OPDU

Report 31

The Pensions Insurance Specialist

Protecting Trustees, the Scheme, Members & the Sponsoring Employer

OPDU
IS MANAGED
BY THOMAS
MILLER

Contents

Another significant year for pensions

OPDU's Annual Meeting 2013

Michael O' Higgins, Chair of the Pensions Regulator, speaking to 150 people at **OPDU**'s Annual Meeting, said 2013 would be another significant year for pensions. In particular, there would be a focus on maximising employers' compliance with new requirements to automatically enrol employees into a work place pension scheme as this began to affect more companies. There would also be a focus on the quality of the schemes used for this purpose, with the emphasis on delivering good outcomes for scheme members. Trustees would continue to be at the forefront of protecting members' interests.

Michael then turned his attention to the long period of economic turbulence and its impact upon the funding of defined benefit pension schemes. The Chancellor, in his Autumn Statement, had announced that the Department for Work and Pensions would look to help businesses manage their pension costs by consulting on two proposals. These were to give the Pensions Regulator a new statutory objective to consider the long term affordability of deficit recovery plans to sponsoring employers and to allow schemes undergoing valuations in 2013 or later, to smooth asset and liability values. The Regulator believed that sufficient flexibility already existed through extending the period over which a deficit is removed which can be revised if there is a return to more normal economic conditions.

Earlier, Mark Hyde-Harrison, Chairman of the National Association of Pension Funds (NAPF), had given his perspective on what he believed were the current big themes associated with policy and regulatory activity. He highlighted the need to balance the requirement for member security with the need for economic growth. Unusually, amongst others, the CBI and the TUC were united in opposing proposals from Europe which, if implemented, would have a huge impact on pension scheme funding and the economy.

Mark concluded his address by outlining the NAPF's proposals for alleviating funding pressures which had resulted from the Government's monetary policy of Quantitative Easing and what the key features of good schemes should be, now that the requirement to automatically enrol employees into work place pension schemes was being introduced.

Jonathan Bull had opened the Meeting welcoming the audience which included several eminent people from the pension's community.

Peter Murray, Chairman of **OPDU**'s Advisory Council, then summarised the work that **OPDU** had undertaken in the last twelve months. **OPDU** continued to provide the most comprehensive cover and support, with the provision of lifetime cover for

retired trustees proving particularly popular. **OPDU**'s membership continued to grow and there were now 286 corporate members with 775 schemes holding assets valued in the region of £180 billion.

Following a lively question and answer session, a reception was held, with Reed Smith's contemporary offices providing superb views of London at night.

Bulletin Board

OPDU and PMI partner on new trustee CPD initiative

OPDU and the Pensions Management Institute (PMI) have joined forces to raise the profile of training and development undertaken by trustee boards. It is intended that this initiative will boost overall standards of governance and reduce risk by:

- Asking trustee boards to complete a PMI Trustee Group training needs analysis if they do not utilise an existing diagnostic analysis
- Ensuring that ALL members of the trustee board complete a minimum level of training and development during the year
- Nominating a Responsible Person (Trustee Chair/Secretary to the Trustees/Pensions Manager) on that trustee board to sign a declaration that all members of that board have satisfactorily met the training needs analysis by the end of the year.

The PMI will then issue a Certificate of Continuing Professional Development (CPD) to that board for the work undertaken in the previous year. **OPDU** will favourably take the Certificate into account when assessing the premium rating for new applications and renewals for trustee indemnity insurance.

Vince Linnane, PMI Chief Executive commented; "We would hope that trustee boards see this as blue riband not red tape. We are not adding to their work rather ensuring that they get a higher recognition from employees, pensioners and the company for the hard work and diligence that they are already undertaking and displaying. The best trustee boards are already delivering well above and beyond the minimum – they should be publicly lauded for their efforts. The PMI Trustee Group Certificate of Continuing Professional Development (CPD) should be seen as a vital factor in raising confidence levels and awareness of the work – across investment, funding, administration, communication and the effective operation and delivery of pension schemes."

Jonathan Bull, **OPDU** Chairman added ; "We are pleased to partner with the PMI in this initiative. Anything that raises standards and helps to reduce risk can only be good for the pensions community. Whilst every application for insurance will be treated on its merits, the PMI Trustee Group CPD Certificate will play a very positive role in the assessment of trustee indemnity insurance premium ratings and it provides a useful tool to help trustees to minimise risk".

