



# IAPF DC Conference 2010

## The Future of DC Pensions

### The Best Model of Trusteeship

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Who am I?

Peter Fahy

- Head of Pensions, Eversheds O'Donnell Sweeney
- Trustee, Eversheds O'Donnell Sweeney Pension Plan
- Director, Bord na Móna ESOP Trustee Limited
- Director, ICC ESOP Trustee Limited



# The Best Model of Trusteeship

Trusteeship is administration of pension funds based on a fiduciary model as opposed to a contractual model.

Effectively required under TCA, Section 774

- Condition for exempt approval that OPS established under irrevocable trust

What is a fiduciary?

A fiduciary is someone who is entrusted with a task on behalf of another party (the beneficiary) who is relying on him to perform it



# Duties of a Fiduciary

## General Fiduciary Duties

- Duty to avoid conflict between your interests and those of your beneficiaries
- Duty to act with undivided loyalty to your beneficiaries
- Duty not to profit from your fiduciary position unless authorised to do so
- Duty to keep beneficiary information confidential



# Duties of a Trustee

## Trustee Duties

- Appointed under a Trust Deed
- Must act in accordance with the Trust Deed
- Must act to carry out purposes of the Trust Deed
- In accordance with your fiduciary duties, i.e. in the best interests of the members of the scheme.



# Duties of a Trustee *(Continued)*

## Statutory Duties

- Pensions Act codifies many trust law principles into statutory law
- To ensure contributions payable are received (*get in monies due to the Trust*)
- To provide for proper investment of scheme assets under Investment Regulations and Trust Deed (*invest as prudent person*)
- To provide for the payment of benefits as they fall due (*make distributions when interests vest*)



# Duties of a Trustee *(Continued)*

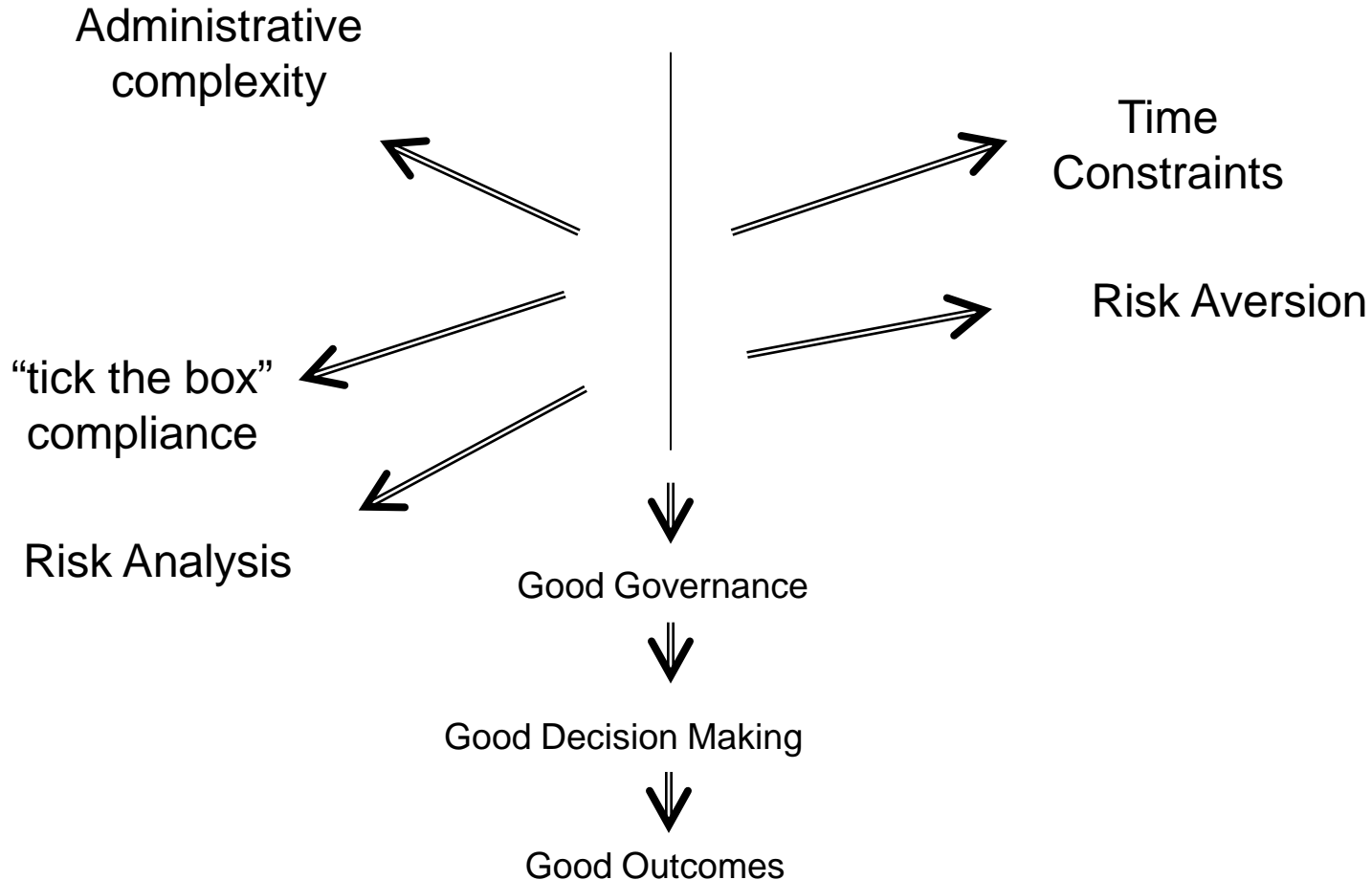
and lots of other things...

