

LEARNER GUIDE MODULE 1:

Governance and strategic direction and control



Occupational Certificate
Retirement Fund Trustee
Professional Principal Executive Officer
(Retirement Fund Trustee)
Level 5 (120 credits) SAQA 9957

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Chapter 1 - Governance of the Board

After completing Chapter 1, the learner will be able to demonstrate understanding and application of various governance topics and practices, including:

- Identify the principles of good governance in the context of a retirement fund
- Identify and explain the roles and responsibilities of the role players within the Board, including whistleblowing obligations
- Discuss the concept of ethics in the context of retirement funds
- Explain the required performance standards of the Board and Board structures including registers and records to be maintained

1.1 Principles of governance

What is a Board of Trustees?

A board of trustees is an appointed or elected group of individuals that has overall responsibility for the management of a retirement fund. The board of trustees is typically the governing body of an organisation and seeks to ensure the best interest of stakeholders in all types of management decisions.

The sole management responsibility vests in the trustees:

Subject to the provisions of the Act and of these rules, the sole responsibility for the management of the fund shall vest in the trustees.

Governance deals with the structures and processes by which an organisation is directed, controlled and held to account. Proper governance provides the means to help an organisation of Fund achieve its goals and objectives. Principles of good governance encourage trustees to transcend the limitations of thinking only in legal terms. The legal implications of an action are critical to any decision, but they are also well defined, easy to determine and simple to apply. Conversely, by questioning an action in relation to values, a trustee must confront the important ethical aspects and implications of his/ her decision. These are far more difficult to pinpoint.

In this way, the principles of good governance serve to guide public managers in their mandate to **act in the best interest of members at all times**.

Good governance in retirement funds

On 11 June 2007, the Financial Services Board (FSB now the FSCA) circulated a document titled "Circular PF No. 130 Good Governance of Retirement Funds." The document sets out a number of 'best practice' principles for the good governance of a retirement fund.

The circular notes that a fundamental requirement for a board of trustees is always "to act with the utmost good faith towards the fund and in the best interests of all members." It is also important for the board to accept that "they stand in a position of trust or fiduciary relationships with funds and therefore must act with integrity."

Circular 130 identifies three areas of governance, namely: governance by the board (the governance structure); governance by the board of the operation of its funds (the governance mechanism); and the management of relationships in the governance of the fund. Here is a summary of the thirteen principles outlined under the governance structure heading.

Principle 1 - Roles, responsibilities and accountabilities of the board

The FSCA circular immediately sets out the key functions of the board. The first requirement is that "the board is responsible and accountable to the members for the administration of the fund, including the prudent investment of fund assets." Board members cannot absolve their accountability to members of the fund by delegating tasks to sub-committees.

A board of trustees operates as a team and should respect the rules of the fund and the various decision-making mechanisms outlined therein. The circular suggests that mechanism to resolve 'deadlocks' in decision making processes be included in the fund rules. The circular also defines the roles and responsibilities of the chairperson and principal officer of the board of trustees. It is important to note that the principal officer should not also serve as the chairman of the board.

The final sub-heading in this section deals with conflicts of interest. It is recommended that the board and principal officer take appropriate actions to resolve conflicts of interest as they become evident. "The proper resolution by the board of any conflict of interest is necessary for promoting the credibility of the governance of the fund."

Principle 2 - Composition and competency of the board

This principle stresses the importance of selecting individuals with the correct mix of skills when establishing a board of trustees. The complexities of the retirement fund environment result in Circular 130 making specific reference to professional trustees (independent trustees from recognised professions). The circular is quite prescriptive where umbrella funds are concerned, stating that "at least 50% of the board of multiple-employer funds and retirement annuity and preservation funds should be independent."

The board of trustees may delegate various tasks to sub-committees. These sub-committees should perform oversight roles within "an appropriate written mandate" in which its roles and authorities are defined. Sub-committees could be established to assist on matters like audit and administration, investment and legal issues.

Principle 3 - Board orientation and education

In the preamble to the principles being discussed here, the FSCA notes that "the accountability requirement of the board means that collectively and individually the board members may be held liable for any breach of the governance which results in any loss to the fund"

This statement highlights the importance of education for trustees in the retirement fund environment. Trustees should receive "rigorous and comprehensive "training to ensure they are familiar with both the legislative and regulatory environment the fund operates under. The cost of this training should be borne by the fund. Circular 130 stresses the importance of continued education on the topics of "risk management, investment risks and strategies, benefit structures, legal issues, regulatory and compliance requirements, taxation, actuarial and reform issues."

Principle 4 - Board assessment and breach of conduct

Circular 130 recommends that both the board of trustees and any sub-committees established by the board be subject to performance appraisals on an annual basis. This process would establish "the effectiveness of the board, the principal officer and the sub-committees, and highlight where improvements should be implemented."

Contravention by any board member of the fund's code of conduct should result in appropriate censure. The circular stipulates that such censure (which may include suspension or dismissal) should only occur after the consideration of defence arguments presented by the board member concerned. "The objective of action by the board against a trustee is to preserve the integrity of the board and its governance role."

Principle 5 - Internal Controls and governance mechanisms

Primary function is rigorous oversight

- Clear identification and assignment of responsibilities to either persons with appropriate skills employed by the fund (self-administered) or by way of written agreement to a licensed administrator/long term insurer.
- To exercise an oversight role.
- Ensure adherence to and compliance with all statutory and regulatory requirements.
- Appreciate the rights and duties of all stakeholders.

Oversight responsibility requires there to be:

- Regular assessment of the performance persons and entities involved in the operation of the fund in terms of the service level agreements, mandates and performance contracts etc.
- Regular review of services, fees and all costs associated with the operation of the fund.
- Regular review, preferably with the independent external advisers, of the information processes, operational software systems, and accounting and financial reporting systems involved in the operation of the fund.
- Monitoring and resolution of actual, potential or perceived conflicts of interest amongst those involved in the operation of the fund.
- Protection of confidential information.
- Regular review of compliance with regulatory and statutory requirements of the fund.

Principle 6 - Expert advisors

Board members are not obliged to have all the expert skills necessary for the day to day operation of a fund. It is reasonable for the board to engage professionals:

- Accountant;
- Actuary;
- Investment manager or financial advisor;
- Lawyer; and
- Other experts.

Principle 7 - Risk management

The management of risk in a fund is a vital component of the governance of the fund. Every fund should have in place a risk management policy which should be reviewed annually and should include:

- Identification of risks facing the fund;
- The impact of such risk to the fund;
- Process or controls necessary to reduce the impact of the key risks;
- The monitoring of the risk process or controls to ensure that they are appropriate;
- The communication to members and the stakeholders of the funds risk management policy, including the identification of the key risks and the process or controls in place to manage them. This may be outlined in the financial statements of the fund.

Principle 8 - The investment performance of fund assets

The investment performance of the fund assets is the most important factor in determining whether the fund will be able to deliver on the retirement benefits or whether there will be a sufficient amount accumulated for adequate replacement of income.

A Fund investment policy statement (IPS), should be communicated to stakeholders, and reviewed annually (when considering the financial statements) to ensure it remains appropriate in terms of the member profile and needs of the fund. The IPS should contain the following minimum information:

- Who the fund's investment advisors are;
- Where applicable, who the custodian of the investors is;
- Whether the fund has a socially responsible investment policy, and its definition of such an investment type;
- Whether the investments are in the form of an insurance policy or a segregated mandate, and the reasons thereof;
- What the targeted benchmarks are in respect of each asset manager. And asset class held by the fund, and what the previous year's actual performance was in relation to the fund's benchmarks, as well as the tracking error;
- The level of risk attributed to each asset class/asset manager;
- Whether or not the fund exercises its ownership rights in respect of investments held by it (and if so, what the proxy voting policy is) and, if not, the reasons therefor.

Principle 9 - Communication and access to information

Access to Information:

1. Board members should have unfettered access to all relevant information relating to the fund to enable them to make an informed decision
2. All information about the fund is confidential and may not be released to any person unless such person has lawful right to that information, such as the rights of members to obtain the registered rules of the fund, actuarial valuations and audited financial statements.

In particular, no person, other than board members and service providers, should have access to the minutes of Board meetings and membership details unless such information is required for a lawful purpose.

The board should not, however, be obstructive in supplying information when the person requesting it has a lawful right to access such info.

3. The information about a fund, its membership and investments belong to the fund and the board should ensure that where this information is held by a service provider, that it is returned to the fund should that relationship be terminated.
4. A communication policy should be established for the disclosure of the fund information to members and beneficiaries. Careful note should be taken of the registrar's prescribed minimum disclosure requirements to members and beneficiaries.

Principle 10 - Members and beneficiaries (protection of rights)

The board should communicate aspects of the operation of the fund, including the performance of the fund's investment.

Where a fund offers member investment choice (this is now a requirement in terms of Regulation 28), the details of the investments in respect of which members may make an election should be described setting out the severity of any associated risk and the performance benchmarks, as well as the underlying type of investments. Members should be able to make an informed decision from such information. Members should also be reminded periodically of the need to review the investment choices made by them.

Principle 11 - Employer and sponsor

A fund owes the employer and sponsor (where different from the employer) a duty of good faith.

Principle 12 - Approved service providers

When selecting approved service providers, the board must be aware of possible conflicts of interest. The board cannot delegate its responsibility and therefore can be held jointly and severally liable for the actions of their mandated agents.

A policy should be established which sets out the frequency of reporting by the administrators and service providers to ensure that the fund is administered and managed properly.

Principle 13 - Regulatory authorities/effective supervision

These must be complied with and any query from the registrar, Pension Funds Adjudicator and any court must be dealt with timeously.

King IV and pension funds

King IV, like previous King reports, continues to strive to broaden the acceptance of good corporate governance by making it accessible and fit for application by organisations of all sizes, resources and complexity. It stresses that good corporate governance is concerned not only with structure and process but also as influencing ethical consciousness and behaviour. It reinforces that good corporate governance is a holistic and inter-related set of arrangements to be understood and implemented in an integrated manner.

The King Reports are not law and consist of voluntary principles and standards of good practice. But the principles have over time been adopted and incorporated into some law like the Companies Act and the JSE's Listings

Requirements. If there is a conflict between any King Report principle and any legislative provision, legislation must prevail.

- King IV applies an integrated approach to corporate governance which covers the economic, social and environmental spheres in which South African entities operate.
- It is built on the four main governance ideals that have always been at the core of all the King Reports, namely; fairness, accountability, responsibility and transparency.
- All SA entities are encouraged to apply the King principles insofar as is practicable and
- King IV is based on an “apply and explain” basis.
- King IV has 16 principles which set out the philosophy, principles, practices and outcomes which are aimed to serve as the benchmark for corporate governance in South Africa.
- King IV includes sector specific supplements which provide corporate governance principles specific to that sector. Sectors covered are SMEs, non-profit organizations, retirement funds, municipalities and public sector organizations.

The main objectives and emphasis of King IV is that organizations must see and implement good corporate governance practices so as:

- to help improve the organisation's ability to sustain itself in the economic, social and environmental context in which it operates.
- make it integral to running a business or enterprise and delivering benefits such as
 - (i) an ethical culture;
 - (ii) enhancing performance and value-creation by the organisation;
 - (iii) enabling the governing body of the organization to exercise adequate and effective control; and (iv) building and protecting trust in the organisation, and its reputation and legitimacy.

Some new features of King IV

- The test for the independence of directors has been expanded. The requirements for “independence” listed in King III are not an exhaustive list, and other factors may still affect a director’s independence despite fulfilling the King III independence criteria.
- The role of the social and ethics committee is expanded beyond that in the Companies Act. King IV envisages this expansion to be in the context of the committee’s direction and oversight of the management of ethics, as well as the socially responsible aspects of the remuneration policy.
- King III recommends that the company’s remuneration policy be submitted to shareholders for their approval in terms of a non-binding vote at every annual general meeting. At present this entails an ordinary majority (a 50% + 1 vote). King IV envisages increasing this to a special resolution of a 75% vote.
- King IV is also more prescriptive on the content of the terms of reference/charters of board and audit committees. These must now set out the composition and rotation of membership, the overall role and associated responsibilities of the committee, the delegated authorities (including the extent of the committee’s decision-making powers), term, and access to company information and meeting procedures; and
- the group governance framework. These should include the delineation of the rights and role of the holding company, the extent of delegation by a subsidiary of certain functions to a holding company’s committee (King IV reiterates the fiduciary principle that delegation cannot be abdication).

King IV and retirement funds sector supplement

King IV and the retirement funds sector supplement applies to all retirement funds: i.e. pension; provident; preservation; and retirement annuity funds. The main principles in the King IV retirement funds sector supplement are set out below. Code for Responsible Investing in South Africa (CRISA) is complementary to King IV CRISA, a voluntary code applicable to institutional investors, including retirement funds. King IV is complimentary to CRISA and both should be applied as reinforcing and complementing one another. Fund's leadership and corporate citizenship must ensure an ethical culture in the fund

The board of the fund:

- must set the ethics tone of the fund by leading ethically and effectively;
- is responsible for effectively managing the Fund's ethics;
- must ensure that the fund is a responsible corporate citizen;
- Fund's performance and reporting must ensure creation of value for fund members. The purpose of a retirement fund is to provide the benefits set out in the rules.
 - The board must lead creation of value for the Fund members by appreciating that the strategies it employs, the risks faced by the fund, its performance and sustainable development are linked and inseparable elements. In this regard, the board must ensure that reports and other disclosures allow stakeholders to make an informed assessment of the fund's performance. It is recommended that funds follow the disclosure practices set out in principle 5 of CRISA. These are that institutional investors: must fully and publicly disclose to stakeholders at least once a year to what extent the CRISA Code has been applied; if not fully applied, the reasons why it was not disclosed to stakeholders. The disclosures as well as policies implemented should be made public;
 - their service providers should also, before agreeing to a proxy or other instruction to keep voting records confidential, carefully consider the reasons put forward to justify any confidentiality;
- Fund's governing structures and delegation must be set up to ensure adequate and effective controls. King IV proposes that the board must implement adequate and effective controls. The board should:

- serve as the focal point and custodian of corporate governance of the fund;
- ensure that its composition comprises a balance of the skills, experience, diversity, independence and knowledge needed to discharge its role and responsibilities properly; consider creating additional governing structures (like sub-committees and MANCOs) to assist with the balancing of power and the effective discharge of responsibilities, but without abdicating accountability; ensure that the appointment of, and delegation to, competent executive management, contributes to an effective arrangement by which authority and responsibilities are exercised;
- conduct and ensure that the performance evaluations of the board, its structures, its chair, its members' investments and outcomes and the principal officer result in continued improved performance and effectiveness
- Fund's governance and functional areas must be set up to ensure adequate and effective controls The board should:
 - govern risk and opportunity, technology and information in a way that supports the fund to set and achieve its strategic objectives;
 - govern compliance with laws and ensure consideration of adherence to non-binding rules, codes and standards;
 - ensure that the fund remunerates fairly, responsibly and transparently so as to promote the creation of value in a sustainable manner; and
 - ensure that assurance results in an adequate and effective control environment and integrity of reports for better decision-making

- Fund's management of stakeholder relationships must result in trust, a good reputation, and legitimacy of the fund As part of its decision making in the best interest of the fund, the board should ensure that:
 - a stakeholder inclusive approach is adopted, which takes into account and balances the legitimate and reasonable needs, interests and expectations of all stakeholders; and responsible investing as advocated through CRISA is applied as a matter of sound governance.

1.2 Roles and responsibilities for which the Board is accountable

The Employer

An employer provides the member with a job. In terms of the Income Tax act, there must be an employer/employee relationship if the employer and member are to claim tax concessions from the South African Revenue Services.

The Role of an Employer:

Members of a fund must be employees, i.e. a group of people who are just friends cannot get together to set up a retirement fund.