Lifetime cover introduced for retired trustees

OPDU regularly reviews its policy wordings with its underwriters ACE to ensure that it continues to provide the most extensive insurance cover available designed to protect the personal liabilities of trustees and the assets of the pension scheme and sponsoring employer.

Accordingly, new enhancements of cover have been introduced including importantly, extending the protection provided for retired trustees from 12 years to lifetime cover. This will provide individual trustees with valuable peace of mind in their retire-ment when they no longer have any say in whether their pension scheme should purchase insurance cover.

Access is also given to **OPDU's** specialist services which include a professional claims handling service provided by a team of in-house lawyers and pension professionals who deal with claims in a sympathetic manner in conjunction with your own advisors. **OPDU** also provides advisory and risk management services including a confidential advice line for trustees and administrators.

OPDU is pleased to assist whether your insurance needs relate to a current scheme or one that is being wound-up and the trustees and employer require discontinuance or run-off.

Protecting Trustees, the Scheme, Members & the Sponsoring Employer

OPDU protects pension schemes by providing a unique combination of risk management and comprehensive insurance cover to trustees, administrators and sponsoring employers. Pension schemes holding total combined assets in excess of £180bn have joined the membership which ranges from large schemes to small.

OPDU's insured members can readily purchase limits of cover between £1m and £50m or higher limits can be arranged if required. The cover has been developed for the special insurance needs of pension schemes but canbe varied to meet the specific requirements of individual schemes.

OPDU affords a valuable external resource for reimbursing losses suffered by pension schemes. The asset protection thereby given is ultimately of benefit to pension scheme members.

OPDU is managed by Thomas Miller, the world's leading independent manager of mutual insurance companies.

OPDU Elite is underwritten by ACE European Group Limited. The ACE Group of Companies is a global leader in insurance and reinsurance.

Court Application Costs cover is available to give increased protection to pension scheme assets. The cover is able to pay the legal costs and expenses incurred by trustees or ordered to be paid out of the pension scheme in seeking a declaration or directions from the court.

OPDU Elite cover to:
- Trustees
- Corporate trustees
- Directors of corporate trustees
- Sponsoring employers
- The pension scheme
- Internal administrators
- Internal advisers
- Internal dispute managers

OPDU Elite cover for:
- Ombudsman complaints
- Defence costs
- Employer indemnities
- Exonerated losses
- Litigation costs
- Investigatory costs
- Data risks
- Mitigation of potential claims
- Prosecution costs
- Errors and omissions
- TPR civil fines & penalties
- Minimising risk to reputation
- Extradition proceedings
- Retirement cover - lifetime
- Third party service provider pursuit costs
- Court Application Costs
- **Discontinuance insurance for schemes in wind-up**

Advisory Service:
- Problem solving
- Guidance on minimising liabilities
- Personal representation
- Working with your own advisers

Some key issues for Trustees

Here is our latest update on some of the issues that are currently receiving attention by trustees

Automatic Enrolment (1)

The Department for Work and Pensions (DWP) has launched a consultation on proposals aimed at improving the automatic enrolment process. These include expanding the definition of pay reference period; allowing employers to retain initial contributions for up to two months to make it easier to deal with refunds for those who opt-out; extending the 'joining window' from one month to six weeks; exempting workers who have registered for fixed or enhanced protection; and possible easements for those who automatically enrol all of their workers regardless of eligibility. The consultation ends on 7 May 2013 with changes likely to be implemented in the period up to and including April 2014. Companies and trustees will need to consider the extent to which these proposed changes can be factored into their own plans and processes.

Automatic Enrolment (2)

The amount of earnings that a jobholder must receive before the employer is subject to the duty to enrol them in a pension scheme will increase to £9,440 a year for the 2013/14 tax year. This is the same as the income tax personal allowance. The lower and upper limits of the "qualifying earnings band" will be £5,668 and £41,450 a year respectively. These are the same as the lower earnings limit and the upper earnings limit for national insurance contributions. The selection of suitable systems and software is essential in ensuring compliance with automatic enrolment requirements.

Automatic Enrolment (3)

It is early days but initial evidence suggests opt-out rates significantly below industry estimates of 20 to 25%. A recent NEST survey showed opt-out rates as low as 10% with others reporting not dissimilar figures but with some variation. Figures for those who fail to opt out within the statutory opt-out period but leave shortly afterwards, quite possibly after seeing a deduction from pay, appear to be running at around 3% of scheme membership. Companies and trustees will be interested to see how their experience compares as automatic enrolment begins to affect a wider range of companies.

