Spotlight on Pensions
PRESENTS
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# Protecting the Talented Amateur

**Back in the day, workplace retirement provision largely involved paternalistic employers providing for loyal employees' welfare at the end of their working lives. Employers were of course encouraged by the business benefits – and the icing on the cake was state support through the taxation system.**

Employee welfare was arguably a strong driver behind most workplace schemes moving from glorified savings schemes to defined benefit pension schemes under the New Code taxation system in the Finance Act 1970. Employers retained an interest in the effectiveness of their schemes, over and above the purely business aspects. The focus on protecting member interests was reinforced through the trust system, with its requirements for trustee individual involvement and ultimate personal liability. All parties had strong interests in good outcomes.

## Changes

But that was a different culture to today's. A combination of a number of factors, has led to the current environment where many pension arrangements are actual or virtual businesses, involving parties who may have no particular personal interest in member welfare per se:

- a seismic shift in most businesses away from paternalism for employees and towards the dominance of returns for shareholders;
- a change in employment patterns which has seen the culture of "jobs for life" disappear, combined with a growth in the cult of individual responsibility;
- a reduction in the appetite of governments to continue high levels of support through the tax system for retirement benefits.

These changes have impacted the traditional member protection systems.

## New protections

In contract-based schemes, members are effectively just consumers. As such, they require consumer-type protection systems. The growth of master trusts in the defined contribution scheme space has led to a new regulatory system entirely focused on them.

For the traditional trust-based scheme linked to a single sponsoring employer or group, protective legislation has grown, driven by concerns that trustees were not providing sufficient member protection in an ever more complex and challenging world. The biggest single leap occurred with the watershed Pensions Act 1995, which established a new interventionist regulatory system, providing the base upon which retirement benefit legislation has mushroomed ever since. The system is also highly prescriptive, which in turn generates further prescription, reducing the scope for common sense discretionary approaches to running schemes – approaches for which trustees should be well suited.

Through this period there has been a struggle to maintain the effectiveness and relevance of traditional trustees. Many schemes now have very substantial funds requiring a high level of sophistication in approach, challenging trustees who are not financial specialists.

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## Specialism isn't everything

Nevertheless, it has long been recognised that the non-specialist trustee brings a perspective that helps to maintain a broader focus that benefits members. When combined with the principle of joint and several personal liability, this should make a strong governance system. This was recognised by the Goode Committee whose report led to the 1995 Pensions Act when they noted that if the trust system did not exist, something very similar would have to be created to replace it. The 1995 Act then boosted the role and involvement of trustees, by creating the system of compulsory member-nominated trustees (MNTs), enshrining the concept of the sensible, talented amateur into the system.

However, many MNTs, despite their best intentions, find it difficult to cope now. That is understandable - even professional trustees struggle at times. With The Pensions Regulator turning up the regulatory heat again, and the DWP's consultation on defined benefit schemes implying further requirements for trustees, worries increase about how trustees will cope. A number of schemes already find it difficult to recruit new MNTs. How can we continue to toughen scheme governance without further undermining the cult of the talented amateur, or indeed the very trustee system itself?

## Possible solutions?

The current vogue for consolidation might reduce the overall number of schemes, in turn reducing the total number of MNTs required, increasing the chances that those remaining will be those best able to cope. However, the new breed of consolidator schemes are in their infancy and their likely impact is uncertain. In other cases, consolidation may only involve pooling services, leaving the number of schemes (and required trustees) largely unchanged.

Regulations could require that every scheme has a professional trustee chair. This would give a clear individual focal point for legal and regulatory responsibility in every scheme. Increased competence requirements would be placed upon the incumbent, perhaps requiring the holding of a recognised qualification. However, this would have cost implications, which would have to be justified in terms of clear benefits resulting.

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## Ease obligations?

The answer may lie in a compromise whereby the member nominees continue to have a role in the running of schemes, but their liability is made more commensurate with a realistic assessment of their technical abilities. This might be achieved by a combination of a further shift in responsibility towards the chair, with a reduction in that of the other board members. This may be sufficient in some cases, but not all.

Alternatively, the law requiring MNTs could be eased. It could allow as an alternative (at the trustee board's discretion) the creation of a member-nominated advisory body to sit alongside the trustee board. The body's right to involvement in trustees' discussions would be enshrined in law, but with decisions taken by the trustee board only, led by the professional chair. It would be expected that the trustee board's decision would reflect the discussions, but where it did not, the board would be required to record the reasoning behind the dissention. The Regulator would police this, through a right to examine trustee minutes. The whistleblowing regime would apply in cases where advisory board members are wrongly prevented from being appropriately involved in scheme business.

## Protection for all

The involvement of lay members in trust-based schemes provides an important layer of protection for members. However, they can only be effective if they themselves are also protected. Perhaps it is time for a rethink on how to support them in their role.