Employers may already have a fund for their staff for many years and are now arranging for member representation on the Board of Trustees, or they may have the intention to set up a fund. They need to consider negotiation and ways to inform their staff about these matters.

The employer will also need to carefully consider implications of setting up a fund. They need to consider contribution rates, costs and benefits when setting up a fund.

In some cases, there is more than one employer involved in the retirement fund. This occurs when an employer is only one subsidiary of a large group of companies. If this is so, then the individual employer may have very little say in the running of the fund as this will be handled at corporate level.

Umbrella funds evolved in response to a need from smaller employers for cost effective retirement fund solutions. They are normal pension and provident funds in which multiple employers participate.

There are two types of umbrella funds in the industry:

- The first type of umbrella fund has one set of rules which sets out all the terms and conditions applicable to all the employers and which bind all employers equally.
- The second type of umbrella fund has a set of general rules which sets out the main governing provisions relating to the fund. Each participating employer then has a set of special rules which set out the specific condition and benefit conditions applicable to their employees.

Umbrella funds are normally established by a service provider who appoints the initial trustees who are normally employees of the sponsor. The sponsor company is usually the appointed administrator and consultants to the scheme.

There is one board of trustees which manages the fund. This board is normally exempt from the Pensions Fund Adjudicator (PFA) Section 7A requirement - to have a board consisting of at least 50% member elected trustees. Some funds have appointed one or more independent trustees to the board

Negotiations with Staff Representatives

Previously, the control of retirement funds rested with the employer since he paid the larger part of the cost of running the fund. However, with the move towards empowered people as per the Labour Relations Act and the changes in the Pension Funds Act, members can now have equal representation on the Board of Trustees.

Some companies have unions, others may have workplace forums and others still may not have any formal employee representative body. Once an employer decides to set up a retirement fund, he should negotiate the benefit structure with the relevant employee body.

The Member

Fund members may be active members who are currently employed by the employer and who are normally contributing to the fund. These members will be entitled to benefits in case of retirement, death, withdrawal or disablement and will depend on the type of benefits the fund offers.

The other type of members are paid up members. These are members who have resigned from their employment and, instead of taking a cash withdrawal benefit, they have left their money in the fund. It will gain interest and may only be paid out when the member elects to withdraw from the fund.

Pension funds also have pensioner members who have retired and are receiving a pension which will continue to be paid until they die and then continue to spouses after death. In funds with large numbers of pensioners, it is advisable to have one member of the Board of Trustees to represent their interest. Pensioner members do not exist in a Provident Fund as the benefit is paid in full, in cash.

Dependants are the people to whom benefits are paid in the event of the member's death. Some dependants are people the member has to support in terms of South African law. Others are dependants because they are defined as such in the Pension Funds Act.

The Role of the Member:

According to the Pension Funds Act, members may be any member or former member of an association for which the fund was set up, therefore the following people would be members of a fund set up for a certain company:

- employees for whom contributions are being paid to the fund,
- former employees who did not take their money out of the fund,
- pensioners.

Members have a duty to:

- take part in election procedures,
- read and understand any communication issued to them by the Board,
- fill in Nomination of Beneficiary forms to make the settling of death benefits more efficient

They have the right to expect the Board of Trustees to:

- act always in the best interest of the members,
- act with due care, diligence and in good faith,
- act with impartiality in respect of all members and beneficiaries.

Trustees (Board of Management)

Trustees are frequently referred to as the officers or the managers of the fund. It is important to realise that the most significant overriding duty of a trustee is to administer or manage the fund in terms of its rules. Furthermore, the trustees' fiduciary responsibilities should not be overlooked.

The Board of Management

A group of people who manage the business of the fund by fulfilling their duties according to legislation and the Rules of their fund.

A Board member looks after a fund in the best interest of the fund members and can be a representative of the workers, a union or the employer.

It must be understood that no matter who you represent, when performing Board duties, you are required to act in the following manner:

- Fairly and always in the best interest of the fund member when carrying out your duties,
- Take responsibility for whatever happens in the fund,
- Never take sides and always decide on what is best for the fund as a whole.

Trustee Attributes

Trustees must:

- Observe good faith, care and diligence,
- Avoid improper gain,
- Disclose personal interest.

When trustees are being chosen, bear in mind that there are a number of circumstances where people do not qualify to serve on a board. This is so when a person is inter alia:

- A minor,
- Insane,
- Insolvent,
- Removed from an office of trust as a result of misconduct,
- Convicted and sentenced and/or fined for theft, fraud, forgery, perjury, any offence involving dishonesty in the forming and managing of a company, corruption, forged documents.

The rules of the fund must also state the period a trustee should hold office, as they cannot be appointed indefinitely. A general trend is to appoint a trustee for three years.

Note: The selection of fund member-elected representatives on the board is not limited to members of the retirement fund. Sometimes members of the board are elected from a trade union. At the end of the specified term a trustee may be re-appointed or re-elected.

What if the Board of Trustees Fail to Perform Their Duties?

To ensure that everything is done correctly, trustees may delegate many of their duties such as investing the funds' assets, insuring risk benefits and the day-to-day administration, they cannot delegate their responsibility.

Note: Trustees are collectively responsible for the actions of individual trustees. There are penalties and fines for failure to comply with the Pension Funds Act.

Fraud and errors or omissions could lead to the trustees being individually or collectively sued by the fund members.

Example: Trustees may fail to ensure that the amalgamation of two retirement funds does not have a negative effect on the benefits that the members of one fund are expecting to receive at retirement.

Indemnifying the Fund

Trustees are responsible for arranging fidelity guarantee cover. This covers fraud and dishonesty of officers of the fund.

Remuneration of Trustees

There is no legislation with regard to remuneration of trustees for performing their duties. Each fund will be different but, in general, trustees are not paid for performing their duties.

Administrative Function of Trustees

A retirement fund is like a business – it receives income from various sources and incurs expenses. The trustees are required to manage the business of the fund in accordance with its rules and a number of applicable laws.

Various administrative functions must be performed when managing the business of a fund. In general, the trustees must ensure that:

- member and employer contributions are timeously collected as specified in the rules
- benefits are correctly determined and paid to eligible members after deduction of tax as specified in the rules
- member details and member actions are accurately recorded, (this is important to ensure that contributions are collected, correct benefits are paid out and that the appointed valuator can determine the fund liabilities)
- legitimate fund expenses are paid
- insurers underwriting risk benefits receive the correct member details and any necessary information and premiums to ensure that members are covered where appropriate
- surplus funds are invested
- the portfolio of fund assets is appropriate and kept safely for future benefit payments to members.

Investment Function of Trustees

Contributions made to a pension fund are not ordinarily required immediately, but should be invested carefully to ensure that sufficient money is available when required in order to pay benefits.

The investment of contributions and monitoring of the growth of the investments and the ability of the fund to pay benefits when required are important responsibilities carried by trustees on behalf of the members and pensioners of the fund.

Making informed investment decisions is a task that requires a lot of skill, insight and understanding. The trustees are not required to make detailed investment decisions and may delegate this to a third party who has the necessary skills.

However, the trustees need to have sufficient background knowledge to be able to specify the fund's investment needs to the investment expert and to be able to assess whether the investment expert is meeting these needs.

The following options are open to the trustees:

- The fund can employ people who will invest on its behalf
- The trustees can appoint firms such as life insurers, unit trust managers and stockbrokers to manage their investments; or

- A combination of the above options.

The Principal Officer

The Principal Officer is a retirement fund's official contact person with the Financial Services Conduct Authority (FSCA). The Principal Officer is appointed by the Trustees to manage the day-to-day affairs of the fund and to convene Trustee meetings.

The Principal Officer carries out the duties of an administration officer. For example, he/she is required to sign certain documents for submission to the Registrar.

It is the Principal Officer who has first contact with the other parties of the fund and reports at Trustee meetings about the progress on, for example, rule changes and claims settlements.

The Principal Officer (PO), is not a decision maker, however the PO has an **executive function** on the fund to carry through the decisions taken by the board and help guide the board in making decisions. The duties and requirements of a PO are contained in a number of provisions in the Pension Funds Act. The statutory nature of the PO's role should be strengthened by measures aimed to protect the PO from being removed from office when he/she comes into conflict with the board members by virtue of the PO executing his/her statutory and good governance responsibilities.

The PO is expected to be in a position to provide guidance to the board on a wide variety of fund issues. This guidance is expected to assist the board in making informed decisions. It must be remembered though that even with this expectation that the board is liable for all decisions taken and must not rely entirely on the guidance or assistance given by the PO – the board will need to critically evaluate any guidance and properly apply their minds. The PO reports to the board and the board will delegate power to the PO as they see fit. The board is responsible for overseeing the succession process.

In order to achieve the board's plan there is a level of infrastructure that is required – as noted above the PO has a strategic, executive, governance and compliance role and needs to be provided with, and have access to the necessary infrastructure in order to fulfil these roles. The executive role of the PO requires the PO to have executive authority and the PO is expected to be involved in all financial management, legal, secretarial and operational areas. As a result, the PO must be provided with the necessary training, tools, systems, access to experts and service providers in order to manage these areas effectively. Without the appropriate tools a PO can't be expected to fulfil his/her duties. The PO is expected to be flexible and adaptable.

The PO is expected to prepare thoroughly for board meetings – understanding the matters on hand and be prepared to talk through and guide the board through the intricacies of the issues under discussion.

The operational function of the PO speaks to the management of service providers and stakeholders, amongst others. The PO is expected to meet regularly with the fund's Chairperson as well as with the respective service providers to ensure that the fund objectives and strategies are attained. The PO will ensure that service is not compromised, for example that fund administration budgets are spent wisely and funds are abiding by their budget plans.

The PO along with the board is expected to put in place a policy with respect to operating, reporting and monitoring for all service providers. This will include the manner and frequency which service providers report on – examples of reports (amongst others) which the PO will specifically monitor are:

- Agenda's for board meetings (determined in conjunction with Chairperson)
- Administration reports
- Investment reports
- Benefit statements
- Financial statements
- Valuation reports
- Asset/liability matching
- Death benefit report / claim documentation
- Beneficiary funds report

The collective responsibilities of management vest in the PO and the PO is expected to manage the day to day business of the fund. The PO is the person who must, from an implementation and practical point of view, ensure that the fund operates effectively and that it will ultimately meet its objectives as set out in the rules and its obligations to members. This function, in some way, can be aligned with project management.

1.3 Applicable legal requirements related to governance and compliance

Legal Identity of the Board

The board of trustees of a retirement fund acts in more than an advisory capacity as it bears a large amount of responsibility of which the trustees must at all times be aware. By law, the board is liable for its decisions and actions. Therefore, the board in its entirety or as individual trustees can be sued or prosecuted for contravening legislation or common law principles.

The trustees are jointly and severally liable for the actions of any of the members of the board of trustees.

Example

Adam, Bret, Clive and Darren sit on the board of trustees. Bret made a decision involving an investment of a large sum of money. Adam, Clive and Darren will also be held liable and accountable for Bret's actions. This also applies if a trustee makes a decision without consulting other trustees as the entire board of trustees may be held liable for that trustee's action.

The Role of Trustees

The Requirements of the Pension Funds Act (Sections 7A – 7D)

7A – Board of Fund

Every fund shall have a Board consisting of at least four members. Fund members have a right to elect at least 50%.

The rules of the fund should consist of the following:

- Constitution of a Board;
- Election procedure of the members;
- Appointment and terms of office of the members;
- The procedure at meetings;
- The voting procedure of Board members;
- The quorum of a meeting;
- The breaking of deadlocks;
- The duties and powers of the Board;
- The authority and role of the Chairperson.

If the Board consists of four members or less, all members shall constitute a quorum.

7C – Object of Boards

The object of the Board is to *direct, control, and oversee* the operation of the fund in accordance with applicable laws and fund rules.

Take care of members' interests at all times, especially in the event of:

- Amalgamation;
- Transfer of part of or all of one fund's assets to another;
- Splitting of fund investments;
- Terminations;
- Reduction of contributions by an employer;
- Increase of members' contributions;
- Withdrawal of a participating employer.

The Board should:

- Act with care, diligence and in good faith;
- Avoid conflicts of interest;
- Act impartially in respect of all members and beneficiaries;
- Act independently;
- Have a fiduciary duty to members and beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, as well as a fiduciary duty to the fund, to ensure that the fund is financially sound and is responsibly managed and governed in accordance with the rules and this Act; and
- Comply with any other prescribed requirements.

7D – Duties of a Board

- Ensure that proper books and records of the operation of the fund are kept, including minutes of all resolutions.
- Ensure that proper control systems are employed on behalf of the Board.
- Ensure that fund members are communicated in respect of:
 - Rights,
 - Benefits,
 - Duties.
- Ensure contributions are paid timeously.
- Obtain expert advice where the Board lacks expertise.
- Ensure that the following comply with the legislation:
 - Rules,
 - Operations and administration.

Board Decision Making

While the PFA prescribes equal representation between the members and employer on the board, this does not mean that the voting rights need to be equal. For example, in a defined benefit fund the employer assumes the investment risk and will therefore seek control over investment decisions, i.e. having a casting vote or a veto right thereon.

The voting rights need to be specified in the rules of the fund.

Generally, simple majority will take decisions. However, with equal representation, this means that the chance of a deadlock is high and deadlock-breaking procedures are required.

Deadlock Breaking Procedures

Some possible approaches are:

- The parties elect a chairman on a rotating basis and allow the chairman a casting vote.
- For protection it is suggested that before he exercises his casting vote:
 - The matter be postponed for consideration at a further or special meeting;
 - The matter be first referred to an actuary or lawyer for an opinion;
 - The matter be referred for conciliation by an agreed person or body.

Or

- (a) Deadlocks are referred for conciliation or, failing success, for arbitration.

Levels of Decision Making – employer consent, collective bargaining

There are two main parties to the fund – the employer and the employees. There will be certain aspects which the employer and employees may need to agree on (possibly in a bargaining forum) outside of the board of management: e.g. benefit structure, the level of the employer contributions to the fund, rule amendments especially those that impact the employer's cost, investment policy decisions where the employer bears the risk, etc.

The board of management can only fulfil their duties in accordance with the rules decided by these parties.

The development of the role of trustees

It is perhaps appropriate to consider the development of the role of a trustee over the last decade or so, as a pattern has clearly been established. Prior to 1996 most funds were sponsored and managed by the employer. In fact the Pension Funds Act (hereinafter referred to as the Act) referred to the person managing the affairs of the fund. An amendment in 1996 introduced a requirement that all funds must have a board of trustees of which at least 50% were to be elected by members. The Act at this stage referred to the duties of the trustees as 'the fund shall ...'. In 2001 the phrase 'the board shall ...' was introduced. The implications of this is best summarised by Judge Mynhardt in the case of *The Chairman of the board of the Sanlam Pensioenfonds (kantoorpersoneel) vs. the Registrar of Pension Funds*; - 'It is therefore clear that the Act itself distinguishes sharply between a board of a pension fund and a pension fund itself. Each of these entities, or institutions, has to comply with its respective duties and obligations.'

The statement of responsibility by the board of trustees introduced recently into the new format of the financial statements inter alia requires trustees to confirm that they are satisfied with the accounting systems, practices and internal financial controls adopted by the fund. In 2006 for the first time a trustee was held liable in his personal capacity (Art Medical Equipment determination).

In terms of Section 7A of the PFA, every fund must have a board of trustees consisting of a minimum of four people. The members have the right to elect at least 50% of these. Funds had until 15 December 1998 to meet this requirement.

PF96 sets out policy concerning management board matters. Board members do not necessarily need to be members of the fund.

If the members do not exercise their right to elect 50% of the members on the board, the employer may then appoint members to the board of trustees. There are no rules that prescribe the way in which the board has to be established although guidelines suggest a secret ballot process.

The rules of the fund must contain procedures for the constitution of the board, the election procedure for the members of the board and the appointment and terms of office of the members. In addition, the rules have to state the procedures for meetings, the members' voting rights, a quorum for a meeting, the breaking of deadlocks and the powers of the board.

