



Summary

- Bullying on pension trustee boards most often takes the form of intimidation, with those with less experience frightened to speak up, or trustees reluctant to contradict those with more 'power', such as a senior colleague on the board or the trustee chair.
- The chair should be the first port of call if a trustee is experiencing bullying. If unable to do so, turning to another senior scheme person, whistleblowing to TPR or seeking legal advice are other options.
- Implementing codes of conduct and undertaking regular board assessments can help minimise the risk of bullying.

When push comes to shove...

... is there a problem with bullying on pension trustee boards? Laura Blows finds out

Workplace bullying is rarely discussed, yet it affects almost a third of the UK workforce – 29 per cent, or 9.1 million people, a 2015 YouGov poll for the Trades Union Congress (TUC) found.

There is no suggestion that pension trustee boards face any unique problems with bullying. But there is also no reason why they would be an exception.

While the more extreme end of bullying – such as threatened or actual

violence and name calling – is clearly recognisable as abuse, beyond that it can be more difficult and subjective to determine what constitutes bullying.

Slater and Gordon's specialist employment lawyer, Clare Armstrong, states that there is no legal definition of bullying and that it can come in lots of different forms. "The classic bully is someone who calls you names and says nasty things, but in a workplace context it can mean excluding someone, overlooking them for work opportunities, unfairly criticising them or undermining or belittling them and their performance in front of others."

'Classic' bullying is rare these days, Professional Trustee Standards Working Group (PTSWG) and Association of Professional Pension Trustees council member Robert Thomas says. He states that he has not seen any case of it and that a PTSWG colleague has only

observed one example of bullying during a 40-year career, in the 1980s by an overbearing trustee chairman.

However, Thomas adds that when PTSWG was drawing up its Professional Trustee Standards, The Pensions Regulator (TPR) warned the group that what they see may not be representative of all pension trustees – "they were conscious that there is some bad practice out there".

BESTrustees chairman Alan Pickering notes that "pension schemes are centred around a number of relationships and within those is the possibility of bullying, either based upon intellectual or status asymmetry".

Power imbalance

According to former Chartered Insurance Institute senior pensions examiner, David Trenner, the risk of bullying or intimidation on pension

trustee boards is a "very difficult issue and has not been helped by the introduction of member-nominated trustees (MNTs)".

"Inevitably, MNTs cannot be expected to argue against people who, outside the trustee meeting, are their bosses," he explains.

However, Pickering feels it is not MNTs that suffer from this problem. He says: "One thing folk may find a paradox is when you have a trustee board comprised of employer- and member-nominated representatives, it is often easier for the MNT to stand up to status-based bullying than is the case with the company-nominated trustees."

Armstrong states that employees who are also occupational pension scheme trustees have special protection from being treated detrimentally or dismissed by their employer for performing any of their functions as a trustee. "This could protect an employee who feels they are being bullied because of decisions they have made or opinions expressed in performance of that role," she adds.

Despite this, Association of Member-Nominated Trustees (AMNT) co-chair David Weeks acknowledges that a MNT could feel intimidated by a trustee board dominated by senior company figures. He has not seen this be a problem for AMNT members, "but our members have voluntarily joined us, a forum in which to exchange views, so we feature the more self-confident end of the trade".

Boisterous or bullying?

Drawing the line between 'self confidence', 'being passionate about giving opinions' and 'intimidation' can be a difficult one.

"You are bound to have strong personalities when you have matters of high finance that can have a major impact on a company's profitability being discussed," Pickering says. "There is bound to be an opportunity for people to lose their temper. Whether you call that bullying or not is a different matter, but the outcome is the same."

Bullying and harassment at work

According to gov.uk, bullying and harassment is behaviour that makes someone feel intimidated or offended. Bullying itself is not against the law but harassment can be under the Equality Act 2010, when it relates to disability, age, sex, race, sexual orientation, pregnancy or maternity leave, marriage or civil partnership, gender reassignment and religion or belief. The negative behaviour counts whether it occurs face-to-face, in writing, on the phone, online or via email. It also does not have to be directed at an individual – for instance colleagues making discriminatory jokes within earshot can still count as harassment.

Examples of bullying or harassment include spreading verbal abuse, malicious rumours, unfair treatment, picking on/undermining someone and denying someone training or promotion.

A 2015 YouGov poll for the TUC found that 29 per cent of people have been victims of workplace bullying – equalling to 9.1 million of the UK workforce.

The Advisory, Conciliation and Arbitration Service (Acas) states that workplace bullying costs the UK economy £18 billion a year through sickness-related absences, staff turnover and reduction of productivity.

Research from the Chartered Institute of Personnel and Development found 43 per cent of workplace bullying occurred by a line manager, 38 per cent from colleagues and 20 per cent from a senior manager or chief executive.

Employers are responsible for preventing bullying and harassment, and liable for any suffered by employees, gov.uk states.

Citizens Advice's website notes that the self-employed and volunteers are not covered by the Equality Act 2010.

