

# A trustee's guide to winding up your occupational pension scheme



**Many trustees are uncertain of their role when their occupational pension scheme is discontinuing.**

**This booklet has been designed to help you to understand this process and the legal obligations and duties of a trustee when winding-up an Aviva Money Purchase Occupational Pension Scheme.**

**This booklet is only a guide. When a scheme is winding up you should also get independent legal advice to help with the process.**

Where you read the words 'we', 'our' or 'us' they refer to Aviva.

Where you read the words 'you' or 'your' they refer to the trustees.

## The winding-up process

### Stage one

You tell us and the scheme members that the scheme is to discontinue.

### Stage two

A check of the pension scheme accounts is carried out. We reply to you enclosing the winding-up forms, an information sheet and option form for each member and any documentation required by other organisations (for instance HM Revenue & Customs or the National Insurance Contributions Office).

### Stage three

The information sheet and option form are sent by you to the members. The remainder of the documentation is completed by you and returned to us.

### Stage four

Each member decides which option to choose, after seeking financial advice, and completes and signs the option form. This form is returned to us, via you. If no option is selected within three months, the replacement policy default option will apply.

### Stage five

The members benefits are paid, transferred or replacement policies are issued, according to the option chosen.

### Stage six

You confirm to HM Revenue & Customs and The Pensions Regulator that the scheme has been wound-up.

## General duties of trustees

Winding-up a pension scheme is a complex and lengthy process. You have a crucial role to play. Listed below is a reminder of your legal duties and obligations:

- To take prompt action to wind-up the scheme in accordance with the winding-up provisions of the scheme rules
- To ensure that the scheme's administrative records, including home addresses of all scheme members, are kept up to date
- To ensure that all monies due to the scheme are collected and passed on to us
- To act in the best interests of the beneficiaries and to carry out your duties honestly and with the utmost good faith

- To supply information to the members and beneficiaries and ensure that they have been notified of the function and address of the Pensions Ombudsman, MoneyHelper and The Pensions Regulator (TPR). You also have to tell the members, on a regular basis, of the progress of the winding-up
- To ensure the member nominated trustee requirements in the Pensions Act 2004 are complied with. These arrangements will continue to apply until the scheme is actually wound-up.
- To inform TPR about the scheme wind up. This can be done by updating your scheme details via Exchange at [thepensionsregulator.gov.uk](http://thepensionsregulator.gov.uk).
- TPR has published guidance on winding up. This can be viewed at [thepensionsregulator.gov.uk/en/trustees/wind-up-or-transfer-your-scheme](http://thepensionsregulator.gov.uk/en/trustees/wind-up-or-transfer-your-scheme). TPR expect trustees to have a plan in place to ensure that key activities are completed within two years of starting to wind up their scheme. The main activities are covered in the bullet points above, further details can be found in the TPR guidance.
- If there are any issues that cause unavoidable delays you should contact TPR through the regular trustee reporting process giving an explanation.

## Regular trustees reports to The Pensions Regulator (TPR).

When the winding-up of a scheme has started you must make regular reports to TPR until the winding up is completed.

The initial report must be completed within three months following the second anniversary of winding-up starting.

The initial report must contain the following information:

- scheme name
- date winding-up started
- Pensions Registry reference number
- a statement as to the nature of the benefits provided by the scheme
- whether an independent trustee has been appointed, and if one has, the independent trustee's name and address, (unless it is the independent trustee making the report)
- if a scheme actuary is required, their name and address
- whether any of the administration is being carried out by someone other than the trustees, and if so, their name and address
- an estimate of when the winding-up may be completed
- a statement as to what steps in the winding-up have been completed, what steps remain, and estimates of when they will be completed
- a statement as to whether any particular difficulties are delaying/hindering the completion of winding-up.

The second and subsequent reports should generally be completed within twelve months of the latest date of the previous report, although TPR may agree to the postponement of any reports (other than the initial report) although any postponement will never exceed a further twelve months.

Any second or subsequent report must contain:

- scheme name
- date winding-up started
- whether any of the administration is being carried out by someone other than the trustees, and if so, their name and address
- an estimate of when the winding-up may be completed, where this differs from the time stated in the previous report
- a statement as to:
  - 1 what steps in the winding-up have been completed since the previous report,
  - 2 if the previous report estimated that certain steps would be completed before the current report, yet they have not been completed, the reasons for this, and
  - 3 steps that remain to be completed, and estimates of when they will be completed
- a statement as to whether any particular difficulties are delaying/hindering the completion of winding-up.