Exemptions

PFA 7B(1)(a), indicates that the Registrar may allow a fund to have a board consisting of less than four members if it is impractical or unreasonably expensive. However, the members of the fund should have the right to elect no less than 50% of the board members.

Exemption from the requirement for member-elected trustees is allowed if the fund has been established for the benefit of employees of various employers which are not subsidiaries of a single holding company (i.e. an umbrella fund), or is a retirement annuity fund. (PFA 7B(1)(b))

The registrar may withdraw an exemption previously granted if a fund no longer qualifies for an exemption. PF96 sets out the criteria for exemption.

Liability of board member

- In any proceedings against a board member in terms of this Act, other than for wilful misconduct or wilful breach of trust, the court may relieve the board member from any liability, either wholly or partly, on terms that the court considers just, if it appears to the court that –
 - the board member has acted independently, honestly and reasonably; or
 - having regard to all the circumstances of the case, including those connected with the appointment of the board member, it would be fair to excuse the board member.

1.4 Ethics and conduct of trustees

Ethics

Ethics can be simply defined as a system of moral principles that affect how people make decisions and lead their lives. Ethics is concerned with what is good for individuals and society. The term is derived from the Greek word *ethos*, which can mean custom, habit or character.

Ethics have important practical uses as they provide a moral framework, by offering rules and principles that can be used by a person when navigating through everyday situations. Ethics can govern a person's code of behaviour and prevent moral wrong doings. Ethic-driven decision making is distinctly different from law-abiding decision making, as law often deters a person's bad behaviour as they have a fear of being penalised. A person with a strong ethical code will do the right thing just because it is the right thing to do! If an individual has no ethics he/ she will do the wrong thing whenever he/ she believes it will benefit him/ her and that he/ she can get away with it. Society would quickly fall apart if there were no guiding ethical principles.

Ethical behaviour covers a wide range of different activities within a business. Some examples of unethical behaviour include fraud, tax evasion and discrimination.

Ethical concepts derive over time from various sources including religion, philosophy and culture. The topic of ethics is often complex and can infuse debate on topics like abortion, human rights and professional conduct.

At the heart of ethics, is a concern with other people's interests, and in the context of pension fund governance is therefore an important discussion point for trustees who have a fiduciary responsibility to members and beneficiaries.

Personal ethics are a person's personal or self-created values. These values are instilled in an individual often by parents, friends and family. Common examples may include honesty, openness, commitment and a sense of responsibility. A person's ethics are often revealed in a situation through his or her behaviour.

Professional ethics are values and principles that are introduced to an individual by a professional organisation or industry. Members of the organisation or industry are meant to strictly follow these principles, as they bring discipline and maintain decorum. Some examples may include confidentiality, fairness and transparency. These ethics make employees responsible and accountable.

Boards of trustees have a responsibility to instil ethics and integrity into their funds. Effective integration of ethics into the fund environment is key to ensuring sound corporate governance and management control. For a fund to create an ethical environment, they need to ensure that they do the following:

- **Ethical leadership:** the board of trustees should demonstrate through their directives, actions and behaviour the importance of ethics and integrity to support the functioning of the fund's internal controls.
- **Establish code of conduct:** the expectations of the board of trustees concerning ethical values should be defined in the fund's code of conduct and understood by all trustees and fund stakeholders, including outsourced service providers.
- **Evaluate adherence to code of conduct:** processes need to be put in place to evaluate the performance of the board and individual trustees against the fund's code of conduct.
- **Address deviations in a timely manner:** deviations from the fund's code of conduct should be identified and remedied in a timely and consistent manner.

Retirement fund governance best practice

There has been an increased focus on governance in recent years. In the international space, this was heightened after the **Enron scandal** in October 2001. The collapse of Enron Corporation, an American-based energy company, was considered the largest bankruptcy reorganization in American history at that time and was seen as a governance, and more specifically an audit, failure. In short, by the use of accounting loopholes, special purpose vehicles and poor financial reporting, executives at Enron were able to hide billions of dollars of debt from failed deals and projects, and were able to pressure their auditors (Arthur Andersen) to ignore the issues.

South Africans have also seen some local governance failures, including the fall of **Fidentia**, the asset management company which was exposed by the FSB in 2007 for 'misrepresentation to clients', 'misrepresenting investments', 'inadequate corporate governance' and 'material conflicts of interest'.

The efficient functioning of a retirement fund depends largely on the trust relationship developed between the fund members and their beneficiaries, and those with the responsibility for managing the fund. Sound **Governance** practices provide a structure through which the objectives of a retirement fund are set and performance is monitored and measured.

In order to establish **governance best practices** within each retirement fund in South Africa, the board can consider the following local and international guidelines, which give retirement funds guidance on good governance principles and practices:

- The FSCA Circular PF130
- The OECD Guidelines for Pension Fund Governance
- The Myners Report
- The King Report on Corporate Governance in South Africa

Source: PPO Course (Batseta)

Conduct of Trustees

The conduct of individuals who govern retirement funds significantly impacts the lives of millions of South Africans who are dependent on retirement funds for their retirement income. It is therefore essential that retirement funds are overseen by a strong, well-functioning governing body that acts in accordance with the fundamental ethical principles of honesty, integrity, independence, fairness, openness and competence.

Circular PF130

Principle 1 of Circular PF130 gives retirement funds guidance on the roles, responsibilities and accountabilities of the board. Paragraph 22 deals specifically with the requirement for each board of trustees to have a code of conduct.

‘Each board should have a code of conduct in which it outlines and confirms its duties and obligations. Every fund should also require each board member that he or she completes an acceptance of duties form, and at least annually or at such great frequency as the board may require, a declaration of interests. This should set out all financial and other interests as set out in the fund’s code of good practice/ code of conduct.’

The board should take action against any trustee who contravenes the Code of Conduct, in a manner preferably included in the rules of the fund, or in terms of the Code of Conduct policy itself. Actions taken against such trustee may include removal from office or suspension for a defined period of time. Action taken against a trustee should not solely be driven by whether or not the trustee’s actions gave rise to financial or reputational damage to the fund (or any other stakeholder) and the appropriate form of discipline applied should be assessed on the facts of the situation.

Annexure A to Circular PF130, provides funds with a Code of Conduct that should be individually signed by trustees, the principal officer and the chairperson of the fund.

This Code of Conduct includes, the following annexures:

- Acceptance of Appointment
- Board of Trustees Policy on Gifts
- Trustees Declaration of Interests All annexures to Circular PF130 provide guidelines for creating appropriate policies and may be adapted by funds to suit their specific needs and circumstances so long as they do not detract from the detailed principles.

Code of Conduct

The Code of Conduct is an agreement to be signed by individual trustees, principal officer and the chairperson of the fund. The Code of Conduct requires that these individuals acknowledge the objective of the fund, their legal duties and a commitment to the governance of the fund. The key items detailed are as follows:

- Obligations of Trustees and Principal Officer
 - Board of trustees to act jointly
 - Responsibilities of the chairperson of the trustees
 - Responsibilities of the principal officer of the fund
 - Trustee undertaking of acceptance of trust document, agreement to policy on gifts and declaration of interests
 - Training and orientation
 - Confidentiality of fund information
 - Performance appraisals
 - Breach of code of conduct
- Management of the business of the Fund
 - Oversight responsibility of administration of the fund
 - Ensure service providers avoid conflict of interests
 - Expert advice
 - Risk management policy
 - Investment policy
- Management of Relationships
 - Regular, good communication to every beneficiary
 - Response to complaints and queries
 - Duty of good faith to employer
 - Relationship with Registrar, SARS and other regulatory authorities

Annexure A: Acceptance of Appointment

This form is an agreement between the fund and the individual trustees whereby the trustee provides all his/ her personal details, a trustee declaration of interests (see Annexure C) and signs an acknowledgement of his/ her acceptance of the trustee appointment and the fiduciary duties and responsibilities of that office. The trustee further undertakes to abide by the rules of the fund, any decision of the board of trustees, any fund policy document and not to divulge any confidential fund information. The trustee acknowledges that he/ she is not disqualified from acting as a trustee in terms of the rules or any law, and that he/ she can be removed as a trustee of the fund in the manner prescribed by the rules of the fund and that he/ she can resign by giving written notice to the chairperson of the fund. The trustee also acknowledges that his/ her performance will be regularly evaluated and that he/ she will provide the fund and the administrator with any change of relevant details.

Annexure B: Board of Trustees Policy on Gifts

This document sets out the fund's policy, applicable to each trustee and principal officer, in respect of any gift received or offered to him/her in his/her capacity as a trustee. The purpose of this policy is to determine appropriate conduct in relation to any gift offered or received, and to show the integrity, independence and accountability implied in the fund's governance structure. This policy should clearly define 'gifts' and any appropriate monetary values, the procedures around accepting gifts and the consequences of non-compliance with such policy.

Annexure C: Trustees Declaration of Interests

The purpose of this declaration is for trustees of the fund to declare any interest in any matter or entity, which may compromise the impartiality and independence that is required of a trustee.

The declaration should clearly define the terms contained within the document for avoidance of doubt, include the consequences of incorrect incompleteness of the declaration and require that the trustee confirm that there are no other facts that may compromise his/ her ability to act independently and impartially as a trustee.

The trustee can be asked to disclose any other retirement funds that he/ she acts as an independent trustee, if he/ she is a director of a professional firm that provides services to the fund/ sponsor or if he/she has any employment arrangement with the sponsor.

1.5 Performance and evaluation by the Board

Purpose of System of Appraisal

A system of appraisal for the board is a key component of good corporate governance. The purpose of this system of appraisal is to identify the expertise of the board and also to identify areas where improvements are necessary. This will assist the board when determining the training required and the board will also be in a position to recommend to the entities which appoint board members areas where skills are required which may be taken into account for future appointments.

The intention of the system of appraisal is not punitive but rather a constructive tool, which will enable the board to track its progress, skills and development needs. Subject to certain exceptions, this system of appraisal largely assesses the board's performance as a whole. It is not geared towards a direct assessment of the performance of individual board members.

Should the system of appraisal reveal poor performance in certain areas – if, for example many of the board members feel that their fellow board members do not come to meetings prepared - the board will have to implement a plan for remedying this situation. If the situation is not remedied and a further appraisal reveals that the particular poor performance has continued, the board will have to conduct an appropriate investigation into the matter. Such investigation should be separate from this system of appraisal and would be instituted in order to determine whether or not his or her colleagues should remove a board member from the board.

The board could also consider permitting the Chairperson of the board to conduct performance interviews with each of the board members using the results of this board appraisal to assist in that process.

Background and construction of System of Appraisal

It is axiomatic that to assess the board's performance in carrying out its responsibilities, the board first must have a firm understanding of what its responsibilities are. Therefore, the assessment process begins with a review of the board's areas of responsibilities. These responsibilities include the

general fiduciary duties of the board as set out in the code of conduct (including ethics), specific fiduciary duties of the board which arise from legislation and principles of good governance as set out in the good governance of retirement funds.

The board must also undertake an assessment of its performance against the approved strategic and business plan that may apply from time to time.

In addition to the board's consideration of its own view of its role, it is also useful to consider the stakeholders' expectations of the board. In this regard, the chief executive officer of the participating employer(s) may be invited to present the board with a statement of his or her own expectations and complete section 11 of this appraisal system, perhaps with input from other members of the board of management that have regular contact with members.

The chief executive officer(s) and/or officers of the fund could also be asked to complete sections 1 to 10, i.e. to review the board's performance.

Rank answers from

1 = Needs significant improvement / definitely no

2 = Needs improvement / no

3 = Consistently good / yes

4 = Outstanding / definitely yes

5 = Do not know / neither yes nor no

In certain instances, a "yes" or "no" answer would appear to be appropriate. In such circumstances 1 or 2 would constitute different levels of "no" and 3 and 4 would constitute different levels of "yes"

1	BOARD DUTIES, ROLE, DELEGATION OF FUNCTIONS AND AGENDA SETTING (MONITORING PERFORMANCE AND STRATEGIC/BUSINESS PLANNING)					
1.1	Is the board aware of its general and specific fiduciary duties to the fund and the stakeholders as contained in general principles on good governance?	1	2	3	4	5
1.2	Does the board measure its decisions against those fiduciary duties?	1	2	3	4	5
1.3	Has the board identified, prioritised and scheduled those issues that it believes should be discussed and/or reviewed by the board on a regular basis? Action lists, prioritisation of duties in terms of action lists, yearly planner setting out priorities and an indication of reporting periods would constitute such identification, prioritisation and scheduling.	1	2	3	4	5
1.4	Has the board drafted a strategic/business plan?	1	2	3	4	5
1.5	Has the board ensured that the strategic/business plan deals with black economic empowerment and employment equity?	1	2	3	4	5
1.6	Has the board identified the information (both internal and external) it requires on a regular basis, including information by which to benchmark the strategic plan?	1	2	3	4	5
1.7	Has the board considered mechanisms designed to identify areas of potential problems in its operation?	1	2	3	4	5
1.8	Has the board implemented mechanisms designed to identify areas of potential problems in its operation?	1	2	3	4	5
1.9	Has the board developed performance objectives that respond to the fund's specific objectives and needs (including comparisons to other similar funds)?	1	2	3	4	5
1.10	Is the board effective in monitoring:					
1.10.1	operational and financial performance;	1	2	3	4	5
1.10.2	the integrity of the processes involved; and	1	2	3	4	5
1.10.3	the fund's system of internal controls?	1	2	3	4	5
1.11	How does this board compare to other boards on which a board member serves in respect of the items outlined in paragraph 1?	1	2	3	4	5
1.12	Has the board properly delegated functions to service providers, i.e. do the rules of the fund allow for delegation and are agreements in place?	1	2	3	4	5
1.13	Does the board ensure that proper monitoring of service providers and remedial action takes place, if necessary?	1	2	3	4	5
1.14	Has the board properly delegated functions to sub-committees, i.e. do the rules of the fund allow for delegation and are mandates in place?	1	2	3	4	5
1.15	Does the board ensure that proper monitoring of service providers and remedial action takes place, if necessary?	1	2	3	4	5
1.16	How does this board compare to other boards on which a board member serves in respect of the items outlined in paragraph 1?	1	2	3	4	5

2	SIZE, COMPOSITION AND INDEPENDENCE OF BOARD					
2.1	Are the provisions of the rules of the fund relating to board eligibility criteria, and board size effective?	1	2	3	4	5
2.2	Are the provisions of the Code of Ethics and Conduct regarding composition of skills of board members, breadth of experience and other characteristics among board members effective?	1	2	3	4	5
2.3	Is the proportion of independent board members to board members appointed in terms of the rules of the fund appropriate for this type of fund (defined contribution fund)?	1	2	3	4	5
2.4	Do the board members consistently ensure that the fund and its membership, rather than stakeholders or constituencies, is the priority as required in terms of the provisions of the Pension Funds Act, 1956 (“the PFA”)?	1	2	3	4	5
2.5	Does the independent board member(s) have an opportunity to meet with the chairperson and/or members of the board of management/or the Principal Officer on a regular basis?	1	2	3	4	5
2.6	Does the independent board member(s) have an opportunity to meet with the Chairperson, if appropriate, on a regular basis?	1	2	3	4	5
2.7	Does board membership criteria (both in terms of the Rules of the fund and in terms of the Code of Ethics and Conduct) ensure that board members have sufficient time to perform their functions?	1	2	3	4	5
2.8	Does board membership criteria (both in terms of the Rules of the fund and in terms of the Code of Ethics and Conduct) ensure that board members are able to retain their independent stature?	1	2	3	4	5
2.9	Does the board seek outside advice when appropriate?	1	2	3	4	5
2.10	Could the composition and organisation of the board, including sub-committee structures, be improved?	1	2	3	4	5

