Keeping up with rising governance standards

As trustee boards tackle new legislation and prepare for more on the horizon, Niamh Smith explores how trustees are ensuring schemes comply with regulation, despite the ongoing pace of regulatory change

Summary

- To stay ahead of regulatory change, trustees should look at trends to anticipate future changes to regulation.
- External support is available to help trustees keep with new requirements through the form of advisers and resources.
- Failure to comply with regulation can result in financial repercussions and damage to reputation.

Recent changes to pensions law have increasingly extended trustees' responsibilities, and the ongoing pace of regulatory change suggests the list of their duties will continue to grow.

As trustees continue to deal with various major external factors for schemes, such as high inflation and market volatility, keeping on top of the changes is proving a time-consuming task.

Look forward first

Ensuring schemes are keeping up with the unrelenting pace of change is even more challenging for smaller schemes than larger scheme and master trusts.

Smaller schemes tend to be less well-resourced and contain fewer trustees, so it is difficult to dedicate the time and resources required to stay on top of the regulatory changes. Sackers senior counsel, Naomi Brown, says "it's basically a full-time job" for trustees to keep up with all.

As a result, schemes require a team of trustees able to spend more time studying and implementing the new regulation, says Brown.

She added: "It's not just the pace of change that makes it difficult – it's also the volume, breadth, and complexity. This is one of the reasons we are seeing such a significant shift towards professional trustees for whom pensions is a day job."

In comparison, master trusts can stay ahead of change as they are often involved in industry-wide working groups and regularly provide input to regulatory changes before they are implemented to ensure they are fit for purpose.

Furthermore, larger schemes and master trusts have prevailed as the vanguard and early adopters of change because they have greater resources dedicated to studying scheme requirements.

"We're lucky to be part of a big insurance company, so we have a whole team of people looking at regulatory changes," says Aegon Master Trust chair, Ian Pittaway. "Their job is to look at the regulations, work out what's happening, and how it affects the trust."

Such personnel can also look at the trends happening across the pensions industry to anticipate the next change and advise trustees in advance.

This will ensure new requirements and regulations come as no surprise and trustees are well prepared to stay on top of changes, explains Cushon Master Trust chair, Roger Mattingly.

"It's important to be as forward-looking as possible. This means keeping ahead of potential regulatory change by constantly analysing what is happening across the current defined contribution landscape," says Mattingly.

However, not everyone recommends this approach. Pinsent Masons partner, Christina Bowyer, says the law firm warns trustees to avoid relying heavily on attempting to continuously stay ahead of new regulations.

Instead, trustees would benefit more from a targeted training session once the regulation is finalised rather than regular detailed updates on a requirement that is still evolving, says Bowyer.

"Although it can be interesting to follow developments step by step as they unfold, when it comes to new regulations, it could make more sense to sit back until the position is clear, so you only spend time getting to grips with the detail once," she adds.

Seek existing help

Trustees from both smaller and larger schemes can benefit from industry-wide collaboration to ensure they are not overwhelmed with the pace of change.

The Standard Life Master Trust scheme collaborated with advisers and the scheme sponsor when assessing the recent Taskforce for Climate-Related Disclosure (TCFD) requirements.

The scheme's chair, Richard Butcher, explains that the scheme benefited from collaboration as it provided valuable insights because directors bring their own expertise and industry connections to the table.

"This creates a collective competence which, along with our interactions with the regulator, allows us to form a holistic view of not only the regulatory developments, but how to best implement solutions that benefit our members," says Butcher.

Of course, this can be expensive. Trustees should not be deterred by the cost of advisers, but should "lean on the experts", urges Brown. "This is likely to incur costs, but advisers can help cut through the technical detail and provide scheme-specific guidance. They are also likely to have dedicated teams of people keeping their ear closely to the ground, so you don't have to."

Trustees of schemes of all sizes can also use the resources provided by regulatory bodies to stay abreast of changes and ensure their interpretation complies with requirements.

The Pensions Regulator (TPR) provides a 'Trustee Toolkit' to provide a detailed overview of the rules, which newly appointed trustees must adhere to.

The regulator also issued guidance in collaboration with the Financial Conduct Authority (FCA) to educate trustees on requirements and legal definitions. These free resources can be a particularly useful tool for smaller and less well-resourced schemes.

Brown says Sackers recommends trustees access the resources provided but to remember that the information is generalised and must be adapted to properly suit individual schemes. "Make the most of the free stuff," says Brown. "There are lots of free alerts, updates and seminars/webinars out there. Signing up is a great start but you still need to read/watch them and, as they will be generic, you will need to check how they apply to your scheme."

"It's not just the pace of change that makes *[keeping up with regulatory reform]* difficult – it's also the volume, breadth, and complexity"

Comply or face consequences

Trustees must ensure schemes are conforming with regulation to prevent costly repercussions, as failures to comply can incur fines and even trigger legal proceedings and penalty notices.

This is particularly the case as the Pension Schemes Act 2021 extended TPR's powers to penalise and issue sanctions to trustees and managers for failing to meet regulations.

For example, TCFD reporting became mandatory for larger schemes and master trusts from October 2021 and smaller schemes from October 2022.

Trustees must now document their policies on material financial considerations, including climate change, in line with the TCFD framework.

A complete failure to publish a TCFD will attract a mandatory penalty of at least £2,500, with other penalties subject to the discretion of TPR.

The regulator also has new powers to issue compliance notices and penalties to trustees and managers for failing to comply with pensions dashboard requirements.

Under new regulations, TPR also now has the option to issue penalties of up to £5,000 to individuals and up to £50,000 in other cases for any instance of a single compliance breach.

However, the risks of failing to comply with regulation stretch beyond financial repercussions as the impacts on reputation have proven to be extremely damaging to business operations.

A damaged reputation can lead to commercial ramifications and drive customers to competitors as employers are likely to leave and new employers choose not to join the scheme, says Pittaway.

"The master trust world is very competitive," he says. "We're competing with other master trusts for business and if you have a reputation of being slapdash for not complying with regulations, then pretty soon, in the commercial market, people won't give you any business."

Regaining a positive reputation is difficult as members' confidence in the scheme must be regained and trustees will be required to undertake expensive and time-consuming corrective actions.

Ultimately, failing to comply with regulation also runs the risk of failing to meet the key objective of a scheme as regulation is introduced to protect customers.

Butcher says member outcomes must remain central to decision-making as schemes could miss an opportunity to better protect or improve member outcomes by failing to meet regulations. "The intent of regulatory change is generally aligned to this goal," Butcher adds. "If we were to be non-compliant then we could risk failing in this key objective."

Written by Niamh Smith, a freelance journalist