You can obtain a blank copy of the report by either writing directly to TPR at the following address:

The Pensions Regulator  
 Napier House  
 Trafalgar Place  
 Brighton  
 BN1 4DW

or

by downloading it from their website - [thepensionsregulator.gov.uk/en/document-library/forms](http://thepensionsregulator.gov.uk/en/document-library/forms)

This requirement does not apply to:

- schemes with only one member
- small self-administered schemes
- a scheme where each member is a trustee
- a scheme that provides death benefits only (in the points above, 'member' includes paid up members and annuitants).

Failure to comply with these reporting requirements may lead to either a trustee being prohibited from acting as a trustee, and/or a civil penalty for scheme trustees/managers up to £5000.00 for an individual trustee and up to £50000.00 for a corporate trustee.

### Your duties will not stop until:

- All the assets of the scheme have been disposed of
- The last remaining member's benefits have been transferred or secured by a policy in his/her own name
- HM Revenue & Customs has agreed that winding-up is complete.

## Disclosure regulations

In order to comply with the disclosure of information regulations there are certain timescales which need to be met.

As soon as you are aware that the scheme may discontinue you must decide if this is the case and at what date it is to take effect. This is

a very important decision as it is the date from which the following timescales will begin.

<b>Time limit</b>	<b>Action required</b>
<i>One month</i>	<p>Within one month of the decision to wind-up you should tell the members:</p> <ul style="list-style-type: none"> <li>• that the scheme is winding-up and the reason for this</li> <li>• the name and address of the person to contact if they have any queries</li> <li>• any action being taken to recover any assets such as unpaid premiums</li> <li>• for active members, whether death-in-service benefits will continue to be payable</li> <li>• the action being taken to calculate the scheme's liabilities, ie. we will calculate the individual fund values assuming all due premiums will be paid</li> <li>• when you anticipate being able to pass final details to the members, this will depend on our outstanding requirements</li> <li>• if there are underpaid premiums you will have to tell the members of the likely reduction in benefits coming from this</li> <li>• The date from which the benefits will cease to accrue</li> <li>• If any of the members requests a copy of a section 72a report, you must provide it to the member within two months of the request.</li> </ul> <p>If the winding-up takes longer than 12 months, the members must be given this information in each 12 month period until the winding-up is complete.</p> <p>If a bulk transfer is to be made without the members' agreement, then full information about the value of the transfer must be provided not less than one month before the proposed transfer takes place.</p>
<i>Two months</i>	<p>Each member must be provided with a statement showing details of their rights and options within two months of the first notification of winding-up.</p>

### TPR's powers to direct prescribed persons to take actions to assist in a scheme's winding-up.

For schemes that are winding-up, where TPR feel it is appropriate to do so, they may issue directions to speed up the winding-up process.

TPR will normally only issue directions in relation to schemes that are required to produce regular trustees' reports to TPR known as 'section 72A reports'; (see regular trustees reports to TPR) and only after the initial report has been or should have been made.

TPR may also make a decision if they feel that a scheme's winding-up would be significantly delayed without such a direction.

The grounds under which TPR would feel it appropriate to give such directions include the following:

- trustees not taking all reasonable steps in connection with the winding-up of the scheme
- steps being taken by the trustees leading to unreasonable delays
- the winding-up being obstructed by the failure of any person:
  1. to provide information to the trustees.
  2. to provide information to any person involved in the administration of the scheme.

3. to provide information to a person of a prescribed description (such persons include those holding scheme assets on behalf of the trustees, those holding payroll, pension or scheme membership details and those involved in the production of scheme documents).

4. to take any steps that they have been requested to do by the trustees of the scheme.

Any TPR direction would be in writing and could impose requirements on any/all trustees of the scheme, or any person involved in the administration of the scheme (either currently or formerly). The requirements that can be imposed by TPR include providing information to the trustees and/or persons involved in the administration of the scheme, or taking other actions not related to the provision of information.

