



Brendan Johnston

TRUSTEESHIP: YOU JUST HAVE TO ASK YOURSELF ...

By Brendan Johnston

I have attended many seminars and courses where trusteeship has been discussed and after such discussions I invariably ask myself the question: why does anyone not being paid to be a trustee, take on the job?

I have also asked others involved in pensions the same question and can find no satisfactory argument in favour of being a part-time, well meaning, amateur trustee. The upside of these positions used to be the ability to look after the members' interests, the attraction of being involved in decisions on the scheme and to attend investment meetings where, perhaps, they were buttered up by bright young managers bringing the fast paced financial world into the mundane workplace.

However, the position is becoming less comfortable. Pension legislation is almost entirely focused on the duties and responsibility of the trustee. For example, there are over 380 pages of pension law and guidance alone that relate to the duties of a trustee. New powers to fine trustees have been given to the Pensions Board and there are new burdens for trustees of defined contribution plans with Statements of Reasonable Projections (SORPS) for all schemes regardless of size and audits for larger schemes.

If developing legislation were not enough, the inherent dangers of being a trustee are becoming more apparent as society becomes more litigious. Trustees are in the firing line for members that have lost out or believe they have lost out through maladministration or improper trustee decisions. The protection for the trustees may be provided by employer indemnities or professional indemnity insurance but how many trustees know whether such protections exist, the level of the cover and what time periods are included?

THERE IS AN ALTERNATIVE

For employees with defined contribution benefits, trusteeship is not needed as the plan could be operated as a Group PRSA. PRSAs are contracts between the individual

member and the provider. The employer is not contractually involved but rather offers a facility for member and possibly employer contributions. In the vast majority of cases, the advisor recommending a Group PRSA, gains additional security for members as the provider will normally be a life assurance company with required solvency levels and margins.

The table below is an analysis that an employer might make in comparing a Group PRSA and a trust-based plan, rating each attribute (5 highest, 0 lowest).

Attribute	Group PRSA Rating	Group Defined Contribution Plan Rating
Trustee Liability	5	0
Member Security	5	4
Access to ARFs	5	2
Investment Choice	4	5
Group Processing	5	5
Bulk Discount	4	4
Risk Cost Deduction	0	1
Audit Fees	3	0
Maximum Contribution	0	2
Employer refund of pre-vesting contributions	0	1
Pensions Board Fees	1	1
Total	32	25

Clearly, different employers will give different weights to these aspects but hopefully all should see that Group PRSAs represent a viable alternative that needs serious consideration by employers and financial advisors.

The ability to pay very high levels of contribution on behalf of executive members and a slightly wider investment choice are still very attractive features of traditional occupational pension schemes. A fusion of Group PRSAs and individual pension arrangements for senior executives is a combination that has many merits as it will substantially meet all the general requirements and will give a great deal of flexibility for the senior executives who can

be treated on an individual basis. To make this work successfully, the provider will need to be able to treat the greater group of PRSAs and individual arrangements as a single entity for the purpose of contribution collection.

THE FUTURE

The pension tanker is large and changes direction slowly.

Employers who are not experiencing problems with their pension arrangements are not likely to push pension change to the

top of their agenda. Therefore, despite clear advantages a mass move to Group PRSAs is unlikely. However, where a company is looking at provision of benefits for new employees, Group PRSAs will increasingly win out.

Trustees will have to be alert to the risks to their personal wealth if a scheme runs into trouble. They will also need to get a clear picture of any safety nets provided. At that point, the question they will have to ask is whether it is appropriate for them to continue to be trustees.

Brendan Johnston is Pensions Director, Eagle Star

TRUSTEESHIP: WHY DO THEY DO IT?

It is clear that the role of the trustee is becoming more difficult and trustees must sometimes wonder if it is worth the effort.

However, the fact that so many are willing to take on the role would indicate that individuals are keen to become trustees and believe they can add value, writes the IAPFs Director of Policy, Jerry Moriarty.



By Jerry Moriarty

The competitive nature of trustee elections for many pension schemes would indicate that there is a very positive view of trusteeship in many companies.

It is often simply a question of trust. Pension scheme members like the idea that someone is looking for their interests in the schemes. They will, quite naturally, have a lot more faith in their fellow work colleagues than they might have in a commercial organisation. The idea that their colleagues are watching over and have an input into the running of the scheme is of great comfort.

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However, the faith of one's colleagues doesn't necessarily make the job any easier when trustees start to grapple with the issues they are likely to face. As all aspects of running a pension fund are getting more complicated, the life of a trustee has also been getting more complicated. While that may deter some from becoming a trustee, it does also highlight the benefits a trustee can add to the overall running of a scheme. It is generally accepted that the trust structure adds to the overall governance of a pension scheme. There is also evidence that good governance leads to increased investment returns which is good news for members and scheme sponsors.

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The Report of the Pensions Board on Trusteeship concluded that the trust model continues to offer protections to pension schemes that justify its continuance. It is important that trustees can continue to operate in a manner that ensures these protections are kept in place. While the job has been getting harder, largely due to increased regulation, it is important that there is a balance to ensure that regulation doesn't destroy what it is trying to protect.

Two good examples of this are “on-the spot” fines and the regulation of administrators. While both of these are of benefit to trustees in some ways, they do have negative effects as well.

On-the-spot fines should, in theory, mean that fewer trustees are taken to Court for breaches of the Act. However, if on-the-spot fines are applied on a much more frequent basis than Court proceedings would be taken, have trustees really benefitted? Likewise, the regulation of administrators for the first time defines in legislation some of the responsibilities of administrators. This should help trustees who have in the past been held accountable for the failings of their administrators. However, it does also add another layer of process and rules in an already complicated area.

It is therefore important that new rules do not move more schemes away from trusteeship. It is clear that for small schemes, there can be an advantage for the employer in having a contract based solution in place; for example, any issues

that arise are between the employee and the contract provider. For the employee, it may be easier when they change employment. What is not so clear is the level at which a trust solution becomes much more favourable to employees than a contract solution.

From an employee perspective, the trustees have a legal duty to act in the best interests of the member of the scheme; in a contract situation the provider only has to fulfil the terms of the contract. There is more flexibility in trust law where the trustees can make decisions based on trustees' discretionary power; in a contract, the terms are normally very specific.

Member trustees are, according to the Pensions Board report, particularly valued for the unique contribution they make to pension scheme governance, including acting as a conduit for providing information to members. Employer-nominated trustees are relied upon for expertise in certain areas, particularly finance.

It will be interesting to watch developments in this area over the coming years. There is still a place for the trust model and one of the main questions will be to what extent it continues to be the main form of governance. It is interesting to note some developments in the UK such as the proposed payment of trustees to reflect their work and the adoption of trust type governance arrangements for collective contract based schemes such as oversight committees.