Defined Contribution (DC) Scheme Governance (1)

The Regulator has recently finished consulting on a proposed new Code of Practice on DC governance which will be supported by regulatory guidance. This includes a list of 31 quality features each stemming from one of the Regulator's six principles which it believes will enable schemes to provide good member outcomes. Trustees will need to review the Code and compare their current practice to be able to demonstrate compliance. It will be interesting to see how this area evolves and what impact it may have on the future structure of DC pension provision in the UK.

DC Scheme Governance (2)

The ABI has announced that some of its members have agreed a basis for the "consistent and straightforward" disclosure of pension charges and costs to employees in workplace pension schemes. This will be implemented by summer 2014 for schemes newly established for automatic enrolment and for all older workplace pension schemes by 31 December 2015. The basis includes disclosure of total charges at outset, including any entry or exit charges; disclosure of total charges taken in the previous year with the intention this is expressed in pounds, and disclosure of the previous year's investment transaction costs.

DC Scheme Governance (3)

The National Association of Pension Funds has announced that its Pension Quality Mark is to lower its cap on charges for automatic enrolment schemes from 1% to 0.75%. The 0.75% charge must cover all fees, including annual management charges, administration, contribution and consultancy charges. Schemes that have already obtained the Pension Quality Mark will be given an additional two years to comply with the reduced charge rate. Trustees will want to review their Scheme charges to ensure they remain appropriate.

Defined Benefit (DB) Schemes (1)

Following an announcement in the Autumn Statement 2012, a new objective will be introduced for the Pensions Regulator to support scheme funding arrangements that "are compatible with sustainable growth for the sponsoring employer" and which are fully consistent with the Pensions Act 2004 scheme funding legislation. The new objective will be contained in legislation published in spring 2013, and its implementation will be subject to review after six months. The Pensions Regulator's Code of Practice will be updated accordingly. This is likely to be a high profile area as companies and trustees progress and conclude their funding negotiations and scheme valuations.

DB Schemes (2)

The Financial Reporting Council (FRC) has published its new

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accounting standard, which will replace most existing UK accounting standards, including Financial Reporting Standard (FRS) 17. The details are contained in FRS 102, become effective from 1 January 2015 and are similar to the international standard IAS19 that came into effect from the beginning of 2013. It will also affect the rules governing pension schemes' own accounts and the Statement of Recommended Practice will need to be revised in due course to bring it into line with the new standard. Companies and Trustees which are affected by these changes should discuss their impact with their auditors.

DB Schemes (3)

An Office for National Statistics Report shows that average life expectancy has increased by around 10 years for a man (to age 79) and 8 years for a woman (to age 83) between 1960 and 2010. There are considerable regional variations with the highest life expectancy in the UK in Kensington and Chelsea and the lowest in Glasgow. The effect of increasing life expectancy on Scheme funding has been clearly shown by the value added to Schemes' liabilities at each actuarial valuation and for DC schemes as a factor in falling annuity rates.

The Budget and Pensions

The budget contained few surprises but there were still some changes that will affect schemes. Apart from those covered elsewhere, they include:

- The dropping of plans to smooth assets and liabilities of schemes for scheme valuations

- Updating the Bank of England's monetary policy committee's remit in an attempt to boost growth through "monetary activism". Whilst the "primacy" of the Bank of England's inflation target of 2% is maintained, the Bank will have to set out the trade-offs it has made. Pension schemes are aware of the impact of monetary policy in reducing gilt yields, thereby increasing the value placed on a Scheme's liabilities

- Confirmation of the reduced annual allowance of £40,000 and reduced lifetime allowance of £1.25 million, both with effect from the 2014/15 tax year. Individual and fixed protection will be available to prevent retrospective tax charges arising as a result of the reduction in the lifetime allowance;
- Confirmation that the capped pension fund withdrawal limit for pensioners will be increased from 100 to 120 per cent of the value of an equivalent annuity, thereby increasing the amount someone with a capped pension fund withdrawal policy can be paid.

State Pensions

The government has announced that it will implement the £144 a week single tier state pension a year earlier than planned in April 2016. This will end contracting out of the State Second Pension. The Government will legislate for a statutory override allowing private sector companies to cover the costs of National Insurance Contribution payments by changing contribution rates or scheme benefits. Companies and trustees with open contracted out schemes will need to review their schemes to take account of these changes.