3	BOARD MEMBER ORIENTATION, TRAINING AND DEVELOPMENT					
3.1	Has the board defined and communicated its expectations concerning board member skills, knowledge and development?	1	2	3	4	5
3.2	Has the board provided an adequate budget for the orientation, training and development of board members?	1	2	3	4	5
3.3	Are new board members provided with adequate information about the fund and the board?	1	2	3	4	5
3.4	Rate the level of information for new board members.	1	2	3	4	5
3.5	Are new board members sent on an orientation programme?	1	2	3	4	5
3.6	Rate the orientation programme for new board members.	1	2	3	4	5
3.7	Rate the effectiveness of the recruitment and retention of board members?	1	2	3	4	5
3.8	Do board members receive proper training in corporate governance matters?	1	2	3	4	5
3.9	Rate the corporate governance training.	1	2	3	4	5
3.10	Do board members receive continuing education on issues facing the fund?	1	2	3	4	5
3.11	Rate the ongoing education.	1	2	3	4	5

4	BOARD LEADERSHIP, TEAMWORK AND MANAGEMENT RELATIONS					
4.1	Rate the effectiveness of the board's leadership at board level.	1	2	3	4	5
4.2	Rate the effectiveness of the board's leadership at sub-committee level.	1	2	3	4	5
4.3	Is board leadership distinct from operational leadership?	1	2	3	4	5
4.4	Rate how effectively and efficiently the board manages the conduct of board business?	1	2	3	4	5
4.5	Rate the board's effectiveness as a team.	1	2	3	4	5
4.6	How well does the board work with the Chairperson, other officers and fellow members of the board and the Principal Officer?	1	2	3	4	5
4.7	Do the board and the Chairperson, other officers and fellow board members and the Principal Officer work to create an open culture that encourages frank discussion?	1	2	3	4	5
4.8	Rate the support given by the new board members and/or board members who do not have a high level of skill.	1	2	3	4	5
4.9	Rate the extent to which a few individuals dominate the board.	1	2	3	4	5

5	BOARD AND COMMITTEE MEETINGS					
5.1	Rate to what extent board meetings are productive.	1	2	3	4	5
5.2	Rate to what extent board and sub-committee meetings are productive.	1	2	3	4	5
5.3	Does the board have a system in place that allows it to track the number of decisions taken at meetings?	1	2	3	4	5
5.4	Is the number of scheduled board meetings sufficient?	1	2	3	4	5
5.5	Does the agenda-setting process for board meetings allow for appropriate issues to be raised as necessary?	1	2	3	4	5
5.6	Is the agenda ordered with sufficient time to discuss the most complex and critical issues, i.e. are the most important and/or complex issues included at the beginning of the agenda so that boards have sufficient time to apply their minds to such issues?	1	2	3	4	5
5.7	Can board members influence the content of the agenda?	1	2	3	4	5
5.8	Do board members influence the content of the agenda?	1	2	3	4	5
5.9	Do board members receive sufficient information about agenda items in advance?	1	2	3	4	5
5.10	Rate to what extent the quality, quantity, and timing of information given to board members is adequate or not.	1	2	3	4	5
5.11	Is sufficient meeting time devoted to discussion of fund performance and review of strategic issues?	1	2	3	4	5
5.12	Rate the meaningfulness or otherwise of board committees with regard to meeting frequency, duration, content and interests.	1	2	3	4	5
5.13	Rate to what extent non-committee board members are well informed or otherwise about the deliberations of each committee.	1	2	3	4	5
5.14	Do committees provide written feedback to the board?	1	2	3	4	5
5.15	Rate to what extent the atmosphere at board meetings is conducive to all board members being able to air their views.	1	2	3	4	5
5.16	Rate to what extent ethical and conduct-related issues are dealt with at meetings.	1	2	3	4	5
5.17	Rate to what extent disclosure required in terms of the code of ethics and conduct are dealt with at meetings.	1	2	3	4	5
5.18	Rate to what extent board members or committee members come to meetings prepared.	1	2	3	4	5

6	BOARD, BOARD MEMBER AND COMMITTEE MEMBER EVALUATION AND COMPENSATION					
6.1	Rate the extent to which the board is regularly and effectively evaluated.	1	2	3	4	5
6.2	Rate the extent to which board members are regularly and effectively evaluated.	1	2	3	4	5
6.3	Does the board have a mechanism in place to deal with board members if it is revealed through a properly constituted evaluation process that they are lacking in one or more areas, for example, they do not come to meetings prepared?	1	2	3	4	5
6.4	Rate the extent to which committees are regularly and effectively evaluated.	1	2	3	4	5
6.5	Rate the extent to which the board ensures that board members are meeting board standards and expectations.	1	2	3	4	5
6.6	Has the board assessed its maximum potential, both individually and as a group?	1	2	3	4	5
6.7	Has the board surveyed others who perform better than it does, and assessed how it can learn from them?	1	2	3	4	5
6.8	Has the board considered benchmarks by which to gauge board performance?	1	2	3	4	5
6.9	Does the board have a credible process for reviewing its progress in meeting its goals and for maintaining the necessary resources and corporate support to function effectively?	1	2	3	4	5
6.10	Is the board committed to continuously improving performance, with well-established procedures for setting performance goals?	1	2	3	4	5
6.11	Is there a process for reducing evaluations to recommendations that are monitored for compliance?	1	2	3	4	5
6.12	Rate the extent to which the free and open exchange of views is encouraged.	1	2	3	4	5
6.13	Are board members appropriately compensated?	1	2	3	4	5
6.14	Does board member compensation provide incentives for maximum performance?	1	2	3	4	5
6.15	Is board member compensation structured so as to align the interests of the board members with the long-term interests of the fund?	1	2	3	4	5
6.16	Has the board agreed on the respective duties of individual board members?	1	2	3	4	5
6.17	Has the board set individual performance criteria for board members?	1	2	3	4	5

7	MANAGEMENT EVALUATION AND COMPENSATION					
7.1	Rate the extent to which the board regularly evaluates the performance of the Chairperson of the board.	1	2	3	4	5
7.2	Rate the extent to which the board regularly evaluates the fund's performance.	1	2	3	4	5
7.3	To what extent can the board's methods of measuring management performance be improved?	1	2	3	4	5
7.4	Has the board created an appropriate designed management compensation plan?	1	2	3	4	5
7.5	Does the board effectively reward management's performance?	1	2	3	4	5

8	SUCCESSION PLANNING					
8.1	Does the board have a fund succession plan in place in respect of board members?	1	2	3	4	5
8.2	Does the board have a specific succession plan for the Chairperson?	1	2	3	4	5
8.3	Is the board familiar with other members of the Executive Committee and the Principal Officer?	1	2	3	4	5
8.4	Does the board regularly review members of the board of management’s strengths as possible successors to the Chairperson?	1	2	3	4	5

9	ETHICS					
9.1	Rate the extent to which the board communicates the proper ethical and legal responsibilities to the board members?	1	2	3	4	5
9.2	To what extent does the board ensure ethical behaviour and proper compliance standards throughout the fund organisation, including management, and set the right “tone at the top” by its own behaviour?	1	2	3	4	5

10	CONSTITUENCIES AND STAKEHOLDER EXPECTATIONS					
10.1	Does the board ensure appropriate consideration for and treatment of various stakeholders?	1	2	3	4	5
10.2	Does the board communicate effectively with stakeholders?	1	2	3	4	5
10.3	Has the board identified the varying expectations and interests of current members and pensioners?	1	2	3	4	5
10.4	Does the board ensure that those expectations are met and/or managed, if appropriate?	1	2	3	4	5
10.5	Has the board identified the expectations and interests of the employers of the current members?	1	2	3	4	5
10.6	Does the board manage and/or ensure that the fund meets the expectations and interests of the employers of the current members?	1	2	3	4	5
10.7	Has the board identified the expectations and interests of the unions/associations?	1	2	3	4	5
10.8	Does the board manage and/or ensure that the fund meets the expectations and interests of the unions/associations?	1	2	3	4	5
10.9	Is the board aware of the expectations of the regulatory authorities regarding the fund?	1	2	3	4	5
10.10	Does the board meet the expectations of the regulatory authorities?	1	2	3	4	5
10.11	Does the board ensure that it develops and maintains an appropriate relationship with the regulatory authorities?	1	2	3	4	5
10.12	Is the board aware of the expectations of its service providers?	1	2	3	4	5
10.13	Does the board manage and/or ensure that the fund meets the expectations of the service providers?	1	2	3	4	5

With regards to board/management relations, the board should obtain management views on the board’s performance. In this regard, the Chairperson should be asked to consider how he or she would assess the board, perhaps with input from other members of the Executive Committee and the Principal Officer who have regular contact with the board. Management should be asked to consider the following questions:

11	BOARD/MANAGEMENT RELATIONS – VIEW OF MANAGEMENT					
11.1	Is the division of responsibility between management and the board appropriate and clear?	1	2	3	4	5
11.2	Does the board provide wise counsel?	1	2	3	4	5
11.3	Does the board provide clear direction?	1	2	3	4	5
11.4	Does the board challenge management as appropriate?	1	2	3	4	5
11.5	Does the board engender management’s trust?	1	2	3	4	5
11.6	Does the board hold information confidential?	1	2	3	4	5
11.7	Is the board too “micro” in its supervision, i.e. does it interfere with the detail of the management of the fund in an inappropriate manner?	1	2	3	4	5
11.8	Does the board request appropriate, relevant information?	1	2	3	4	5
11.9	Are board members prepared for board meetings?	1	2	3	4	5
11.10	Are board members knowledgeable about the fund and the issues it faces?	1	2	3	4	5
11.11	Is the proper mix of expertise reflected on the board?	1	2	3	4	5
11.12	Are all members of the board of management (i.e. Chairperson, Principal Officer, and other officers of the fund) invited to attend board meetings in order to stay informed of fund matters?	1	2	3	4	5

Case Study Example of evaluation exercise and appropriate feedback:

1 Board duties, role, delegation of functions and agenda setting (monitoring performance and strategic/business planning)

Case Study Extract:

This part of the evaluation has been rated between 3 and 4. That means the Trustees are comfortable with the board duties, roles, delegation of functions and agenda setting.

Recommendation:

- Trustees need to pay attention to their general and specific fiduciary duties to the fund and the stakeholders as contained in general principles on good governance, this is point 1.1 of the evaluation and was rated 3 which means consistently, we were expecting a 4 on average when it comes to this point.
- The board needs to implement mechanisms designed to identify areas of potential problems in its operation since this is a critical part of any risk management strategy. This is point 1.8 in the evaluation and it was rated 3, we were expecting a rating of 4 on average.
- The board should ensure that proper monitoring of service providers and that remedial action takes place, if necessary. This was point 1.15 and was rated 3 rather than 4, we would recommend that the board pay attention to their service level agreements and construct a valuation template to evaluate their service providers on a regular basis.

2 Size, composition and independence of board

This part of the evaluation has been rated 4. That means the Trustees are comfortable with size, composition and independence of the board.

Recommendation:

- The board should always seek outside advice when appropriate, the act provides for utilisation of expert advice in cases where board lack knowledge on any matter relating to the fund. This is point 2.9 and was rated 3 and we would have preferred a rating of 4 because of the importance of this matter.
- The board should carefully examine its composition and organisation, including sub-committee structures; this will assist the board in terms of delegation of tasks as per the recommendations in PF 130 document on effective governance.

3 Board member orientation, training and development

This part of the evaluation has been rated between 3 and 4. That means the Trustees are fairly comfortable with the orientation, training and development process.

Recommendation:

- The board should clearly define and communicate its expectations concerning board member skills, knowledge and development. The board needs to draw up a comprehensive development plan; there should be training calendar for the year with UNIT STANDARDS that need to be covered for that particular year. There should be remedial action for those trustees who are not yet competent in terms of the UNIT STANDARDS covered. These are point numbers: 3.1, 3.4, and 3.5 and were rated 3 rather than 4 in this evaluation.

4 Board leadership, teamwork and management relations

This part of the evaluation has been highly rated at 4. That means the Trustees are comfortable with their leadership, teamwork and management relations.

Recommendation:

- The board needs to re-evaluate the way they work with the Chairperson, other officers and fellow members of the board and the Principal Officer. This is a vital factor of effective governance, trustees should maintain appropriate conditions which may allow a conducive environment for good working relations between the board and fund officers.
- The rating of point 4.9 somehow reflects the trustee's dissatisfaction with a few individuals dominating the board, this is a serious concern and it might damage relations within the board itself and this will discourage participation of other board members. The board should encourage open, constructive and selfless criticism to avoid the domination by a few.

5 Board and committee meetings

This part of the evaluation has been highly rated at 4. That means the Trustees are comfortable with their committee meeting.

Recommendation:

- The low rating of 2 in point 5.2, of the evaluation reflects trustee's lack of confidence in the productiveness of board and subcommittee meetings. This is a serious concern; the board should be granted an opportunity to express their concerns regarding factors which they perceive to be destructive or impact negatively on the productivity of their meetings. One of the trustees has actually written a note on his/her evaluation regarding this issue, he/she is concerned about lack of control in the meetings.
- The rating of 3 in point 5.3 reflects the boards' lack of knowledge when it comes to fund documents, the question was "Does the board have a system in place that allows it to track the number of decisions taken at meetings" most of the answers were between 2 and 3. It seems as if most board members don't know what the purpose of the minutes of the meetings is. Trustees' training will have to include the purposes of fund documentation.
- The rating on this question reflects some dissatisfaction with regards to the timing of agenda, "Do board members receive sufficient information about agenda items in advance?" We would recommend that you review the timing of when trustees receive their agendas for the next meeting.
- The low rating of 2 in point 5.14 reflects the boards' dissatisfaction with feedback format from the committee members; it seems as if the board is not getting written feedback from the committee members. We would recommend that there be written feedback from the committee members, this is a requirement as per the PF 130 document on governance.

6 Board, board member and committee member evaluation and compensation

This part of the evaluation has been between 2 and 3. That means the Trustees are really not that comfortable with the board member and committee member evaluation and compensation issues.

Recommendations:

- The board seems to be ignorant or dissatisfied with regards to assessment of its maximum potential, both individually and as a group. We would recommend a delegation of function for each board member. This will be combined with their trustee training assessment results so we are able to assess their potential as individuals and as a group. This can be achieved through observational assessment in their meetings.
- It seems as if the board have no credible process for reviewing its progress in meeting its goals and for maintaining the necessary resources and corporate support to function effectively. We

would recommend a credible template to review progress of trustees in meetings, this can be achieved through a benchmark derived from factors stated from both section 7 of the PFA and PF 130

- Board members seem unhappy about their compensation. There is nothing to be done in this regard, but we would recommend that the fund consultant explain the fact that trustees are paid by the employer for their normal working hours when they attend to fund issues. One of the trustees made a valid point; he noted that trustees will have to be compensated for all **valid** expenses incurred while carrying out their duties as trustees.

7 Management evaluation and compensation

This part of the evaluation has been rated as a 3 by the board. That means the Trustees are comfortable with the management evaluation and compensation issues in the fund.

Recommendations:

- Has the board created an appropriate designed management compensation plan? The answer to this question was 1; this means the board has no management compensation plan. We would recommend that the board look at what other boards are doing in this regard, the board can possibly get that information from their consultant since she is involved with other funds.

8 Succession planning

This part of the evaluation has been rated as a 3 by the board. That means the Trustees are comfortable with succession planning in the fund.

Recommendations:

- Point 8.1 has been rated low at 2; this means that the board is not really satisfied with the current succession plan. We would recommend improvement of the current succession plan and that process should involve trustee participation in a form of workshop.

9 Ethics

This part of the evaluation has been rated between 3 and 4 by the board. That means the Trustees are comfortable with ethics of trustees in the fund.

Recommendations:

- We would recommend that the trustees read the document relating to trustees' code of conduct in detail.

10 Constituencies and stakeholder expectations

This part of the evaluation has been rated 3 by the board. That means the Trustees are fairly comfortable with constituencies and stakeholder expectations in the fund.