It may include a time limit by which any steps should have been taken (although TPR have the power to extend any time limit imposed if they feel it would be reasonable to do so). Any application for an extension or further extension, to any time limit imposed by TPR, must be made no later than two months before the expiry of the time limit.

Where a direction is given to a trustee, failure to comply, without a reasonable excuse, may lead to a trustee being prohibited from acting as a trustee.

Failure to comply with any direction, without a reasonable excuse, may lead to the trustees of a scheme being subject to a civil penalty with a fine of up to £5000.00 for an individual trustee and up to £50000.00 for a corporate trustee. This penalty would also apply to any other person (ie not a trustee) to whom a direction is made.

#### **TPR's powers to modify a scheme to assist in its winding-up.**

At any point in the winding-up process, if the sponsoring employer is insolvent, you can ask TPR to modify the scheme in order to speed up the winding-up.

The application must be made in writing to TPR and must contain certain information which TPR will require.

Before making an application, you must give written notice of the intention to make an application to TPR to all members and the insolvency practitioner.

We will provide you with full details of the exact procedure you need to follow if you are considering making an application to TPR.

#### **Trustees keeping records of decisions relating to winding-up the scheme.**

You (or any other person who the rules allow to make decisions about winding-up), must keep written records of decisions in connection with the following matters:

1. When steps were first taken to consider winding-up the scheme.  
The record must specify the date that the first steps for winding-up are to be taken.
2. Decisions to defer the winding-up of the scheme. The record must specify the date on which it is proposed to wind-up the scheme. If the winding-up date has not yet been determined, the record must specify the date on which it will be considered.

3. Decisions to wind-up the scheme. The record must specify the name of the person(s) making the decision and the date on which it was made.

This regulation does not apply to decisions taken before 1 April 2002.

Failure to keep proper records in accordance with these requirements may lead to either a trustee being prohibited from acting as a trustee, and/or a civil penalty for scheme trustees with a fine of up to £5000.00 for an individual trustee and up to £50000.00 for a corporate trustee.

## **Initial action**

You should then ensure that any professional advisers connected with the scheme eg. insurance company, adviser, solicitor, auditor etc. are told of the situation.

An announcement should be sent to all the current members of the scheme and any previous employees with paid up benefits, telling them that the scheme is to be discontinued.

If the scheme benefits include Temporary Insurance and/or Widows, Widowers or surviving Civil Partners Death-In-Service benefits, current members should be told that they are no longer covered for these benefits. All beneficiaries should be warned that although winding-up may be a lengthy process this will not result in any loss of pension benefits or rights.

For details of the other information to be provided within one month please refer to the section headed 'Time limit action required'.

## **Requirements and documentation**

As soon as we are instructed to start the winding-up procedure we will need to find out about the nature of the discontinuance. In order to avoid repeatedly contacting you with requests for information we have designed a questionnaire, enclosed at the back of this booklet, so that all the facts are gathered at once.

It is extremely important that we receive this information promptly. It is required to allow us to calculate the benefits available to the members and to satisfy HM Revenue & Customs requirements. Please also note that if there is an outstanding renewal before the date of discontinuance, the renewal details will still be required.

## **The winding-up resolution**

A "Winding-Up Resolution" is required to start the process of winding-up a scheme. Your legal advisers should be able to provide you with a suitable resolution. If the trustees are a company, please ensure the resolution is signed by a director and the company secretary or two directors. If there are individual trustees, the resolution should be signed by all trustees of the scheme.

## **Replacement Discharge Form**

The pension scheme cannot be wound-up whilst there are still members with benefits payable under the scheme. Each member must decide their own way of securing their benefits. Even those people who have previously left the company and have left their benefits paid-up in the pension scheme must be contacted and encouraged to seek other arrangements.

Members who have previously retired from the company and who are in receipt of a pension must have their benefits replaced by a policy in their own name.

The purpose of the discharge form is as follows:

The members have three months in which to find their own way of securing their pension benefits. If the discharge is signed it allows us to automatically put the members benefits into a replacement policy if an alternative option is not selected. It also acts as your authorisation for us to replace the policies for any existing annuitants.

If you do not return the Replacement Discharge Form, members benefits cannot be automatically replaced. It will remain your responsibility to continue to obtain a decision from the members. Your duties will not stop until the last remaining member's benefits have been transferred or secured by a policy in his/her own name.