Pension Fund Liberation

The Pensions Regulator has published material to help members understand the dangers of liberating funds from occupational pension schemes. This includes a transfer pack insert and fraud awareness leaflet for members. Trustees will want to review with their administrators the material being sent to scheme members as well as scheme administration procedures.

Europe (1)

The test case supported by the National Association of Pension Funds which sought to get investment management fees paid by pension schemes exempted from VAT has failed in the Court of Justice of the European Union. It decided that a pension scheme is not a "special investment fund" for VAT exemption purposes. Schemes will therefore not benefit from a "windfall" which would have been welcome given the current difficult funding conditions.

Europe (2)

The European Insurance and Occupational Pensions Authority (EIOPA) have said that more impact studies will be required before changing the Institutions for Occupational Retirement Provision directive. The European Commission had wanted to make changes as early as this summer. The results of the initial study will be published in June. Both companies and trustees should carefully monitor developments and their potential impact on Scheme funding.

Not forgetting...

a variety of pension de-risking exercises including enhanced transfer values, pension increase exchange and early retirement exercises, buy-ins, longevity swaps, Master Trusts, Regulator spot checks on data, Data Protection issues, and GMP equalisation.

The environment remains challenging for companies, trustees and their advisers.

News from the Pensions Archive

London Metropolitan Archives' pension material surveyed

The Pensions Archive Trust (PAT) has published its guide to archival material held at London Metropolitan Archives (LMA) relating to occupational pensions and other support provided in old age. It is hoped that this will be a valuable resource to financial and social historians for understanding the significance of pensions as well as a handy tool for locating material connected to the history of occupational pensions in the UK. The guide is available on the Trust's website at **www.pensionsarchive.org**

Background to the project

One of the main reasons that the Pensions Archive was located at LMA back in 2007 was the extensive business archive collections already held there along with the many other collections concerning the history of London which held material relating to pensions and old-age support. The guide is the outcome of a project to survey these extensive collections for material relevant to the history of pensions which began in summer 2011. The extensive work was carried out by volunteer Malcolm Deering, who painstakingly checked through catalogue entries for each of LMA's 5,800 plus collections to identify relevant material.

Coverage

The guide is broken down into 12 main sections and a miscellaneous category. Each section includes a brief introduction to the category of pension or provision and a list of relevant collections or pension funds. In many cases a brief introduction to the pension fund and its history is also provided. A hard copy of the guide is available at LMA. The guide covers records relating to many company pension schemes, including those provided by Courage Barclay and Simonds Limited, Whitbread and Company Limited, Rio Tinto plc., the Press Association, Whiffen and Sons Limited and the United Synagogue, as well as local government pensions. There are also records relating to pension schemes which provided benefits for nurses in the late nineteenth and early twentieth centuries and a section on livery company pensions.

A collection which sheds light on the very early pensions was uncovered by the project: the superannuation fund of the Chartered Gas Light and Coke Company. This company established a fund for their officers in 1841. This makes it one of the earliest company pension schemes in the UK. Records relating to the scheme include rules of the fund and correspondence and lists of votes relating to the proposed abolition of the fund in 1851.

Railway companies were also some of the first employers to provide pensions for their staff, and PAT was pleased to uncover records relating to these pensions in the year the London Underground celebrates its 150th anniversary. The Metropolitan Railway Company had joined the Railway Clearing System Superannuation Fund in 1893, but this was only open to its salaried staff. Proposals for the establishment of a pension fund for uniformed and waged staff were first made in 1903, and this was accepted by the Company's Directors and shareholders in 1906 with the Metropolitan Railway Pension Fund established by Act of Parliament in 1907. Archives relating to the fund at LMA include papers concerning the establishment of the fund, forms of application for membership, copies of rules booklets for the fund, and the General Manager's files on the fund, which include copies of the fund's accounts.

The guide also includes sections detailing LMA's holdings for friendly societies (which helped members save for funeral costs, unemployment or a source of income in ill-health or old age), provident funds, life assurance schemes, and annuity and benevolent societies, which also provided benefits or saving mechanisms for employees. Records relating to companies which were involved in pension administration, such as Legal and General Assurance Society Limited, or those providing professional services associated with pensions, and campaigning organisations were also included in the survey.