Recommendations:

- The board should ensure appropriate consideration for and treatment of various stakeholders, we would recommend that the board be referred to PF 130 principles of Management of stakeholders.
- The board should identify the expectations of all stakeholders and manage them appropriately.
- The board should be aware of the expectations of its service providers.
- The maintenance of stakeholder relationship is a vital component of effective governance and the board should refer to the funds' communication policy for further assistance on this matter.

11 Board/management relations – view of management

This part of the evaluation has been rated 3 by the board. That means the Trustees are fairly comfortable with constituencies and stakeholder expectations in the fund.

Recommendations:

- Principle 11 of PF130 is meant to provide the terms of relations between the fund and the employer and/or sponsor. We would recommend that trustees deal with this part of the evaluation with reference to that principle.
- The board owes the employer a duty of good faith and as a result, a clear communication channel should be maintained between the board and the employer and/or sponsor.
- The board can attain and keep these channels open through an appropriate mix in the board itself, which will include the possibility of having some employer appointed representatives in the board.

The golden rule is to always act in good faith with the best interest of the members and to ensure independency from the management/employer/sponsor but to be transparent and grant access to information to all concerned stakeholders.

Conclusion

This exercise has proven the need for trustees to be regularly reviewed and the fund should consider some factors when designing and establishing the basis of the evaluation template for the board members. There should be a buy-in from the board members in relation to the expectations of the evaluation process. Some of the responses we got did not really reflect the true concerns or understanding of the rating system that has been used in this evaluation but we acted on the averages of those that reflected clear understanding of the rating system.

Trustees will have to undergo comprehensive trustee training which will allow them the opportunity of being formally assessed against the INSETA UNIT STANDARDS to document and track their competency.

Chapter 2 - Strategic direction and governance of the Fund

After completing Chapter 2, the learner will be able to demonstrate understanding and application of various strategic direction governance topics and practices, including:

- Define objectives of a fund in line with the rules of the Fund
- Discuss and/or develop the strategy
- Discuss the importance of setting and monitoring the implementation of a strategy
- Discuss the appropriate resources required to implement the developed strategy
- Explain the processes and procedures to be followed for the selection and approval of resources (including fund management and service providers)
- Describe the procedure the Board should follow when overseeing the operation of the Fund, including delegation

2.1 Objectives of the Fund

An objective is a specific result that a person or system aims to achieve within a time frame and with available resources. In general, objectives are more specific and easier to measure than goals. Objectives are basic tools that underlie all planning and strategic activities.

The objective of a *pension* fund is to provide employees with a regular pension on retirement. Pension fund members must buy an annuity with at least two-thirds of their retirement fund.

The objective of a *provident* fund is to provide employees with a lump sum benefit at retirement. A provident fund is thus more flexible, as employees can still purchase an annuity with their fund.

2.2 Strategy to meet the objectives of the Fund

The board of trustees should ultimately make decisions and lead value creation for the fund in line with the objectives of the fund. The rules of the fund state the object of the fund, typically along the lines of “*the object of the fund is to provide retirement benefits for members, and in the event of members not retiring, (i.e. death before retirement date) to provide benefits for their dependants*”. In light of this objective, all decisions, strategies, policies and practices adopted by the board should have this ultimate focus and should centre around the strategic objective of the fund. Achieving this strategy consists of delivering good investment returns without taking unnecessary risk as well as managing the fund’s expenses so as to ensure that the retirement savings of members are maximised.

For any decision or policy to be implemented by the board, a process should be adhered to, effectively ensuring that the process takes cognisance of the object of the fund and that the desired outcome is in align with the funds’ objective. The board is not expected to undertake and put in place all fund strategies on their own, and in fact, governance principles encourage the board to obtain expert advice and seek guidance in adopting strategies and that once set, these need to be reviewed for appropriateness on a continual basis (usually annually).

The Principal Officer, although not a decision maker (no voting powers), has a governance driven responsibility to help guide the board in achieving the desired fund strategy. The decisions taken by the board are to be implemented by the Principal Officer in conjunction with the respective service providers and ultimately the Principal Officer will be giving strategic guidance to the board in the setting and rolling out of all fund strategies to be in line with the fund objective as stated in the rules / charter.

The rest of this chapter provides some principles and theories covering the fundamentals of strategic planning. Ideally boards should undertake such processes whether setting up a fund for the first time, or whether setting the Investment Policy Statement for an existing fund, or making any similarly important fund decision – the broad principle should apply.

In this chapter, we will refer to the ‘organisation’ and the ‘management’ thereof, and learners should understand that the principles and theories can be applied to ‘retirement funds’ and ‘boards of trustees’ respectively.

‘Planning’ simply means to decide beforehand what to do, how to do it, and who must do it. Planning spans the gap from where the organisation is currently positioned to where management wants the organisation to be positioned in the future. Planning specifies objectives for the organisation as well as the means of achieving objectives.

There are so many factors that influence management decisions, so it is almost impossible to plan with complete accuracy. Plans must, therefore, be reviewed on a regular basis to determine to what extent actual conditions differ from those which were expected when the plans were formulated. Even during the initial planning phase provisions must be made for the possibility that things could happen for which details were not included in the existing plans.

Formulating effective plans has several advantages for the organisation, including:

- Forcing managers (and in the context of pension funds, the board) to think ahead and observe trends
- Anticipating trends and potential problems in the industry
- Increasing the effectiveness of the organisation because the best alternative is selected and implemented
- Improving the management and communication in the organisation
- Increasing the possibility that management will evaluate results and revise objectives

Successful plans require a number of conditions or steps to be adhered to:

- Plans must be based on accurate information as decision-makers will not be able to formulate effective plans without an adequate knowledge and understanding of all the factors (external as well as internal to the organisation) that could influence the achievement of the objectives.
- It must be economically feasible to execute the plans, that is, the plans and targets must be realistic.
- Plans must be flexible. It should be possible to make adjustments if circumstances change. Plans must relate to the objectives of the organisation. For example, a plan must try to eliminate factors that will have a negative effect on the achievement of objectives of the organisation.
- The targets of a plan must be stated clearly and simply to ensure that the “maximum” understanding and co-operation will be attained from stakeholders who will be involved in implementing the plan. Plans must be reviewed on a regular basis and re-planning must take place when circumstances or deviations make it necessary.

Developing a strategy

Here are six simple steps to help you deliver an effective business strategy:

Gather facts

To know where you’re heading, you have to know where you are right now. So before you start looking ahead, you should review the past performance, or the current situation. Look at each area of the business and determine what worked well, what could have been better and what opportunities lie ahead.

There are many tools and techniques available to help with this process, such as SWOT (Strength, Weakness, Opportunities and Threats) analysis.

You should look internally at your strengths and weaknesses. And for the opportunities and threats you should look at external factors.

Develop a vision statement

This statement should describe the future direction of the business and its aims in the medium to long term. It’s about describing the organisation’s purpose and values. Business gurus have debated long

and hard about what comes first – the vision, or the mission statement (see step 3). But, in practice, you could develop both at the same time.

Develop a mission statement

Like the vision statement, this defines the organisation’s purpose, but it also outlines its primary objectives. This focuses on what needs done in the short term to realise the long-term vision. So, for the vision statement, you may want to answer the question: “Where do we want to be in 5 years?”. For the mission statement, you’ll want to ask the questions:

- What do we do?
- How do we do it?
- Whom do we do it for?
- What value do we bring?

Identify strategic objectives

At this stage, the aim is to develop a set of high-level objectives for all areas of the business. They need to highlight the priorities and inform the plans that will ensure delivery of the company's vision and mission

By taking a look back at your review in step one, in particular the SWOT analysis, you can incorporate any identified strengths and weaknesses into your objectives. Crucially, your objectives must be SMART (Specific, Measurable, Achievable, Realistic and Time-related).

Your objectives must also include factors such as KPIs, resource allocation and budget requirements.

Tactical Plans

Now is the time to put some meat on the bones of your strategy by translating the strategic objectives into more detailed short-term plans. These plans will contain actions for departments and functions in your organisation. You may even want to include suppliers.

You're now focusing on measurable results and communicating to stakeholders what they need to do and when. You can even think of these tactical plans as short sprints to execute the strategy in practice.

Performance Management

All the planning and hard work may have been done, but it's vital to continually review all objectives and action plans to make sure you're still on track to achieve that overall goal. Managing and monitoring a whole strategy is a complex task, which is why many directors, managers and business leaders are looking to alternative methods of handling strategies. Creating, managing and reviewing a strategy requires you to capture the relevant information, break down large chunks of information, plan, prioritise, capture the relevant information and have a clear strategic vision.

Strategic plan documents

Having conducted a strategic planning exercise it is important for organisations to document the decisions and processes that have been agreed on. A strategic plan is a document used to communicate with the organisation the organisational goals, the actions needed to achieve these goals and all the other critical elements developed during the planning exercise. In practice, the strategic plan often includes smaller, more focussed strategies within it.

There are governance requirements for local retirement funds to maintain policies on investments, communication, risk and education. It is common practice for funds to document other strategic decisions and processes in their fund rules and other applicable policies.

It should be noted that many pension funds in the UK are creating and publishing annual business plans, which include details on their investments, to demonstrate compliance with Myners Principle 1: Effective Decision-Making. Examples of topics covered in these business plans are as follows:

- Fund information
- Fund governance
- Fund responsibilities
- Customers of the fund
- Key policy documents
- Business objectives of the fund
- Investments
- Budget
- Action plan

Operational plans

Operational plans clearly define actions to support the strategic objectives and plans of senior management. Successful organisations use detailed operational plans to ensure a systematic process to implementing strategic initiatives.

The operational plans, often formulated and maintained by departments of an organisation, are regularly updated to reflect achievements, changes in performance and shifting priorities. When preparing an operational plan, the department should document their strategically aligned objectives and include a provision for contingencies that address potential risks and weaknesses. The operational plans must also document tasks, responsibilities, timeframes, performance measures and resource needs.

In the context of retirement funds, ‘departments’ could refer to the board or relevant sub-committee with specific mandates and responsibilities, where appropriate.

Development of operational plans

Operational plans for individual departments or specific functions are developed based on the strategic plan for the organisation. The main characteristics of a strategic plan are:

- It is linked to the overall objective or mission of the organisation
- It is linked to the long-term future (1 - 5 years ahead)
- It attempts to change future results by focusing on the most important aspects

An organisation would expect each of its departments to contribute to its strategic plans and objectives. The usual way is to get the departmental managers to develop annual plans and budgets to show how this will be achieved. While strategic planning provides the vision, direction and goals for

the business, operational planning translates that into the everyday workflow of the business that will hopefully produce the outcomes defined by the strategy.

Operational planning is the conversion of strategic goals into managed execution. It deals specifically with the internal operations and resources necessary to fulfil the organisation's purpose. The framework for the operational action plan is recommended as follows:

- *Departmental objectives* (aligned to organisational strategy)
- *Tasks*: List all of the tasks and activities that need to be carried out to achieve each departmental objective. Break down each objective into logical bite size steps or actions.
- *Responsibilities*: Allocate responsibilities to resources for each of the tasks. This is likely to be management's responsibility and they will then cascade the tasks to the respective individual or department.
- *Resources required*: Resource needs may include people, IT systems, or money, to name a few. The plan should define specific resource needs that are required to achieve the objectives. In instances where there is limited budget available, develop contingencies to address shortfalls.
- *Timeframes*: A start and finish date supplies one with definitive measures for performance. They also assist in defining predecessor and successor relationship between the tasks. Some actions may be dependent on others before they can commence. There should be an understanding of the knock-on effect of not achieving specified timelines.
- *Potential risks and contingencies to address these*: A risk is the potential harm that may arise from some present process or from some future event. It is often mapped to the probability of some event, which is seen as undesirable. A contingency is the planned allotment of time and cost for unforeseeable elements or risks. Within the action plan identify potential risks, such as the availability of skilled resources, market changes, budgetary restraints and when preparing your contingency plans, document how these can be managed to minimise the potential impact of the risk.
- *Performance measures*: Performance measures should cover cost, quantity and quality. In addition to the operational action plan, each department needs to undertake a budgeting process and prepare its own operating budget. These budgets will be prepared with the objectives of the organisation in mind. The action plan that is developed to support the organisation's strategy will list the metrics that can be used to track performance against the outlined strategy. These can be divided into milestones (the completion of a task or project by a certain date) and quantifiable measurement. It is important to carefully select the performance metrics and ensure that they clearly tie back to the organisation's objectives; they are simple to measure and maintained with the most up-to-date data.

2.3 Resources required to implement and execute the strategy

Service provider management

Although the board of a retirement fund may choose to delegate some of its functions to service providers, it is important to remember that in accordance with Circular PF130 and the Pension Funds Act, the board remains responsible and accountable to the members of the fund for the administration of the fund and it may not abdicate from any of its responsibilities. It is often said that the board may *delegate*, but it cannot *abdicate* responsibility. Principle 12 of Circular PF130, gives guidance on the selection, appointment and management of service providers.

- *Conflicts of Interest*: When selecting and appointing a service provider, the board should be acutely aware of any potential conflicts of interest in accepting advice from the service provider. A conflict of interest may arise, for example, when a service provider giving advice is obliged to act in the best interest of the fund and at the same time he or she may have a separate personal interest or another fiduciary duty owed to a different beneficiary in relation to the decision at

hand. This gives rise to a possible conflict of interest with his or her fiduciary responsibility to the fund, which then needs to be pro-actively identified, monitored and managed. No service provider should derive any benefit from the fund assets and resources, other than the terms contractually agreed upon in the service level agreement. Funds and service providers should have an acceptable, workable Conflicts of Interest policy to deal with such situations as they arise.

- *Accountability:* Members of the board of the fund can be held jointly and severally liable for the actions of their mandated sub-committees, agents, office bearers and service providers. It is for this reason that the selection and ongoing management of service providers should remain a priority for the board of the fund.
- *Fund rules, policies and controls:* A fund should have clear written rules and control processes in place for the financial management and funding, investment management and the safeguarding of assets, delegation of duties, outsourcing of functions and selection processes to be followed in the evaluation and appointment of service providers.
- *Reporting:* A policy should be established which sets out the frequency of reporting by administrators and service providers to ensure that the fund is administered and managed properly and responsibly as delegated by the board.
- *Selection and ongoing management:* Various factors should be taken into account during the formal selection and ongoing assessment of service providers, namely:
 - Skills and competence of the service provider
 - Track record in terms of fulfilment of mandates, breaches etc.
 - Fee structure of the service provider and how it is linked to performance standards or delivery on its mandates
 - The internal policies, practices and procedures of service providers
 - Independent reference checks with past and present clients of the service providers
 - Benchmarking against set standards as set in the service level agreements, contracts etc.

Service provider procurement and contracting

The selection of suitable service providers for a retirement fund is part of the board of the fund's fiduciary responsibility to its members. The most efficient way to responsibly manage the procurement of a service provider is through a formal Request for Proposal (RFP) process.

This is a solicitation process by a fund that is interested in the procurement of specific services, to potential providers to submit business proposals for consideration.

There are a number of reasons that a fund may wish to conduct an RFP process:

- The fund is a newly established fund and seeks to put these services in place
- The fund has made the decision to replace an existing service provider who has performed below the expected standards.
- The fund may experience a change of circumstances, which requires the change of a service provider to one that is more suitable for the needs of the fund.
- The fund, without a change of circumstances, decides to conduct a 'due diligence' RFP to assess if their current service providers or a new service provider is more suitable for the fund's needs.

RFP process

To begin this RFP process, the fund needs to determine a deadline date for an executed contractual agreement with the successful service provider. The fund also needs to decide whether they will be responsible for conducting the RFP process or if they will outsource this responsibility to a third party, to ensure that the process is objective.

