

A thoroughly modern trustee

✓ **Robert West and Hannah Moxon look at how 21st century trusteeship requires training, independence and added value**

Who would want to be a trustee? It's a legitimate question, given the scrutiny the Carillion trustees have been receiving over the potential descent of their schemes into the Pension Protection Fund, following the problems engulfing their corporate sponsors.

Personal liability is a risk faced by trustees but, in a well-run and well-advised pension scheme, it is unlikely to be an issue. The perils are more likely to be reputational damage, uncomfortable encounters with The Pensions Regulator and the Pension Protection Fund (and possibly a select committee) and personal angst for scheme members facing substantial benefit reductions.

Who would want to be a regulator in these circumstances? Inevitably, there is a focus on the actions of the regulator and whether the regulator has adequate powers to prevent those problems. Although supervision and anti-avoidance powers are key, the issue also highlights the importance of the regulator's 21st Century Trusteeship and Governance Programme.

This programme, launched in 2016, is "designed to stimulate a dialogue about how government, regulatory bodies and the pensions industry can raise standards of trustee competence and improve the governance and administration of pension schemes". It was followed by the regulator's Raising the Standards of Governance campaign, introduced in September. The objective, as described by Anthony Raymond, the regulator's acting executive director for regulatory policy, is that "pension schemes should have a skilled and engaged board, led by an effective chair, have robust



risk management in place and good relationships with advisers and third parties".

The regulator has been keen to show an increase in its compliance and enforcement interventions, but its focus is on raising standards generally. So far, it has published guidance and checklists on governance, trustee responsibilities and strategic planning, with further content expected.

One particular aspect of the discussion is whether schemes should be required to have an independent or professional trustee and, on a related note, what should be expected of these trustees. The Professional Trustee Standards Working Group issued a consultation paper in December, which asks whether there should be a formal qualification, potentially with a requirement for continuing professional development.

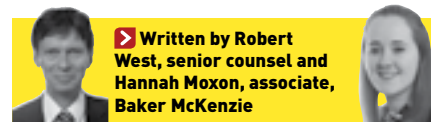
Another question raised is whether a professional trustee, in the context of potential liability, should be judged by more exacting standards. Many pension schemes do tailor their liability provisions to render professional trustees potentially liable for 'negligent' actions and to be judged by the standards of a

professional trustee.

To an extent, this reflects the Trustee Act 2000, under which a trustee's obligation to exercise reasonable care and skill is to be determined having regard to "special knowledge or experience that he has or holds himself out as having". Furthermore, this statutory duty provides that regard must be had, "if he acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession".

There is an interesting parallel here with the requirements imposed on trustees of master trusts under regulations made under the Pension Schemes Act 2017. Here, the regulator will decide whether trustees are 'fit and proper persons', taking into account completion of the regulator's online toolkit and the collective expertise and experience of the trustees.

So, what should trustees be doing at present to meet the standards expected of them? Training and paying attention to the regulator's campaign are clearly important. But so is adopting strong governance structures and a robust and questioning approach to trusteeship. Reliance may be placed on advisers, but trustees and advisers should develop a strong working relationship in which the important issues can be identified and addressed. Sometimes the experience of an independent or professional trustee can enhance this process and we anticipate an increase in such trustees over the next few years.



Written by Robert West, senior counsel and Hannah Moxon, associate, Baker McKenzie

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Baker McKenzie.