However, in December 2018 the government announced a new Code of Practice to tackle sexual harassment at work and announced that it will consult on whether volunteers and interns need additional protections.

The expectation as to what is acceptable behaviour has changed in recent years, Weeks points out. “In terms of culture, there may be some people

used to a more robust debating style than others,” he explains. “Some of our members, for example, have backgrounds in local authorities, the cut and thrust of

debate in the council chamber meaning they are used to strong opinions. But if you are trying to attract people [onto the pension trustee board] who are not used to that sort of thing, there may be some mismatch.

“I have certainly been in meetings where it turns out people have very different expectations as to the way to behave. Older people on the board may call it ‘robust debate’; younger people may say it verges on intimidation.”

Weeks says he would not describe this as ‘bullying’, but more ‘entrenched management’; the attitude of ‘this is the way we’ve always run the scheme and we don’t like outside interference’. “Being dyed in the wool instead of conscious bullying,” he explains.

“While you can sometimes encounter boards with forceful personalities, I would be careful not to class this as bullying,” Hymans Robertson senior consultant Laura Andrikopoulos agrees. “A certain level of robust challenge and debate on a board is entirely healthy and contributes to quality conversation, which is a keystone of good governance.”

Smart Pension’s independent chair of trustees Andy Cheseldine says trustee boards should use the cognitive diversity it possesses to arrive at better decisions for everyone. “But if one side

✂ Bullying within the pensions industry

“Over the years I have experienced both bullying and harassment,” a source tells *Pensions Age*. “One example of bullying occurred when I worked for a large industry-wide scheme that was very male dominated. I sent a proposal to a prospect that had a spelling mistake in it. One of the directors emailed me copying in all the other directors, lambasting me, calling me stupid and unprofessional – basically calling me an airhead – raging about protocols for checking etc. I explained I had followed procedures and it had been signed off to go. I’m dyslexic, so I do get things checked, but his abuse continued. In the end the chairman stepped in and HR did ask if I wanted to make a complaint but it was too little too late. This was not the first time the CFO had tried to bully me but it was the most public humiliation.”

2018 saw PensionBee CEO Romi Savova publish an open letter to Aegon’s CEO, accusing it of ‘corporate bullying’ its mutual customers and PensionBee itself, as a relative newcomer to the industry, by making it slow and difficult for Aegon’s customers to transfer to PensionBee. In response, an Aegon spokesperson told *Pensions Age*: “The matter occurred some time ago and was resolved successfully through an agreement with both companies’ management.”

Arguably representing a personal manifestation of bullying culture with regards to pensions is Philip Green. The BHS pensions scandal of 2016, with its sponsor and trustee board relationship, could be a prime example of how being neglected is a form of bullying that can have devastating consequences.

Fear of speaking up against workplace superiors on the pension trustee board is another, and one that is currently being debated regarding Green. His recent proposal to half the sponsor pension payments into the Acadia pension scheme has drawn concern, partly due to half of the trustees on the pension board also being Acadia employees.

Former Pensions Minister Baroness Ros Altmann goes as far as to accuse Green of bullying and intimidation over the BHS debacle, stating that she was “bombarded with texts” from Green who was “furious” about TPR’s investigation into the BHS pension scheme.

Staying within politics, last year Shadow Minister for Work and Pensions Debbie Abrahams was removed from Labour’s frontbench following allegations of bullying by an unspecified number of staff.

Meanwhile, the #MeToo movement, highlighting sexual harassment in the workplace, has broadly bypassed the pensions industry. But instances have been known to occur at industry events. For instance, a female source tells *Pensions Age* of being groped at an industry event, and at another event, of being pushed against a wall to be kissed against her will, only for a male colleague to pass by and pause, enabling her to escape.

Pensions Age has also been informed of ageism in the industry, with one source recalling verbal comments from a senior person at a trade body in response to the suggestion that younger people (under 35 years old) speak at its annual conference. “We have to think of our reputation, we can’t embarrass ourselves” and “what if [the younger person] were to collapse gibbering on stage” were the responses, along with “best if [younger attendees] watch [the conference] from their desks, I mean unless they can put a very convincing argument to their boss’s boss’s boss about why they should be allowed to attend”.



keeps 'winning' because they are older/more senior/louder, decisions will be suboptimal in the long run," he warns.

According to Cheseldine, it is the role of the chair to prevent this occurring and to ensure discussions remain amicable but honest.

The Pensions and Lifetime Savings Association (PLSA) agrees that it is the chair's role to foster the board's culture and conduct, ensuring that it is supportive and inclusive.

TPR also expects the trustee chair to ensure everyone has the opportunity to contribute their view and tackle anything that amounts to bullying, its spokesperson says.

Chair problems

So, the chair should be the first port of call for any trustee feeling bullied or intimidated. However, sometimes the chair itself is the problem.

For instance, Weeks notes that a typical intimidation situation may be where the chair and scheme administrator together have been used to running the scheme and not being questioned, so they try to give the MNT the brush-off.