The Fund should plan for each stage of the RFP process, to ensure that realistic timelines are set:

- *Search*: This stage involves identifying possible providers, drafting and distributing RFP questionnaires.
- *Evaluation*: This stage involves the evaluation of provider's written responses and selecting a short-list of providers to interview or to present their proposal in a competitive pitch environment.
- *Interview / Pitch*: This stage involves drafting interview questions and scheduling interview times. In a competitive pitch environment, the fund would need to schedule suitable times for the short-listed service providers to pitch their proposals.
- *Contract negotiation*: This stage includes making the final decision and engaging with legal teams to assist with the necessary contracts and service level agreements.

RFP questionnaire topics

The topics and types of questions in an RFP Questionnaire will depend on the type of service provider that the fund is looking to appoint. Later in this chapter, there will be some examples of questions that can be addressed to specific service providers. In the meanwhile, here are some examples of generic topics to be addressed:

- Information about the firm, its financial condition and its available services
- Experience with other retirement funds
- Customer references to gauge existing customer satisfaction with relevant services
- The identity, experience and qualifications of the professionals who will be interacting with the fund
- Any recent litigation against the service provider
- The providers experience or performance record
- A description of the service provider's business practices
- The service providers competitive advantage
- The existence and extent of the service provider's liability insurance
- Full schedule of the fees and expenses
- The types of fees charged
- Fees for ad hoc/ out of scope work
- Possible additional fees
- Whether lock-in fees apply
- If the service provider outsources any functions, how is this managed
- Security of the service provider's offices and systems
- The Service providers' preferred communication methods and typical response times
- Dispute resolution policies and procedures
- Nature of the technological resources, security of the systems, business continuity plans, compatibility of service providers' systems with the systems of other parties involved with the fund (e.g. employer / administrator)
- Transitions assistance available to move the fund from existing service provider
- Service provider procedures to ensure legal, licensing, tax and fiduciary compliance

Service level agreement

Upon the selection of the most suitable service provider for the funds' needs, the legal process begins. The specific considerations and requirements for the legal contracts between the fund and each type of service providers are detailed later in this chapter (Specialist Service Providers). In addition to a legal contract, most funds agree a service level agreement with the service provider. Although these are normally tailor-made agreements, drawn up to include the specific duties to be performed by the service provider, there are some general concepts that need to be applied to all such agreements.

A Service Level Agreement (SLA) is an agreement between two parties (in this case a fund and a service provider) that details the performance standard and service quality agreed to by both parties. An SLA may be a legally binding contract or it can be an informal agreement.

An SLA between a fund and its' service provider is structured to ensure that the fund receives the services that it expects at the expected performance standard and price. The SLA, along with the legal contract, are key components to managing, and mitigating, some of the risks inherent with outsourcing arrangements.

A typical SLA includes the following components and is tailored to the specifics of the services being offered:

- Service categories- the roles and responsibilities of the contracted service provider
- Acceptable ranges of service quality
- Definition of what is being measured
- Formulae for calculating the measurement or measuring the outcomes
- Relevant processes and penalties for failing performance targets
- Frequency and interval of measurement

Developing a successful SLA involves 3 steps:

1. Determining objectives and requirements: determining how the outsourced service fits into the fund's overall strategic plan and budget, and defining the level of service that the fund needs from the service provider to meet its strategic goals and objectives.
2. Setting measurement: stipulating clear and impartial measurements / matrices used to measure and confirm whether the necessary service levels have been achieved and the strategic objectives have been met.
3. Establishing accountability: developing and adopting a framework that ensures accountability after the measurements have been clearly defined. Establishing accountability usually includes a clear statement of the outcome (and consequence) if the level of service fails to meet the stated standard. It is rare for the service provider to be accountable and responsible for all deliverables.

Ongoing communication between the fund and the service provider is imperative for the successful implementation and management of the conditions of the SLA. Once the fund has measured the service activity of the service provider against the defined service levels, the results should be examined closely so that the trustees can identify any issues. Regular communication between the fund and the service provider based on the objectively measured performance matrices ensures that issues with processes or functions are proactively dealt with and appropriate action is applied where necessary. If there are any issues or disputes that cannot be resolved following the above process, then the fund should refer back to the SLA and follow the agreed procedures for failing performance targets - these may include placing a service provider on 'watch', penalties, termination or in more severe cases reporting to the Registrar.

2.4 Oversight of the Fund's operations

The Consultant

The consultant is paid by the fund via the insurance company, if it is an underwritten fund. If not, the consultant is paid from the fund by the Board of Trustees.

The Role of the Consultant

When the consultant introduces a fund to the insurance company as a new fund, he is paid both introductory commission and renewal commission. In return he advises the Board on the fiduciary duties. He also ensures that the members are advised with regards to taxation of lump sum payments, preservation of pension benefits and submission of claims.

Another duty of the consultant is to see that the Rules of the Fund are in line with legal requirements and market trends. The consultant is expected to ensure that the benefit structure is competitive.

He may also offer such services as communicating with members and counselling members reaching retirement age.

The Fund Administrator

There are many administrative duties which must be performed to ensure that retirement funds run smoothly and comply with the law. These include:

- New members must be put onto the fund,
- Claims must be paid,
- Contributions must be collected, banked and invested,
- Risk insurance must be arranged and premiums paid and claims submitted,
- Accounts must be kept and fund statements issued.

Some large companies perform these duties themselves and have self-administered funds. The risk insurance is then arranged with an insurance company. They may or may not handle the investment of the fund's monies.

Other funds are administered by insurance companies who then perform all the functions listed above.

The Role of the Administrator

Since 1st April 1996 it is a criminal offence for an administrator who is not approved by the Financial Services Board to administer any retirement fund. Section 13B of the Pension Funds Act covers the appointment of an administrator.

There must be a written agreement or a letter of appointment between the Administrator and the fund. This agreement must cover the following:

- Powers of Administrator,
- Powers which the trustees may delegate,
- The Administrator will ensure that investments comply with Regulation 28 of the Pension Funds Act,
- How much the Administrator will be paid,
- Termination of agreement details.
- Changes to agreement must be in writing.

Insurance companies administer retirement funds in terms of a formal proposal requesting them to act as Administrators and this is evidenced in the issuing of a policy that covers all of the above matters.

Funds that are underwritten, i.e. operate exclusively by means of policies of insurance, are exempt from a full audit of the administrator of the fund:

- If the contribution payments and claim payments are handled by a life insurer; or
- More than one life insurer is involved and one of them is appointed as Administrator to control the flow of contributions to the others.

The Keeping of Records

One of the functions of the person performing the tasks of administering the retirement fund is to keep proper records of the members of the fund. It is essential that a record of each member is set up and updated regularly so that benefits are correctly paid and the fund's liabilities are established.

All contributions from members and the employer, as well as claims paid, investments made and returns on investments, must be recorded.

Insuring the Risk Benefits of Retirement Funds

Most funds pass the risk of death and disability to an insurance company. In this case a contract between the fund and the insurance company exists to pay a certain sum to the fund or to the beneficiaries when members die or are disabled. This contract/document is an insurance policy.

It is essential for trustees to make themselves familiar with the contents of any policy/ies of insurance.

The Investment Manager

The responsibility for investing the assets of the fund may never be delegated by the trustees. However, they may delegate the task to a person or company to perform on their behalf.

The Role of the Investment Manager

Very often, trustees do not have the expertise to manage the investment of the fund's assets. With an exempt fund, the assets are generally managed by the Insurer's investment management team.

The Auditor

Audit exempt funds are funds that operate solely via policies with an insurance company. As these funds are administered in terms of these policies they are exempt from certain conditions of the Pension Funds Act. One condition is to appoint an Auditor to the fund.

Funds that are not audit exempt appoint an auditor to ensure that fund monies are received and paid timeously.

The Role of the Auditor

Section 9 of the Pension Funds Act covers the appointment of an Auditor. The auditor must be approved within 30 days of fund registration. However, there is no need to appoint an auditor if your fund is an exempt fund.

The Actuary/Valuator

An actuarial valuation is a type of appraisal of a pension fund's assets versus liabilities, using investment, economic and demographic assumptions for the model to determine the funded status of a pension plan. The assumptions are based on a mix of statistical studies and experienced judgment. Since assumptions are often derived from long-term data, unusual short-term conditions or unanticipated trends can occasionally cause deviations from forecasts.

An actuary or valuator estimates the number of deaths, disabilities and withdrawals that a fund may experience. This assists in calculating the amount of money a fund needs to meet its liabilities.

An Actuary may also be involved in the investment decision-making, calculating performance, appraising managers, etc. Most insured funds do not need to have their own valuator.

However, in terms of the Pension Funds Act, the Insurer's valuator has to sign a statement every three years to ensure that the manner in which the fund is administered and invested make his services unnecessary.

The Role of the Actuary/Valuator

In terms of Section 9A of the Pension Funds Act, all funds must appoint a valuator who must investigate the financial condition of the fund at least once in every three years.

Defined contribution funds, where the retirement benefits are an accumulation of member and employer contributions plus growth, are known as valuation exempt funds.

As with the Principal Officer the appointment of a Valuator has not been formalised by the Pension Funds Act. In Section 9 of the Act it only states that the appointment must be made within 30 days of registering the fund and the fund must request the approval of the appointment by the Registrar.

Chapter 3 - Governance of stakeholder relationships

After completing Chapter 3, the learner will be able to demonstrate understanding and application of various strategic direction governance topics and practices, including:

- Identify stakeholders and their relationship to the Fund
- Discuss the rights and obligations of stakeholders in terms of applicable laws, policies, contracts and the rules of the Fund
- Explain the responsibilities and accountability of the various stakeholders
- Identify information relevant to stakeholders
- Identify principles of effective communication in a fund context

3.1 Stakeholders and their relationship to the Fund

Each stakeholder group will have different interests in the fund, and it is the duty of the trustees to ensure that all the stakeholder's interests are protected. Some groups of stakeholders of a retirement fund are as follows:

- *Active fund members*: A pension fund member who is making contributions to the fund, or whose employers is making contributions to the fund on their behalf, and is accumulating assets.
- *Beneficiaries*: A nominee of a member of the fund, or a dependant who is entitled to a benefit, as provided for in the rules of the fund. In most cases, financial dependants of a deceased fund member, who at the trustees' discretion, have received the proceeds of the death benefit.
- *Pensioners*: A person who receives a pension paid from a retirement fund.
- *Deferred pensioners*: A pension fund member who ceases to be employed by the employer before his/her retirement age, and therefore no longer contributes or accrues benefits from the fund. These members can also be referred to as 'paid up members'. A fund does not usually have a large number of deferred pensioners, as most members when leaving the employment of their employer, transfer their benefit to another fund.
- *Spouse in a divorce action*: Former husbands and wives of members who, as a result of a court order on divorce, have been granted a portion of their former spouses' accrued benefit.

Some other important stakeholders of the fund are the contributing employer or sponsor, related trade unions, the media and regulators. Having established the specific profile of the fund, and identified its key stakeholders and their related interests, the fund should develop a stakeholder management strategy.

This strategy should clearly define the processes used to identify key stakeholders and include a comprehensive guide that the trustees can follow to ensure regular, focused and effective communication with each key group of stakeholders.

There should also be mechanisms identified for stakeholders to raise complaints to the fund, and efficient processes identified that ensure that any disputes are resolved in an efficient and timeous manner. Section 7C and 7D of the Pension Funds Act, prescribe certain duties that trustees have to protect the interest of the fund's members and beneficiaries.

Amongst other duties, they are required to ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure as may be prescribed. Further to this, in the case of divorce court orders, trustees have a further duty to ensure that the rules of the fund comply with the provisions of the Divorce Act, especially with regard to the method of calculating the portion of the member's benefit payable to the member spouse.

3.2 Protection of stakeholder rights (Treating Customers Fairly)

In December 2014, National Treasury published a revised draft of the Financial Sector Regulation Bill, 2014 (now the Financial Sector Regulations Act, 2017). Together with the Bill, Treasury published a discussion document called 'Treating Customers Fairly in the Financial Sector: A Market Conduct Policy Framework for South Africa'. This document proposes a comprehensive framework for how the new FSCA, will operate in order to ensure that financial institutions treat their customers fairly.

Treating Customers Fairly (TCF), is defined by the FSCA as *an outcomes based regulatory and supervisory approach designed to ensure that specific, clearly articulated fairness outcomes for financial services consumers are delivered by regulated financial firms.*

Firms are expected to demonstrate that they deliver the following 6 TCF Outcomes to their customers **throughout the product life cycle**, from new product design, to promotion and marketing, through advice, point-of-sale and servicing thereafter, to complaints and claims handling – and throughout the product value chain:

- Customers can be confident they are dealing with firms where TCF is central to the corporate culture
- Products & services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly
- Customers are provided with clear information and kept appropriately informed before, during and after point of sale
- Where advice is given, it is suitable and takes account of customer circumstances
- Products perform as firms have led customers to expect, and service is of an acceptable standard and as they have been led to expect
- Customers do not face unreasonable post-sale barriers imposed by firms to change product, switch providers, submit a claim or make a complaint.

Source: www.fsca.co.za

Pension funds and pension fund administrators are regulated financial institutions and are subject to TCF. To date much of the emphasis has been on retail financial services, so that administrators and trustee boards are sometimes not aware of the TCF implications. Although it must be mentioned that there is certain overlap with TCF outcomes and with other industry accepted guidelines, which focus on ethical behaviour, namely Circular PF130 and King IV.

National Treasury's mentioned discussion document specifically highlights issues experienced in the retirement fund industry, especially hidden and excessive investment charges, so there is no doubt that more specific attention will be given to the retirement fund industry in future. This paper also states that while government is already working towards a fair and sustainable social security system that will provide pension, life insurance and disability benefits, the retirement reform programme is already underway to improve household savings. The paper highlights for retirement funds, the following incremental policy reform proposals:

All of these principles should be firmly integrated into a retirement fund's TCF policy, which should reference governance, communication and risk policies and processes.

As we are considering communication in this chapter, there are many ways that a fund should apply the 6 TCF outcomes as well as the retirement policy reforms to their communication policies and processes, including:

- Critically evaluating the effectiveness of recent communications sent to members and beneficiaries to see where the fund could improve.
- Constantly reminding members to save for retirement (and have preservation as the default option).
- Ensuring efficient complaint and claims management and call centre operations (if appropriate). In addition, this will involve ensuring that the fund's administrator has incorporated such TCF outcomes into their processes.
- Ensuring transparency regarding fees paid to service providers.

3.3 Responsibilities and accountabilities of stakeholders

Trustees

The role of a trustee is very important in that, the members of the scheme place their trust in you to make sure that they receive their promised benefits. They will be looking to you to make sure that the scheme is administered efficiently and honestly and in the best interest of all members by doing the following:

- Act in line with the trust deed and rules
- Secure scheme registration
- Appoint pension fund managers, custodians and other service providers and ensure their compliance with regulatory requirements or guidelines
- Maintain investment policy statements and internal control procedures that may be prescribed by the FSCA
- Ensure that the investment of funds of the scheme is diversified to minimise investment risk
- Act as a provident trustee in a financing relationship with its member
- Keep proper accounting records and a members' register
- Prepare and lodge annual audited financial statements, scheme and investment reports and other relevant records that the FSCA may require
- Perform other functions as may be directed by the FSCA
- Act prudently, responsibly and honestly
- Act in the best interests of your beneficiaries
- Act impartially

Employers

- Comply with legal demands and obligations towards the social security and occupational pension schemes such as deducting the relevant contributions from the employee's salary and remitting these along with their contributions to the Mandatory scheme.
- Provide the administrative and accounting services required to enable a worker join and contribute to a personal pension scheme of the employee's choice.
- Make appropriate payroll deductions from the monthly salary of a worker who desires to contribute to a provident fund or a personal pension scheme and remit the contributions to the approved trustee of the scheme within fourteen days after the end of the month of deduction.
- Should not mingle payroll deductions with the employer's own funds and where an employer deducts contributions from the salary of a worker the contributions shall be held by the employer in trust until it is remitted to the appropriate approved trustee.
- Provide scheme trustees or administrators with the information they need to carry out their duties.
- Provide information and access to support employees.
- Keep proper books of accounts and records of contributions made.