- Comply with information disclosure requirements
- Keep proper records
- Prepare accounts and have them audited
- Appoint registered administrator
- Prepare SIPPs (+100 members)
- Prepare SORPs
- Comply with equality law  
etc, etc

So how to devise a model to make sense of this?



# Trusteeship - The Push/Pull Factors





# What's Good with the Current Trusteeship Model?

General absence of fraud or bad faith by trustees

General understanding of conflicts

Comparison with investment funds industry favourable on some points

- Pension trustees do more
  - Funds directors not responsible for investment decisions



# What's good with the current system?

- Quality of funds directors an ongoing issue
  - “Market is dominated by “rent a director” corporate service firms” - FT April 2010
  - Focus in funds market moving from paper qualifications to true capability of appointees



# The best model - pull factors

## Time constraints -

How often should trustees meet?

- Once a year for small insured funds?
- Four times a year for large schemes with multiple managers and segregated portfolios?

In my view, this depends on two key issues



# DC Trusteeship - Time Constraints

Do you have -

- A good pension manager/secretary
    - to do the actions between meetings
  
  - A good chairman
    - to set the agenda and ensure decisions are made and actioned
- so recruit one of each to our trustee board



# DC Trusteeship - Administrative complexity

Proper administration is more critical in DC than DB

Most DC administration involves non-discretionary tasks

- Collecting correct contributions
- Investing in accordance with designated allocations
- Maintaining and updating risk cover
- Processing changes in membership



# Administrative Complexity *(Continued)*

- Maintaining records
- Issuing Pensions Act designated communications

Trustees can delegate these tasks, but must retain supervisory responsibility

This looks solvable:

- Good agreements with admin service providers
  - Hire a lawyer



# Administrative Complexity *(Continued)*

- Recruit a manager/secretary to manage and supervise day to day administration
- Recruit one or more trustees prepared to acquire enough understanding of what administrators are doing to supervise them



# DC Trusteeship - Risk Aversion

Risk aversion is not a bad thing – but may lead to poorer outcomes on discretionary decisions

- Distinguish administrative decisions from discretionary ones
- Investment decisions are the main discretionary responsibility for DC Trustees

The legal decision-making framework is quite sophisticated:

- General starting point is full discretion under trust deed
- But within parameters of Investment Regulations



# DC Trusteeship - Risk Aversion

Understanding the process is key: In law, trustees will be judged not on the outcome of a discretionary decision, but on how properly they made it

i.e. is it “appropriate” to invest a 25 year old’s contributions in cash and gilts?

The key to taking a discretionary decision is to take account of the right considerations, and not irrelevant ones.

*So this is an area on which the trustees need legal advice or expertise, and investment advice or expertise*



# DC Trusteeship - Push Factors

## Compliance

Ensuring scheme is compliant is a strong indicator of basic good governance

Difficult to delegate the verification of overall compliance

Requires trustee understanding of what is involved

A checklist can be agreed to assist the process

- Advice can be obtained, as long as its independent of the service provider



# Compliance

What is needed for good compliance outcome?