Chair intimidation was discussed in a break-out session at the recent PMI annual conference and was described by an audience member as "quite a big issue".

They gave the example of a trustee chair who was the only professional on the board. "The other trustees virtually said nothing for the whole meeting. The chair wasn't trying to dominate but it was almost like they were so intimidated

by the fact they didn't feel they knew enough. Despite being well-educated and having good positions in the company, they just didn't seem to have that confidence."

Another audience member agreed that it is usually the most vocal person who is confident enough to speak out whose opinion the board gets 'anchored' to. "Generally that person in my experience is the chair, or someone quite senior on the board, so there is that lack of challenge."

To counter this, an audience member, who is a trustee chair, recommended letting those people who are not particularly confident on the trustee board speak first.

"If an adviser recommends something, you [*as chair*] do not give your opinion first as otherwise you anchor the discussion as to whether it is a good idea, and you do not want someone to just agree with what the chair says. So there is a risk that nobody has the courage to say anything," they said. "What you have to do is build up a well-trained, collaborative board. This takes time; it does not happen overnight. It may take a year's cycle to discuss everything for people to then feel confident enough to chip in, especially with professional trustees on the board that may make people feel less knowledgeable."

In contrast, Thomas highlights how professional trustees can help mitigate



this problem. Their role, either as chair or assisting the chair, is to meet the Professional Trustee Standards, he says, which says that the chair should recognise each individual trustee's potential and ensure their knowledge and skills are used effectively, and to encourage full participation and open board discussions.

"Without a professional trustee on the board you may not have someone who specifically feels they should be doing that check and balance to ensure all get a fair share of the discussion," he adds.

If a trustee is feeling bullied or intimidated by their trustee chair, they should speak to someone else senior in the running of the scheme for help, such as the pensions manager, scheme administrator or HR director.

"But if all else fails then I think that touching base with the scheme's legal adviser on a quasi-whistleblowing basis would be the right way forward," Pickering says. "In most schemes I have

✎ Pension funds tackling bullying

Pension funds can play a role in tackling workplace bullying. Smart Pension's website features a comprehensive review of what defines bullying, how to spot signs of bullying, what employees can do if they are being bullied and how employers can prevent bullying occurring.

Last year the *Financial Times* reported that Calpers, the largest US pension fund, and the Los Angeles County Employees Retirement Association (Lacera) will both start asking fund managers to disclose their history of harassment cases and settlements. Calpers updated its investment policy to include sexual harassment as a form of misconduct and Lacera said it may add language about sexual misconduct risks to its investment management contracts.



been involved with, individual trustees are not normally allowed to commission advice from the legal adviser, but there is normally a clear exception that such advice can be sought if a board member genuinely feels they need to blow the whistle."

For any trustees concerned about bullying, TPR says to contact it via its dedicated website page for whistleblowing.

Prevention

It would be better for all involved to prevent bullying long before it gets to the stage of whistleblowing.

According to PLSA policy lead, investment and stewardship, Caroline Escott, it may be appropriate to formally consider and document trustee board

culture and conduct as part of a scheme's risk management approach.

"This could identify possible issues and ensure there are clear procedures and processes in place, which are well understood by the trustee board and executive, should there be any concerns about workplace bullying and harassment," she explains.

Pickering agrees that a code of conduct could be helpful. "With all quasi-voluntary organisations, which pensions trusteeship is, there is a temptation not to behave in the way you would in relation to your day job. People tend to be less formal. So I think it is important to have a conduct protocol. It only needs to be a couple of lines on respecting and behaving appropriately to others," he says.

However, Weeks is more sceptical, noting that a trustee code of conduct may be open to different interpretations.

Implementing short evaluations after each meeting, possibly anonymously, could also help. "This may also include one-to-one interviews on an annual basis with the chair or an external consultant, who can provide feedback and coaching on an individual's level of contribution and the way they handle themselves in meetings," Andrikopoulos suggests.

An annual governance and culture review may also help the board understand the importance of creating a strong culture of openness and trust, she adds, with reviews taking place without the chair's involvement, to ensure they also receive sufficiently robust feedback.

Decline?

Hopefully, instances of trustee bullying is in decline. Andrikopoulos states that behaviour is part of trustees' softer skills, "which is an area increasingly under scrutiny by the industry". She adds that behaviour expectations should be reinforced throughout the trustee recruitment and training cycle.

Also, since pension freedoms, the intimidation of experience has declined, Weeks notes, as newer trustees may still have as much experience of freedom and choice as older trustees.

Thomas has also found a changing attitude by trustee boards. "A lot of boards have very consciously made the effort to improve diversity. If a trustee board has that self-awareness to promote diversity of thought and they succeed in getting a more diverse range of trustees, those boards are likely to be sensitive enough to respect those individuals.

"The problem is the board that doesn't even recognise it has a problem. Without that level of self-awareness, if someone new and 'different' comes in, there could be a risk of bullying."

➤ **Written by Laura Blows**