Employees

- Know information about your payroll deduction arrangements with your employer.
- Know how much is deducted from your contribution or how much contribution you pay to the scheme.
- Know contact details of trustee of scheme, such as name of representative of company, phone and fax number and email.

Investment Managers

- Invest the funds in different investments to minimise investment risks whilst achieving the best return within specific investment activities set by trustees
- Maintain books of accounts on transactions related to pension funds invested
- Submit its activities to inspections in the discharge of duties of trustees
- Submit records and reports that the FSCA may require
- Perform other functions that the FSCA may prescribe that are incidental to the performance of its functions

Pension Fund Custodians

- Notify the trustee within forty-eight hours of the contributions from an employer.
- Hold pension fund assets in trust for members.
- Settle transactions and undertake activities related to the administration of pension fund investments including the collection of dividends and related activities.
- Report to the NPRA Board on matters related to the assets being held on behalf of a trustee at periodic intervals that the NPRA Board may determine.
- Undertake statistical analysis on the investments and returns on investments with respect to pension funds in their custody and provide data and information to the trustee and the NPRA Board.
- Execute in favour of the trustee, relevant proxy for the purpose of voting in relation to the investment.
- Perform other functions as may be directed by the NPRA Board.

3.4 Access to information

Constitution of the Republic of South Africa, 1996

Section 32 of The Constitution of the Republic of South Africa, 1996 provides for the ‘right of access to information’ and states that *‘everyone has the right of access to any information held by the state; any information that is held by another person and that is required for the exercise or protection of any rights’*.

The legislation aims at fostering a culture of transparency and accountability both in Public and Private Bodies; and to promote a society in which the people of South Africa have effective access to information, to enable them to more fully exercise and protect all their rights.

Promotion of Access to Information Act

A Members’ constitutional right to access information, is contained in the Promotion of Access to Information Act, 2000 (“PAIA”). The purpose of the PAIA is to give effect to section 32 of the Constitution.

PAIA gives persons the right to lodge a request from a public or private body. The requestor must be given access to the record if the record is required for the exercise or protection of any right and the requester complies with the procedural requirement for the request.

PAIA also requires that all private and public bodies prepare a PAIA manual, which provides the information on both the types and the categories of records held by the particular body.

Below is a summary of the requirement for private bodies.

PAIA manual

In terms of section 51 of PAIA, a private body must:

- Compile a manual as required by section 51
- Submit a manual to the South African Human Rights Commission (SAHRC)
- Update any material changes on the manual on a regular basis
- Make the manual available as prescribed by the Act, at the company's offices and on their website (if applicable)
- Must annex a request form to the manual and also make a request form available on the website and at the company premises and access points

The manuals must contain the following information:

- Postal and street address, phone and fax number and if available the e-mail address of the head of the body. Section 51(1)(a)- In the case of a retirement fund, the contact details for the principal officer should be included.
- The description of the guide referred to in section 10: section 51(1)(b) compiled by the SAHRC. Include details on how to access the guide at Human Rights Commission.
- The latest notice regarding the categories of records of the body (if any), which are available without a person having to request access in terms of PAIA. Section 52(2)
- A description of the records of the body, which are available in accordance with any other relevant legislation. Section 51(1)(d).
- In the case of a retirement fund, this would be the details available in terms of the Pension Funds Act
- A description of the subjects on which the private body holds records, and the categories of records held on each subject as in Section 51(1)(e)
- In the case of a retirement fund, this would be a description of the records held by the fund e.g. general records, member records, contracts and financial records
- Stipulate the fees applicable as legislated by the Act which are chargeable to requesters;
- Remedies available to requesters if their request for information has been refused;
- Details facilitating request for access to a record etc. as detailed in Section 51(e)

Access to records

The most important implication of PAIA, is that a requester may request a private body to allow him/her access to records that the private party holds, under the circumstances that PAIA allows.

A requester must meet the following requirements to get access:

- To get access to records of private bodies a requester must establish “*that record is required for the exercise or protection of any rights*” (section 50).
- A requester must comply with the procedure that PAIA stipulates (the request must be in the format that the Regulations specify and the requester must pay the prescribed fees to the private body).
- There must not be any grounds for refusal (as determined in PAIA).

If a decision is made not to disclose the requested information, then the requester must be notified of this in writing in 30 days. The written response to the requester must include the section of PAIA that was used when refusing their request. The requester must also be notified that they can appeal the decision made not to disclose the information that they requested, in court. In terms of Part 3, Chapter 4 of PAIA provides grounds for refusal of access to records:

- Protection of privacy of third party who is a natural person
- Protection of commercial information of a third party
- Protection of certain confidential information of a third party
- Protection of safety of individuals, and protection of property
- Protection of records privileged from production in legal proceedings
- Commercial information of the private body
- Protection of research information of a third party, and protection of research information of private body

A very important provision of PAIA is the public interest override, which provides that despite a ground of refusal applying, the head of the private body, must grant a request for access if:

- *the disclosure of the record would reveal evidence of-*
 - *a substantial contravention of, or failure to comply with, the law; or*
 - *an imminent and serious public safety or environmental risk; and*
 - *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question*

The public interest override is very powerful as it has the result of a ground for refusal being overridden if the two conditions above are met.

The Companies Act, no.71 of 2008

The Companies Act, which became effective from 1 May 2011, allocates different access rights to those stakeholders that have an interest in an entity from those who are totally independent of the entity. Despite this, the stakeholder's right must still be demonstrated in terms of PAIA.

The Pension Funds Act

The Pension Funds Act gives fund members the right to obtain copies of, or to inspect, certain documents. The trustees cannot refuse to make this information available to such members. Section 35(1) stipulates that the following documents should be delivered by the fund to any member on their request, and on payment of the amount detailed in the fund rules:

- The fund rules
- The last revenue account and the last balance sheet prepared in terms of Section 15(1) of the Pension Funds Act

Section 35(2) requires that the following records are available for any member's inspection (without charge) at the fund's registered address:

- The fund rules
- The last revenue account and the last balance sheet prepared in terms of Section 15(1) of the Pension Funds Act
- The last report (if any) by a valuator prepared in terms of section 16 of the Pension funds Act
- Any scheme which is being carried out by the Fund in accordance with the provisions of section 18 of the Pension Funds Act

In terms of Section 22 of the Pension Funds Act, any person (upon payment of prescribed fees) may inspect at the office of the Registrar of Pension Funds any record referred to in Section 35 (as detailed above) and make a copy thereof or take extracts therefrom, or obtain from the Registrar of Pension Funds a copy thereof or extract therefrom. The Registrar may waive the prescribed fees if he/she is satisfied that the inspection, copy or extract is desired for the purpose of furthering some public interest.

Board members should have unfettered access to all relevant information relating to the fund to enable them to make informed decisions. All information about the fund is confidential and may not be released to any person unless such person has a lawful right to such information, such as the member's rights to obtain the registered rules of the fund, actuarial valuations and audited financial statements.

No person, other than board members and service providers, should have access to minutes of board meetings and membership details unless such information is required for lawful purposes. The board should not be obstructive in supplying information when the person requesting it has a lawful right to access such information.

The information about a fund, its membership and investments belong to the fund and the board should ensure that where this information is held by a service provider, that it is returned to the fund should the relationship with the service provider be terminated.

Protection of Personal Information Act no.4 of 2013 ("POPI")

The Protection of Personal Information Act, No. 4 of 2013 (POPI) promotes the protection of personal information by public and private bodies.

Personal information, as defined by POPI, is any information that identifies an individual.

Examples of such information are a person's name, contact details, identity number, employment history, financial information and personal correspondence. The assessment of whether information is 'personal information' must be performed on a case-by-case basis. POPI also recognises a special category of 'sensitive personal information' such as information about children (under the age of 18) and other such information relating to an individual's religion, race, trade union membership, political views, health or sex life, biometric information and criminal behaviour. The processing of sensitive information, including the transfer of that information to third parties, is prohibited unless consent has been obtained from the individual or in circumstances prescribed by POPI.

POPI has been signed into law by the President on 19 November 2013 and published in the Government Gazette Notice 37067 on 26 November 2013. POPI will only commence on a date determined by the President, and different commencement dates will be set for different sections of the Act. Once the Act is made effective, companies will be given a year's grace period to comply with the Act, unless this grace period is extended as allowed by the Act.

The President signed a proclamation declaring that some parts of POPI were effective from the 11 April 2014:

- Section 1, which contains the definitions
- Part A of Chapter 5, regarding the office of the Information Regulator including the establishment, powers, duties and functions of the Information Regulator
- Section 112 and 113, regarding the regulations that may be made under POPI and the procedure for making those regulations.

The National Assembly approved the appointment of members to the Information Regulator on 7 September 2016. The Regulator will be responsible for education, monitor and enforce compliance, handle complaints, perform research and facilitate cross-border cooperation.

Until the full commencement of POPI, the personal information of data subjects (the individuals whose personal information is about) in South Africa will continue to be given the general protections provided for under the common law and the Constitution. In terms of the common law and constitutional right to privacy, data subjects have an objectively reasonable expectation of privacy, which may not be wrongfully interfered with. This protection extends to the collection, processing and storage of personal information as well as to the disclosure of personal information to third parties. POPI does not fundamentally change the existing requirements imposed by the common law and constitutional right to privacy, but will improve the enforcement mechanism to ensure the protection of personal information.

The POPI Act protects the rights of data subjects, mainly by placing duties on data controllers or responsible parties (the person or organisation that is processing the personal information).

It also provides eight general protection principles or conditions for the lawful processing (including collection, collation, storage, use, erasure, destruction, alteration or distribution) of personal information. In summary form, those principles are:

- Accountability (section 8): The responsible party is accountable for compliance under POPI.
- Processing limitation (sections 9-12): Personal information must be processed lawfully and reasonably and only if the processing is adequate, relevant and not excessive. Conditions when personal information may be processed are listed. Subject to certain exceptions, personal information must be collected directly from the data subject.
- Purpose specification (sections 13 and 14): Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party, and the data subject must be aware of this purpose. Subject to certain exceptions, records of personal information must not be retained for longer than it is needed for achieving the purpose for which it was processed (unless the retention of record is required by law). Records may also be kept for research purposes provided that the responsible party has appropriate safeguards in place against the records being used for other purposes.
- Further processing limitation (section 15): The further processing of personal information must be done in accordance with the purpose for which it was initially collected. There are prescribed factors that should be considered in order to assess whether further processing is compatible with the purpose of collection.
- Information quality (section 16): The responsible party must take reasonable and practical steps to ensure that the information is complete, accurate, not misleading and updated where necessary.
- Openness (sections 17 and 18): The responsible party is required to provide certain mentioned details in the manual that it prepares in terms of PAIA, in relation to its data processing activities. The responsible party must take reasonable steps to notify data subjects of certain information, such as the information being collected, the purpose for which the information is collected, whether the supply of information is voluntary or mandatory, the consequences of failing to provide such information and any particular laws that apply.
- Security safeguards (sections 19-22): The responsible party is required to ensure that it has implemented sufficient security measures to ensure the integrity and confidentiality of personal information, which it processes. These technical and organisational measures should prevent loss of, and damage to, or unauthorised destruction of personal information and unlawful access to or processing of that personal information. The processing of personal information by a data processor must be governed by a written contract, between the responsible party and the data processor, which requires the data processor to establish and maintain confidentiality and security measures to ensure the integrity of the information. Where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person, the responsible party must notify the Information Regulator and the data subject as soon as possible.
- Data security participation (sections 23-25): A data subject has the right to know if a responsible party holds personal information about them, free of charge. The data subject may also request access to the record or a description of the personal information for a fee. The data subject can request correction or deletion of inaccurate, irrelevant, excessive, out of date, incomplete, misleading or unlawfully obtained personal information and request destruction or deletion of personal information that a responsible party is no longer authorised to retain.

POPI allows for a data subject, to submit a complaint alleging interference with the protection of personal information to the Information Regulator, who will be required to investigate further. The Information Regulator may also, of its own initiative, conduct an investigation into perceived non-compliance with POPI by a responsible party.

If the Information Regulator proceeds with the investigation into the complaint, it must notify the data subject and the responsible party accordingly. The responsible party should also be provided with the details of the complaint and informed of its right to submit a written response.

In terms of its power under POPI, the Information Regulator may issue:

- An information notice to a responsible party requesting certain information, including a report on compliance with conditions of lawful processing; and/or
- An enforcement notice to a responsible party, after an investigation, which will require the responsible party to take specific steps within a specified time period (or to cease taking such steps) and/or stop processing information specified in the notice. A responsible party may apply in writing to the Information Regulator to cancel or vary the enforcement notice, and may also file an appeal at the High Court against the enforcement notice, within 30 days of receipt of the notice. A data subject or the Information Regulator at the request of the data subject, may institute a civil action for damages against a responsible party for interference with the protection of personal information of the data subject.

A person is liable for up to 10 years imprisonment or a fine, or both, in the case of conviction of any of the following offences in terms of POPI:

- Obstruction of the Information Regulator's duties
- Failure to comply with an enforcement notice
- Knowingly giving false evidence to the Information Regulator after having been sworn or having made an affirmation
- Contravention by a responsible party of the conditions for lawful processing insofar as they relate to the processing of an account number of a data subject
- Knowingly or recklessly, without the consent of the responsible party, obtaining, disclosing or selling an account number of a data subject

A person is liable for up to 12 months imprisonment or a fine, or both, in the case of conviction of any of the following offences in terms of POPI:

- A breach of confidentiality by persons acting on behalf of the Information Regulator
- Obstruction of the execution of a warrant
- Knowingly or recklessly making false statement
- Failing to attend or give evidence before the Information Regulator when summoned to do so
- Failure to notify the Information Regulator of the processing of information which requires prior authorisation from the Information Regulator
- Processing information that requires prior authorisation from the Information Regulator before the Information Regulator has completed its investigation.

If the responsible party has alleged to have committed an offence in terms of POPI, the Information Regulator may issue an infringement notice to the responsible party. This infringement notice must specify the name and address of the infringer, the particulars of the alleged offence, and the amount of the administrative fine (which may not exceed R10 million). This infringement notice must also notify the infringer that the infringer may pay the administrative fine, make arrangements with the

Information Regulator to pay the administrative fine in instalments, or elect to be tried in court on a charge of having committed an offense referred to in POPI. If an infringer elects to be tried in court, the Information Regulator must hand the matter over to the South African Police Service and must inform the infringer accordingly. However, if the infringer has paid an administrative fine, then no prosecution may be instituted against that responsible party.

POPI and retirement funds

Retirement funds process a lot of personal information, in order to provide benefits and services to their members and beneficiaries. A retirement fund is a responsible party under POPI and trustees of the fund are therefore accountable for a fund's compliance with POPI. The fund's service providers are also required to comply with POPI.

Firstly, the fund is required to appoint an Information Officer, and even deputy information officers for the purposes of complying with POPI and PAIA.

To ensure that the Fund will be compliant with POPI, the trustees need to consider the legal contracts and service level agreements that the fund has in place with their service providers (especially their administrator).

Trustees should review all relevant legal agreements to ensure that they contain the following:

- Confidentiality undertakings with respect to personal and confidential information
- Confirmation of service providers security processes and controls to safeguard personal information
- Breach mechanisms are in place so that breaches under POPI are reported.
- Processes for POPI complaints
- Appointment of an Information Officer
- Understanding where service providers may be direct marketing to the fund's members and what measures are in place to protect personal information in these circumstances.
- Understanding of where a service provider is going to be responsible for assisting the fund's compliance with POPI.

The fund will also need to consider its' processes as well as the processes of its' service providers (especially their administrator), to ensure that the general protection principals for the lawful processing of personal information, discussed earlier in this section, are provided for.

