A crushing weight?

Louise Farrand considers the increasing pressures facing trustees, with yet more challenges to come

Summary
• Trustees are under more pressure than ever before. In the defined benefit world, concerns are growing about the sustainability of previously made pensions promises, leading the government and The Pensions Regulator to toughen their approach. Meanwhile, defined contribution regulation is growing to better protect members' interests, as this area evolves.
• The Pensions Regulator is trying to help by producing clearer guidance for trustees. The revised DC code and the 21st century trustee initiative are two examples of new resources that are designed to support trustees.
• However, the fact remains that the regulatory burden has increased exponentially, but trustees' resources haven't. This is calling some to question whether the trustee model is still fit for purpose. We are likely to see more professionalisation of trusteeship, as well as consolidation of DB pension schemes.

Once upon a time, trustee boards met four times a year. The meetings lasted a few hours and were largely spent reviewing investment growth (usually satisfactory), addressing member enquiries and perhaps having a training session with their advisers. Afterwards, many such boards went out for a nice lunch.

These days, life is very different for trustees. Members are living for longer. Investment strategies are more complex, markets uncertain and strong performance by no means assured. Pension scams are an ever-present worry. Defined benefit (DB) schemes are underfunded and encouraging members to engage with and save enough into their defined contribution (DC) counterparts is a struggle.

Regulation, which is designed to address some of these issues, has increased exponentially. The four meeting a year model is a distant memory for many pension trustees.

"The regulation on pension scheme trustees is now massive," summarises PAN Trustees managing director Steve Delo. He adds: "Whilst some of it is necessary, a bit of it is welcome and pretty much all of it is well meaning, the compound impact on boards is excessive."

"The burden of regulation has increased exponentially, but the resources at trustees' disposal haven't," agrees Independent Trustee Services' director, Peter Askins.

Regulation, regulation, regulation

Consultancy Broadstone's technical director, David Brooks, witnesses the extent of trustees' workloads regularly. "An agenda I was looking at for next week had a list of issues to cover – sponsor covenant, legal update, actuarial valuation, the investment adviser talking about fund performance – at this point, we are nearly at two hours already. Then the administrator comes in, and then we have to cover governance, GDPR, business plan, conflicts of interest policy, training policies – it's just layer upon layer upon layer. So, I am not surprised that trustees are flat out."

The Department for Work and Pensions' white paper, *Protecting Defined Benefit Pension Schemes*, is a bid to tighten up governance in the wake of high-profile scheme collapses like Carillion and BHS, as well as encouraging poorly-run schemes to consolidate.

Brooks says: "Anyone hoping for a lighter regulatory regime following the recent issues experienced by DB schemes will be in for disappointing read. The government clearly sees TPR as the body to provide the answers to any issues in the DB funding area. We shall soon see a more interventionist and proactive regulator with more powers to punish employer and trustee transgression."

The Pensions Regulator welcomes the DB white paper. Its policy manager, Louise Sivyer, told *Pensions Age*: "The planned improvements to anti-avoidance and information powers will allow us to provide more clarity on what is and isn't acceptable."

In response to high-profile pension

scheme collapses, the regulator has already become more interventionist, says Brooks. Last year they picked 100 small schemes, planning to audit 50 prior to their valuation, and 50 afterwards, to test whether an interventionist approach is effective.

"We have had six letters about this," says Brooks. "Trustees should expect to receive a letter from the regulator more than they ever have before."

GDPR is another piece of regulation at the top of trustees' priority lists. "GDPR is a massive issue for pension schemes," says Askins. "I have asked seven lots of lawyers, what's the penalty if a pension scheme is noncompliant? And no one knows. It's all right saying a company can be fined a certain percentage of its turnover, but what about a pension scheme?"

Sivyer adds: "We think there is probably a large chunk of schemes where they haven't addressed this as well as they ought to. If trustees are in a space where they are already compliant with the existing data protection regulations, they are in a really good space to be compliant with GDPR. Our main message to trustees is you really ought to have started this quite a while ago and at the earliest opportunity, you need to be having conversations with all the advisers who hold your data and have a clear view of the controls in place. It's not just a case of trustees holding data correctly, it's about them being accountable for all their providers' data – they need to be confident that third parties are also compliant with GDPR."

GDPR and the DB white paper are just the tip of the iceberg when it comes to the expectations that rest on trustees. Any expectation that a swathe of Brexit-related legislation might stem the flow of pensions guidance and regulation has so far proved unfounded. What can trustees do to manage the burden?

Down to business

Well-run pension schemes are more and more closely resembling businesses. The regulator's 21st century trustee initiative encourages trustee boards to take steps in this direction. "They want trustees to take more of a strategic view of their pension scheme," says Brooks. "What the regulator wants is for them to look five or ten years ahead: where is the scheme and how are we getting there?"

Sub-committees are one way to make trustee boards more efficient. "Trustee boards typically meet four times a year, with bigger schemes having sub committees. However, recent compliance pressures mean even smaller schemes boards are having to set up working groups or sub committees to drive forward projects between meetings. Lots more are having regular conference calls," reports Delo.

Using advisers effectively is another way trustee boards can manage the burdens on their time. However, great advisers are not a panacea. As Sivyer says: "It is important that trustees have high quality advice provided to them so that they make well informed decisions, but the accountability of these decisions lies with the trustees, so they can't delegate a lot of their decision making. However, some things can be delegated – individual member issues, for instance."

The regulator is sympathetic to the burden on trustees and is trying to support them. Sivyer says: "We completely rewrote our code of practice for trustees of DC schemes, which we launched last year … We aimed to produce something that provided them with a lot more clarity around what we expect of them as a DC trustee and practical steps for them to do that."

Similarly, with the 21st century trustee initiative, Sivyer explains: "What this aims to do is not introduce any new standards or messages, but to break down the guidance and expectations we have set previously into clearer and more digestible chunks, so that trustees can see quite easily, without having to read through lots of guidance, what it is we expect of them in certain areas and how we can go about achieving that."

However, the fact remains that many trustees are struggling to keep up. Askins questions whether the model is fit for purpose, particularly member-nominated trusteeship. He says: "I am thoroughly wedded to the democratisation of trustee boards. But we are in a position where – if you were an ordinary person working for a firm, bearing in mind the legacy is mostly small, industrial firms – given your day job, are you really going to want to get involved with all of this?"

A changing landscape

Consolidation might well make sense for trustees of smaller schemes who are struggling to find the time, or lack the expertise, to meet their responsibilities.

Sivyer says: "In the DC space, the DWP are introducing regulations from this April which mean that DC schemes should be more easily able to consolidate and undertake bulk transfers. If trustees feel they are in a space where they are not able to carry out their duties in a way that meets our expectations and provides value for money, we do think there are a large number of schemes that need to be seriously considering whether their position is sustainable and whether they ought to be considering consolidation."

The trend towards using professional trustees is likely to continue. Sivyer says: "We think that professional trustees are going to have an increasing role in the landscape and that role is a very important one."

It's no wonder that the future pension governance landscape looks set to change. Value for members and transaction costs are next on the DC regulatory agenda, as UK DC continues to mature. Meanwhile, with high street retailers suffering, the public's gaze is increasingly focused on the sustainability of DB schemes. The pressure on trustees is unlikely to relent any time soon.

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