Self-directed personal pension schemes

What is a self-directed personal pension scheme?

Self-directed personal pension schemes (also known as self-invested personal pension schemes) are a common type of pension arrangement found in the Isle of Man where the member has power to direct how their contributions are invested amongst a very wide range of investments. Sometimes members will be able to invest in any investment which would not prejudice approval of the scheme by the Assessor of Income Tax.

In a typical self-directed pension scheme, there will be:

(1) **trustees** who are legal owners of the assets of the scheme and are responsible for ensuring that the scheme is administered in accordance with the rules and

(2) the **manager/administrator** who administers the scheme on behalf of the trustees. The manager/administrator will be authorised by the Financial Services Authority in the Isle of Man to perform this role)

There will be a contractual agreement between the member and the manager/administrator setting out the terms and conditions under which investments will be made and the charges the manager/administrator is entitled to levy. Usually under the contract there is an option to invest in a very wide range of investment funds or individual investments often including investments made through "open architecture platforms" with fund managers or insurance companies.

Under the investment power in the trust deed and under the contract with the administrator the trustees/manager will generally be required to invest contributions on the directions of the member or their appointed investment adviser (acting as the member's agent or appointed discretionary fund manager).

There will typically still be some investment restrictions. Investments which could prejudice Isle of Man tax approval for the scheme by the Assessor of Income Tax will not be permitted. There may also sometimes be general investment guidelines setting out the range of permitted investments under the scheme. In a self-directed pension scheme/self-invested pension plan the intention is that the member (not the trustees/manager) will direct how any contributions are invested on their behalf within the range of permitted investments.

Self-directed pension schemes are commonly set up on the advice of a financial adviser who will then be appointed by the member to act as their agent or investment manager in relation to future investments to be made under the scheme. There will also be a contractual agreement between the member and the independent financial adviser (IFA). Usually under the terms of the contract the IFA will report on and give ongoing advice to the member about the performance of their investments and set out the IFA's charges. Sometimes the self-directed pension scheme will be set up on what is known as an "execution only" basis which means that the trustees & manager/administrator will invest your pension assets in accordance with your instructions.

The scheme manager/administrator will, however, still be responsible for ensuring compliance with regulatory requirements, investing contributions in accordance with the rules, preparing accounts and maintaining books and records of transactions and is generally required to maintain a trustee bank account into which any money received by the trustee is paid.

It is important to understand what types of complaint the Pensions Ombudsman can determine in relation to this type of scheme.

Complaints about advice from IFAs on transfers in and investments

The Pensions Ombudsman has no power to investigate complaints about investment advice given to a pension scheme member by their financial adviser or investment consultants on transfers to a pension scheme or on the investments the member subsequently makes in the pension scheme following such a transfer.

If the financial adviser is authorised by the financial services authority in the Isle of Man, it may be possible for the member of a self-directed pension scheme to make a complaint directly to the Financial Services Ombudsman Scheme operated by the Office of Fair Trading.

If the financial adviser is authorised in another country it may be possible for the member to make a complaint to the regulatory authorities in that country or, if there is one, the financial services ombudsman or compensation arrangements in that country.

Complaints against trustees and administrators of a self-directed pension scheme

The Pensions Ombudsman can consider complaints against the trustees or manager/administrator of a self-directed scheme about the general management of the scheme such as complaints in relation to transfers, or delays in investing or divesting contributions or whether the charges levied are in accordance with the contract entered into with the members. (Please see the 'Transfers', 'Investments' and 'Charges' links on this webpage for further information.)

Complaints are also sometimes received that:

(1) the trustees are in breach of their investment duties in allowing the member to invest in unregulated or riskier investments
(2) trustees /managers/administrators should have checked or carried out due diligence that the financial adviser was appropriately authorised to provide advice on the scheme investments or
(3) the trustees/managers/administrators should have supervised the investments that the financial adviser directed the manager/administrator to make on the member's behalf

In considering complaints of this type the Pensions Ombudsman must analyse the extent, if any:

(1) the trustees are required under the rules of the pension scheme to follow member instructions or have any residual role in the choice of investments
(2) to the extent that the trustees have any residual investment discretion to exercise, and whether the Retirement Benefit Schemes Act 2000 investment obligations apply (generally they will not)
(3) to the extent that the trustees have any residual investment duties and whether they have exercised those duties in accordance with the Trustee Act 2001 (to the extent applicable) and to their general trust law duties
(4) the manager/administrator had any obligation to carry out due diligence

Given the typical structure of the legal arrangements in a self-directed pension scheme if there is a duty of care it is likely to be quite limited in scope.

Depending on the obligations under the trust deed and rules and wording of contractual documentation it is possible, however, that even in a self-directed scheme there may be circumstances where the trustees owe a limited duty of care in relation to the investment despite the fact that they generally have to act on members' instructions. It is also possible even in a self-directed scheme that the manager may assume a duty in relation to monitoring the activities of an appointed investment adviser in certain limited circumstances or may be put on notice of something which they should notify the member.

The Pensions Ombudsman will judge whether the trustees or managers have breached any trust law duty or duty in relation to the management of the scheme by reference to the standard which would be expected of an Isle of Man manager/administrator having regard to Isle of Man legal duties, regulatory guidance and the scope of the duties accepted by the manager/administrator under the contractual terms and conditions entered into.

There are a couple of examples of how the Pensions Ombudsman has approached this type of case on the website.