3.5 Fund communication

As part of pension reform in South Africa, the general public needs to be adequately informed about changes in the pension system, the impact of these changes on their pension benefits and the options they face to sustain themselves during retirement. The FSCA, as part of their Consumer Education Programme has used various communication channels, to educate the public on various pension related topics, some include the importance of savings for retirement, options available to members when they change employment, rights and responsibilities of members of retirement funds, and understanding the unclaimed benefits process. They have also developed a range of materials, including the trustee toolkit, booklets containing generic information on retirement funds and a financial guide for the youth (to name a few).

Individual pension funds also play a major role in pensions communication, and trustees have a fiduciary responsibility to communicate effectively with their members and beneficiaries to ensure that they are kept fully informed of their rights, benefits and investments and of developments in the retirement fund industry and how they could affect them. Not only is it's a board's responsibility to communicate effectively, but it is in their best interests to do so, as good communication builds relationships, based on trust, between members and the board of trustees. Funds with well- informed members have higher engagement rates and fewer instances of queries and complaints.

Good communication is essential to improve member understanding and member appreciation of the benefits that the retirement fund has to offer. Good communication is especially important for DC pension funds, where members carry increased investment risk, and need to be equipped to make a variety of complex financial decisions.

Trustees face various practical challenges in fulfilling this fiduciary responsibility. There seems to be a distinct lack of interest, from a large part of the population, in the topic of 'pensions'. This is particularly evident with the younger section of the population who often fail to see the relevance of retirement savings, when their retirement seems so far in the future. There is also a perceived (or actual) complexity of the 'pensions' topic, especially to those sections of the general public with low levels of financial awareness and literacy. With these challenges in mind, good communication and effective information disclosure are essential to ensure that pension reform and DC schemes are a success.

Circular PF130 and FSCA guidance

Circular PF130 requires that every fund has a communication policy, and provides further guidance on the creation of the communication policy and other communication best practices.

The FSB now FSCA, in their paper entitled ‘Guidance for an effective communication policy for trustees in good governance’, 2011 gives the following guidance on a retirement fund’s communication policy:

- All boards of retirement funds should ensure that they have a communication policy in place that ties in with the business plan of the fund, in order to ensure that it is aligned to the vision and mission of the fund.
- The policy should spell out upfront the legal liability of the fund, the board and other stakeholders who are responsible for member communication as well as the statutory and other legal requirements (such as the rules) on member communication. All legal requirements in respect of member and stakeholder communication should be clearly stated in the policy in order to establish the board of management’s responsibilities in this regard.
- The policy should make reference to the composition and the geographic dispersion of the fund’s membership. It should also make reference to the type of fund and the type of benefits provided by the fund.
- The policy should also state whether the fund is open to multiple employers, as this would have a direct impact on the type of strategy that it would need to implement.
- The policy should also be specific that the method of communication will be clear, short and simple and therefore easy to understand from a member perspective.
- The policy should also list the types of information that will be made readily available as well as the process to be followed when disseminating potentially sensitive information to other stakeholders.
- The communication policy should also contain a dispute resolution procedure, which should be in line with the registered rules of the fund and applicable laws.
- The policy should state the frequency of stakeholder communication as well as how often the fund’s communication policy and the communication strategy will be reviewed in order to ensure its ongoing effectiveness. The review of the communication policy should be based on empirical evidence sourced by the board or experts appointed by the board to provide the board with sufficient information on which to base their decision.
- The policy should also refer to research that will be conducted in order to determine these factors accurately when establishing and subsequently revising the fund’s communication policy. Further to this, the same FSCA paper gives fund guidance on their communication strategy: ‘A fund’s communication strategy should set out the fund’s communication objectives, action plan or tools to implement the strategy, the measurement criteria of the effectiveness of the communication process and the approval of the communication budget by the board of management. The strategy should also spell out the timeframes for communication and duties of the service provider(s) in this regard. It should also spell out the sanction for any breaches by the service provider(s).’ Funds must consider all relevant legislation and governance principles when communicating with members, but it must be noted that trustees are not permitted to give financial advice to members, and no communication with members should be phrased in such a manner that it could be interpreted as advice.

Communication objectives

In formulating the fund communication strategy, the communication objectives and desired outcomes are integral and should be specific, measurable, achievable and time-specific.

Defining the communication objectives allows the fund to be focused on the key message and method of delivery, and will help the recipients understand why they are being communicated with.

Examples of communication objectives could be as follows:

- Provide investment education to young members of the DC fund to equip them to make informed member investment choices, to limit switching and increase preservation.
- Deal with any communication, query or complaint received from members, the employer, the registrar in a timely, thorough and respectful manner.
- Remind members, at least annually, to update their Nomination of Beneficiary Forms.
- Continuously strive to improve the cost effectiveness of all communications Clear and measurable objectives drive successful communication.

Methods of communication

The first step in evaluating the appropriate method of communication delivery, is defining the target audience. Legislation prescribes that retirement funds must communicate with certain groups of people for specific reasons and at particular times. However the fund, may wish to communicate with members and beneficiaries about the certain aspects of the fund or benefit provision, at other times.

It's important for trustees to know their audience and not adopt a 'one-size fits all' approach. Funds need to ensure that they target the content and method of delivery to their specific audience to ensure that the identified audience can relate to the information that the trustees are giving them. Young people who have just joined the fund, and older members doing their retirement planning will need different messages (often delivered in different ways).

It is widely recognised within the industry that continuous engagement with members is best, so that they are regularly reminded of their pension savings. Many funds provide newsletters periodically throughout the year and benefit statements on an annual basis. Information published on the fund's website (or company's intranet site) provides members with access to information at any time.

How and where the company operates is a crucial consideration when considering the appropriate delivery method. It seems senseless to deliver an urgent message to members by email, if the fund membership profile, show that most members don't work at a computer. Trustees should consult with those who have a close working relationship with members such as employers, member nominated trustees and union representatives, to get their opinion on how members prefer being communicated with.

Trustees also need to make decisions on the language to be used when communicating with members. Some funds in South Africa will have members speaking all 11 official languages but a decision on the cost effectiveness and accuracy of translation needs to be made, when deciding what language(s) should be used for communications.

In the modern environment, there are numerous methods of communication that trustees can consider, but they should remember that traditional methods of communication could still be effective in certain circumstances. Communications channels do not have to be mutually exclusive- it can sometime be appropriate to reach members with the same message in a number of different ways.

Communication delivery method	Considerations
Standardised brochures and leaflets	Effective if message is simple, but face-to-face contact may be necessary if members are likely to have a lot of questions
Individual / group meetings for staff with pension fund staff/trustees	Encourages member participation and feedback but a bigger time commitment
Internal/ External mail	Internal mail is more effective for urgent communications which require information to reach members quickly
Email	Effective if all members have access to this technology. Cost effective, compared to print, if communication is confidential and needs to be member specific
Staff noticeboard	Less effective if many staff work from home
Company intranet	Won't work for reaching deferred members and pensioners
Company newsletter	Can be sent in hard copy or electronically

As mentioned previously, when evaluating the different communication delivery methods available to funds, they should take into account the membership profile of the fund and the needs of the target audience.

Further to this, trustees should also ensure that the following factors have been taken into account:

- *Cost vs coverage:* The fund should always take the most cost-effective option that gives them the best coverage potential. It would also not make sense to hold one training session in one location (for cost cutting purposes) if the membership is spread across the country.
- *Timeliness:* If the communication requires that information reaches members quickly, then a notice on the staff noticeboard or intranet or an email would be more effective than the use of the Post Office.
- *Response:* If the communication requires a response from members, then ensure that the delivery method ensures that each member receives the communication and allows for a simple response action (for example, a voting button on the company intranet or a pre-paid, addressed envelope included)
- *Confidentiality:* Sometimes communications need to be personalized and delivered individually if information included is deemed to be confidential.
- *Detail:* If communications deal with a large number of topics, it may be worth breaking the message into manageable “sound bites” to aid understanding. This can be done in the design of the material or by simply sending out a series of communications on one topic. In essence, good communication is about getting the right message, to the right person, in the right way, at the right time!

Generally, boards of trustees most often communicate with their members on the following topics:

- *Benefits:* methods, calculations and timing of benefit payments
- *Regulation:* changes to fund rules, changes in regulatory requirements, issues raised by the Registrar, Pension Fund Adjudicator rulings against the fund, all deviations from fund rules and policies, governance issues.
- *Management:* Details of the board of trustees, administrator contact details, various fund policies (including investment, risk, communication etc.), details of trustee election process

- *Funding/ investments*: financial data and extracts from the annual financial statements, funding status, changes in investment strategy, investment performance
- *Member investments*: investment options, default portfolios, underlying asset class and associated risks, net replacement ratios, member investment choice decisions. These details are communicated to members at different stages.
- *Initial Communication*: Circular PF86 provides funds with the minimum disclosure requirements for the Explanatory Pamphlet and benefit statement. The format of this communication is not prescribed but the Registrar states that it should be in writing, clear, unambiguous and in plain language in order to encourage members to participate in fund governance. When trustees are designing their explanatory pamphlet they should ensure that the pamphlet contains sufficient information on how the fund works, what decisions the member needs to make upon joining and how to make the outcome of those decisions known.

When designing this document, trustees should consider the following points to ensure reader engagement:

- Break the text into small sections, using attention-grabbing headlines and sub-headings to keep readers attention
- Consider the use of graphics to illustrate numeric or technical terms, and to break up the text
- Use case studies and / or examples of people who have been through the same processes

It is crucial to get across to DC members, the vital role that they play in their own retirement security. Key points on costs and charges, contribution rates, tax relief provided by the Government, investment choices and inherent risks should be disclosed in easy-to-follow language. Funds should direct members to as many sources of information as possible, either within the fund or elsewhere, and explain the principles of independent financial advice. It is important to make ‘calls to action’ very clear.

Members need to be told that they need to make a decision, and be given very clear instructions on what is required of them.

Ongoing communication: Some fund communication is prescribed, for example the annual benefit statement or the annual report, but funds should consider contact with their members above and beyond the minimum legal requirements as this improves the trust that the members place in the board of trustees and encourages member engagement.

In the case of deferred members and pensioners, regular communication reduces the number of ‘missing’ contacts, and therefore saves on the expense of tracking down these people.

There may also be occasions when you need to contact members because something is going to change. Whether that change is for better or for worse, the scheme has a responsibility to communicate the details to members effectively. It may also have a legal duty to consult on the changes. And where the situation is a difficult one, explaining the change in the clearest possible terms may help relieve future tensions.

An example of a change communication to members could be on the occasion of the board terminating their relationship with an existing investment manager and appointing a new investment manager. The fund would need to notify all members of the change in investment manager to bring them up to date with the most current investment fund options available to them.

Members should be informed in good time before any fund transfer/ transition takes place, so that those members invested in the fund of the exiting manager if relevant, have sufficient time to switch to a different fund manager should they not wish their investment to be automatically transferred across to the new investment manager. Most transitions may result in a ‘black-out period’ where

members are unable to view or alter their investments so they need to be notified of this. While it is important to notify members timeously giving them all the relevant details of the new investment manager's product offering and alternate options available to them, member communications should not delay a transfer/ transition that needs to happen urgently to protect member investments.





Annual benefit statements must provide scheme members with a clear snapshot of how their saving is progressing and the level of retirement income they are heading for. While regulation sets out how this data should be communicated, there is room for funds to improve the efficiency of the statement. Explaining benefits in clear terms with no jargon is crucial. The annual statement is also an opportunity to encourage members to take action – to consider how much they are investing, for example, and whether they have chosen appropriate funds.

Another reason to communicate with scheme members is to find out what they think about important aspects of the scheme (including the quality of its communication materials). These exercises should be conducted with all categories of members, and can help improve scheme design on an on-going basis. It is important to include the relevant fund contact details on all communications to elicit queries and feedback.

Communication at retirement: Member's final decisions, made just before retirement, are extremely important as they contribute towards the member's financial comfort in retirement. Retiring members will stand a better chance of making good decisions if the scheme communicates well with them, both in the run-up to retirement and when the time finally arrives. Funds should start letting upcoming retirees know about their options well ahead of their expected retirement date. Communications need to change from the generic to more personalised, detailed information, including illustrations of potential financial outcomes and risk warnings (e.g. members should be told about the risks associated with the options that the fund offers). Some retirement funds supplement written communications with seminars, run by an advisor or the Principal Officer or member of the employer's HR team, for members who are about to retire.

The following points are worth considering:

- Members need to have annuities explained to them - that these are the products that will enable them to turn their retirement funds into income, and that they should seek independent financial advice to ascertain which annuity product best suits their needs. It may be worth providing them with a glossary of the jargon that they will expect to find when determining which annuity product is best for them.
- Members should be explained their options step-by-step with the use of graphics, flow-charts and case studies to aid in the decision-making process. Trustees should be careful to avoid giving financial advice to members (as opposed to providing information). One method that trustees can use in assessing the effectiveness of their communication material is to honestly answer these four questions before finalising any communications material.

Does it have impact?		Will the material grab the attention of those at whom it is aimed?
Is it clear?		Will the target audience be able to easily understand the material?
Is it accurate?		Are any elements confusing or ambiguous?
Is the material complete and reliable?		Is there any danger that the material could mislead those reading it in some way?

While trustees are assessing their responses to the above questions, they should also be aware that their own views on the effectiveness of the communication material, may not be the same as those of the targeted audience. Asking a sample group of members their opinion, before finalising the material, and taking member feedback on communication received in the past, could be part of the continual improvement process.

Many funds have developed their own style and brand so that communications from the fund are easily recognisable.

All communication material sent out to members should be reviewed by the communication and education sub-committee (in the case of larger funds) to ensure that the communication is aligned with its terms of reference and in accordance with the communication policy prior to circulation. Where deemed appropriate by the fund, technical specialists such as the fund actuary may also be requested to review the communication material.

Member responsibilities

While the fund has full responsibility for member communication, members owe the fund a duty to ensure that they read all forms of communication addressed to them, attend information sessions as appropriate and provide feedback to the fund should their information requirements not be met. They have a further responsibility to ensure that all their personal information held by the fund, is updated and accurate, to aid the fund in the distribution of benefits (this is especially important in the case of a death benefit claim).

Communication and education sub- committees

In large funds, the board should create a sub-committee with the responsibility for member education and communications. This sub-committee should have clear terms of reference, with responsibility for the member detail integrity, general and specific communications and certain financial education initiatives, which are aimed at raising financial literacy levels amongst members. The sub-committee may also have responsibility for the management of third party service providers should any part of communication function be outsourced.

Budget

When determining the annual communication budget requirements, it is important to remember that the cost of communication with members should not overshadow the ultimate responsibility of the fund, which is to provide benefits to members.

The budget should include all costs in setting up communication policies, the monitoring and evaluation of the effectiveness of the communication, the cost of the communication material and the dissemination of the communication material and feedback received.

The communication budget should be pre-approved by the board and the sub-committee should monitor expenditure closely to ensure that expense of communicating with members does not exceed the budget amount. This is especially important when the fund has delegated any part of the communication function to third party providers.

Evaluation methods

The board of trustees, or those trustees serving on the communication and education sub-committee, should regularly (at least annually) evaluate the effectiveness of the fund's communication policy and strategy. Where possible, the trustees should try to evidence any changes that have occurred as a result of a communication (that would otherwise have not taken place).

Trustees are able to use both quantitative and qualitative analysis. Quantitative analysis involves the collection of data over a period of time, and could include the number of complaints/queries received from members, number of members' making/ changing investment choices and amount of adjudicator complaints against the fund. Qualitative analysis usually involves direct contact with the members and could include face-to-face meetings, questionnaires/surveys, email or SMS. The results of the qualitative analysis can also help identify 'soft issues' that can be rectified before they are reflected in the results of the quantitative analysis.

This feedback should be analysed and used to evaluate the success of the fund's communication against the communication objectives originally set.