

How can we help?

Our experienced Pensions FS team consists of lawyers from across the firm who understand pensions, investment management, investment funds, derivatives, insurance, financial regulation and tax, and who all understand the unique position and needs of trustees as investors.

What makes the our Pensions FS Team stand out is our strength and depth of experience in advising pension schemes on their investments, and in particular on regulated funds and investment linked life policies. We can ensure you have the right lawyers on your team to advise you in a way that meets your needs, is in your best interests and is cost efficient.

What you can expect from us

You can expect advice that:

- is of the highest quality
- is tailored to your needs and to your style
- is commercial and pragmatic
- is focused on the key legal risks you face
- facilitates the implementation of your chosen investment strategy

Our experience means we can deliver our advice to you more quickly and more cost effectively than our competitors. We understand when documents are, and are not, negotiable and advise trustees accordingly. We do not waste your time and run up fees raising points that will not be accepted by counterparties. We ensure that you fully understand the legal risks so that you can comply with your legal duties as trustees.

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