One of the more unexpected subjects uncovered was that of Royal Navy pensions. In 1590 the Chatham Chest was established to provide pensions to wounded seamen of the Royal Navy, and this was probably one of the first funded occupational pension funds. LMA has a nineteenth century application from William Lampen, a carpenter's mate on H.M. Sloop 'Nimrod', to the Directors of the Chest for a pension, and also has a number of petitions from those who had served in the navy or military for county pensions within the Middlesex Sessions' records. (For further details see "The History of Pensions" on the PAT website.)

The guide also summarises the range of material held at LMA which evidences how people coped before the widespread availability of occupational pensions. There are sections on almshouses, charity pensions, charities which supported the elderly, the Poor Law and Widows' and Orphan's Funds.

The Association of Consulting Actuaries (ACA) archived records deposited

On moving to new offices, the ACA has deposited its archived records with the Pensions Archive. They include the main Committee minutes from when the ACA was established in 1951 through to 2003, copies of Sessional meeting minutes from 1964 up to when minutes were discontinued in 1990, histories produced for the 40th anniversary of its establishment in 1991 and 50th anniversary in 2001 and a range of publications – reports and surveys conducted over the last 20 years. They join the records of a number of other leading pension bodies which are now held in the Pensions Archive and which give an interesting insight into pension developments over a number of years.

Newsletter

PAT has recently launched a quarterly newsletter which gives updates on the Trust's work and collections; to receive future copies please e-mail me at the address below.

Alan Herbert
Chairman, The Pensions Archive Trust
01438 869198
alanherbert@btconnect.com

Q & A's on pension trustee liability and a brief guide to insurance protection

Jonathan Bull *Executive Director OPDU Limited*

Why do we need insurance when we have an indemnity and an exoneration clause to protect us against claims?

An indemnity may be given by the scheme or the sponsoring employer company and many trustees will have the benefit of exoneration clauses within the trust deed and rules excluding them from liability. However, it is not always appreciated that such clauses are subject to statutory limits. For example, an exoneration or indemnity from the fund cannot operate for any breach of trust relating to investments and it is also prohibited for the scheme to indemnify trustees for civil fines and penalties. It should also be appreciated that an indemnity from the employer would be of no value upon an insolvency when the trustees are still having to manage the scheme.

Exoneration clauses are also subject to several other limitations including not affording protection from claims involving third parties and moreover, they will always be construed restrictively by the courts. In addition, the problem with relying purely on exoneration and indemnity provisions is that they merely transfer any liability between the trustees, the beneficiaries and the employer. Pension trustee liability insurance, however, will normally provide cover for the trustees, pension scheme and sponsoring employer.

Insurance provides an external source of protection and should stand in front of such indemnity and exoneration clauses. In today's environment, trustees do not usually wish to "hide" behind exoneration clauses when facing valid claims from pension scheme members.

We have been told that we do not need trustee liability insurance as we are covered under the company's Directors & Officers policy, is that correct?

The answer depends on the poIicy wording and terms of cover. However, Directors & Officers (D&O) policies will often contain an exclusion for any acts or omissions while acting as a trustee or administrator of the pension scheme. Generally, it is not recommended that reliance be placed upon a D&O policy of insurance as the cover will not be tailored to meet the specialised circumstances relating to pensions and potentially there will be competing calls on the policy which are outside the control of the trustees.

Are we covered for past actions that were taken before the date that we take out insurance?

Trustee liability insurance operates on a "claims made" basis which means that there is potentially cover for claims made against the insured during the policy period irrespective of when the event giving rise to the claim occurred. Therefore, this is another reason to consider taking out insurance sooner rather than later to give protection for mistakes that might have already occurred in the past. However, this will be usually subject to not previously having had insurance and being unaware of the circumstance likely to give rise to the claim when purchasing insurance.

What is the position when a trustee retires – are they still covered?

A trustee's personal exposure does not cease when they retire and their post retirement situation may make them particularly vulnerable. Problems in pensions often take a considerable time after the event to materialise. It is important, therefore, to check that the position of retired trustees and pension managers is properly protected. The solution is for retired trustees to have the guarantee of cover in the event that the scheme ceases to be insured. They can then rest assured that they have cover personal to them, irrespective of what the employer or trustees have done, or not done, about insurance since they retired. It is again important to check the extent of cover provided in this respect as policies do vary (the **OPDU Elite** provides lifetime cover for retired trustees from the date of expiry of the main policy of insurance thus giving valuable peace of mind). However, if the main policy of insurance is renewed each year then the cover for retired trustees should remain in place.