## **Scheme premiums and accounts**

As soon as we have confirmation of the exact date that the last scheme premiums were deducted from the employees/employer, we will contact you. This will either confirm that all scheme premiums are paid up to the correct date or give full details of any over or under payments.

A separate bank account will probably have been kept for all scheme monies. This account should not be closed until we tell you that all payments have been accounted for and the winding-up is complete.

Your pension scheme has been set up under Trust, which is a legal means of ensuring that benefits and assets provided by the scheme are protected and kept separate from those of the employer. Therefore the members' rights to the scheme assets are protected if the employer becomes insolvent. You are preferential creditors of the company in respect of certain unpaid contributions. If these outstanding contributions cannot be recovered from the company you may be able to make a claim to The Insolvency Service for the unpaid monies. This claim should be made with the assistance of the company's insolvency practitioner.

In addition trustees have an obligation to report late or non-payment to the TPR and individual members.

If any premiums have been over collected from the employee(er) eg. direct debit payments collected after the date the last premium is due, HM Revenue & Customs will generally allow these to be refunded to the employer without being taxed.

Alternatively, the scheme rules state that any assets of the scheme may be used to provide increased or additional benefits for the members. Although the scheme rules do not specify that these assets should be distributed equitably, you have a duty to work for the benefit of all members and should therefore treat them fairly.

We both need to be satisfied that all scheme premiums are applied to the correct date. Once this is done we can calculate the members transfer values and prepare statements showing the benefits available.

## **Options available to the members**

Every member of the pension scheme, including members who have left the company but still have paid-up benefits under the scheme must find an alternative way of securing their pension benefits.

Any member who has not yet taken their pension benefits may transfer their benefits to a new employer's pension scheme or a personal pension plan, providing that it is registered with HM Revenue & Customs. Alternatively, members can be provided with an individual

policy in their own name (a replacement policy). In some cases full commutation of benefits (a winding up lump sum) or early retirement may be possible options.

We will send you an information sheet and winding up option form with details of the options available for each pre-retirement member. You must pass these on to the members and encourage them to seek financial advice and choose the option that best suits them. However, the payment of benefits will only be carried out subject to your consent. Therefore please ensure that you countersign all the completed 'option selection' forms returned by the members.

Any members who are already in receipt of a pension (including members who are a dependant of a member who has died) will need to have their benefits replaced via a replacement policy. These members do not need to sign an option form, but you must sign the Scheme Replacement Discharge Form to make sure their benefits are covered in the winding up.

As the scheme cannot be formally wound up until all the members' benefits have been settled, it is important that options are chosen promptly.

We strongly recommend that the replacement discharge is signed as soon as possible, see the section headed 'Scheme Replacement Discharge Form'.

It is possible that you may not have current addresses for some people. The Department for Work and Pensions offers a letter forwarding service which may be useful. Further details can be found in the questionnaire.

## **Finalising the winding-up procedure**

You must notify TPR, advising that the scheme has finished winding up, by updating the scheme details via Exchange at [thepensionsregulator.gov.uk](http://thepensionsregulator.gov.uk).

Completing a pension scheme wind up is also a HMRC Reportable Event. The scheme administrator (usually also the trustee) must notify HMRC through their Pension Schemes Online service. You can find out more about Pension Schemes online at [hmrc.gov.uk](http://hmrc.gov.uk).

Please note that there is a three month deadline to report the completed scheme wind up to HMRC. Failure to do this on time can result in the scheme administrator being fined, so please ensure that they register for the online service with plenty of time.

There is a requirement to tell members who will be responsible for paying their benefits in the future, the amounts of benefits and the terms and conditions. This requirement will be fulfilled when they receive their replacement policy.

We recommend that you retain the scheme documentation in a safe place as it may be needed should any queries arise in the future.

We hope that this guide is helpful to you but as it may not cover every situation please contact your adviser if you have any queries.

## **Additional information**

### **Queries and complaints**

If the trustees or the employer have any queries or complaints they should contact their own advisers.

If members need further information or wish to complain, they should contact the trustees in the first instance.







## Need this in a different format?

Please get in touch if you'd prefer this guide (**SP05001**) in large font, braille, or as audio.

## How to contact us

 0800 068 6800

 [contactus@aviva.com](mailto:contactus@aviva.com)

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