- Obtain trustee training
- Seek advice on terms of trust deed
  - Face to face advice is often best
- Use manager or independent person to monitor day to day compliance



# DC Trusteeship - Risk Analysis

If risk aversion is a problem, good risk analysis leads to better decision making

Main areas of risk in a DC scheme are administration investment and custody

Risk analysis is a difficult resourcing issue with a smaller scheme

- trustees need proper investment advice
- ideally independent of the provider



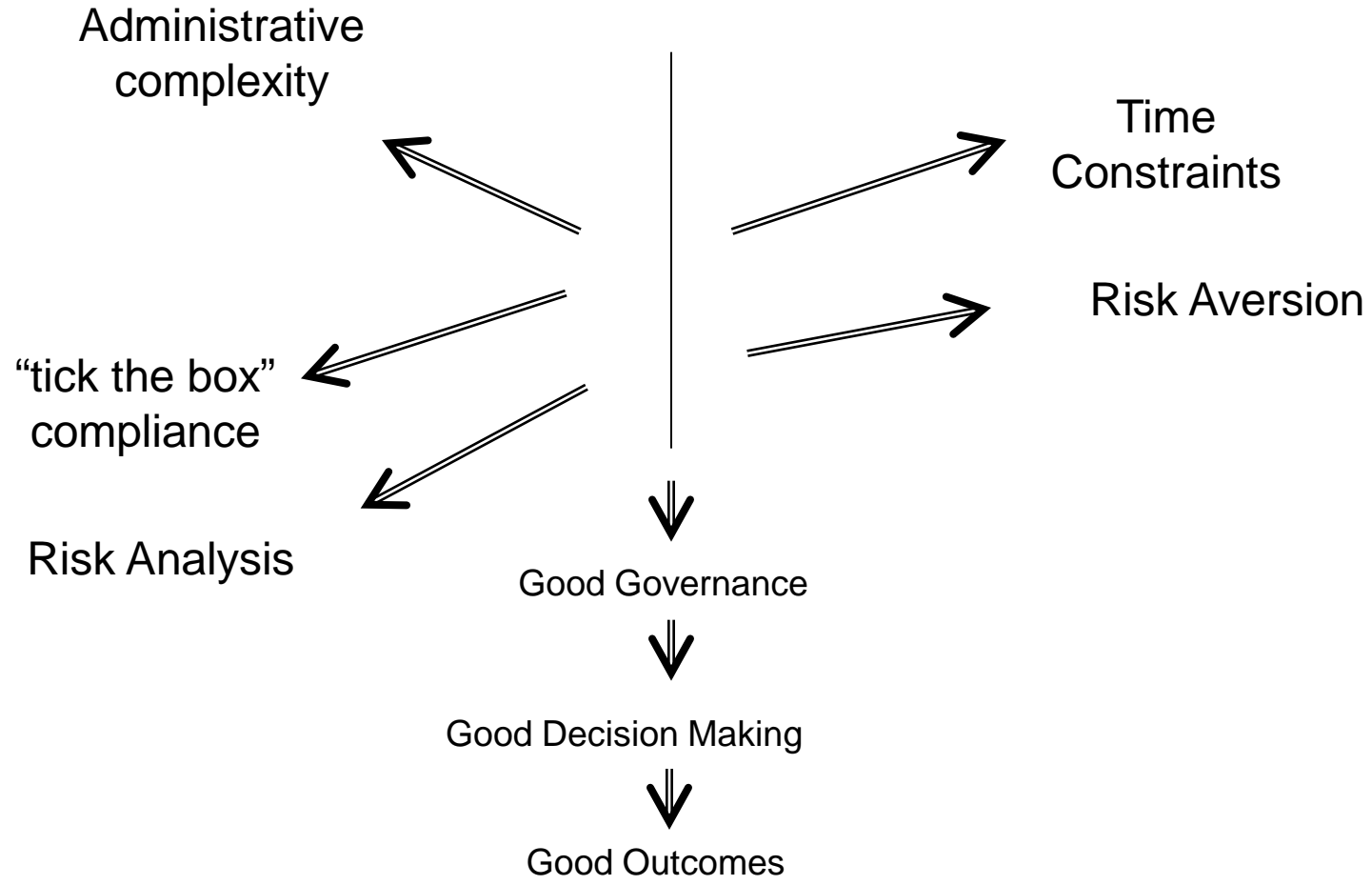
# DC Trusteeship - Risk Analysis

How it get it:

- A good investment adviser/consultant and/or
- A trustee with investment expertise
- Professional trustees have their place - but is it investment, legal or compliance capability you need?
- Corporate trustees are always a good idea - limits personal liability of individual trustees, at no great additional cost



# Trusteeship - A Good Model





# Thank you

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