Have claims been made against trustees?

OPDU's own claims experience has seen issues which have involved individual claims sums of up to £20m to date. One common feature is, as one would anticipate, the importance of the accuracy of data and we encourage trustees therefore to ensure that regular data healthchecks are undertaken. Other issues which have given rise to problems and potential liabilities include: incorrect formulas used for calculating benefits; interpretation of Trust Deeds; overpayment of benefits; misapplication of Scheme Rules; seeking court directions; early retirement & ill-health disputes; rectification proceedings, accounting irregularities; DC choices of investment funds; Pension Sharing Orders; general administration errors; TUPE issues; misrepresentations by trustees; transfer values; incorrect quotations; discrepancies between scheme documentation and administration practice; delays in transfer and payments of benefit assets; and PPF levy issues.

Trustee Liability Insurance: A Brief Guide

Liability for breach of trust is a personal liability and a trustee is liable to both the scheme beneficiaries and to scheme creditors. Professional advice should be sought when appropriate and failure to do so may in itself be held to be a breach of trust. If trustees are uncertain as to how to exercise their powers, they can also apply to the court for directions. The risk is potentially greater after a winding up where there may be missing beneficiaries or other contingent liabilities and no assets. A trustee or trustee director is also potentially at risk of having to pay a civil fine for breach of pensions' legislation. Fines for individuals range up to £5,000 and for corporate trustees £50,000.

Insurance Protection

In these circumstances, insurance is playing an increasingly important role in protecting trustees and pension scheme assets. It provides an external resource of protection and should stand in front of such indemnity and exoneration clauses. The purchase of a properly drafted and comprehensive insurance policy can be a cost-effective means of protecting members benefits, individual trustees, the sponsoring employer, pension managers and internal administrators from losses resulting from claims, be they well-founded or not.

If the decision is taken to adopt insurance, however, it is important to have a policy specifically designed to respond to the needs of trustees and other individuals involved in the management of pensions. This is highlighted by the potential conflicts of interest which commonly exist when a trustee is also a director of the sponsoring employer company with duties to the company and its shareholders. As a trustee, however, there is an overriding duty owed to the scheme beneficiaries which is paramount. Accordingly, as noted above,it is not recommended that reliance be placed upon a Directors & Officers (D&O) policy of insurance as the cover will not be tailored to meet the specialised circumstances relating to pensions and potentially there will be competing calls on the policy

Retired trustees

A trustee's personal exposure does not cease when they retire and their post retirement situation may make them particularly vulnerable. The solution is for retired trustees to have the guarantee of cover in the event that the scheme ceases to be insured. They can then rest assured that they have cover personal to them, irrespective of what the employer or trustees have done, or not done, about insurance since they retired. It is again important to check the extent of cover provided in this respect as policies do vary *(OPDU Elite Policy provides lifetime cover for retired trustees at the date of expiry of the main policy of insurance thus giving valuable peace of mind).*

What should be covered?

Below is a guide to the main headings of cover which can be included:

Guide to main headings of Insurance Cover	
▪ *Errors and omissions*	▪ *Prosecution costs*
▪ *Damages, judgements, settlements*	▪ *Employer Indemnities*
▪ *Regulatory civil fines and penalties*	▪ *Exonerated losses*
▪ *Ombudsman awards*	▪ *Litigation costs*
▪ *Defence costs*	▪ *Retirement cover – lifetime*
▪ *Full severability of cover*	▪ *Costs re investigations by regulatory authorities*
▪ *Individual representation*	▪ *Mediation & Arbitration*
▪ *Maladministration*	▪ *Court Application Costs*
▪ *Public relation expenses*	▪ *Third Party Provider Pursuit Costs*
▪ *Extradition proceedings/bail bond costs*	▪ *Emergency Costs*

Court Applications

Trustees and pension schemes can also incur significant legal expense in going to court to seek directions or if they are joined by another party who is seeking the court's directions. Insurance can be obtained to cover these expenses which do not necessarily involve a legal liability upon the trustees but the scheme will usually be responsible for the legal expenses of all the parties involved. There have been several high profile cases involving costs in excess of £1m which have had to be met from pension scheme funds. (OPDU Elite provides an extension to reimburse such costs – it is important to note that this type of legal expense would not usually fall within the scope of "defence costs" as defined in many insurance policies).

Claims

The value of insurance cover is probably best demonstrated when it comes to claims which can affect even the best managed schemes. Regrettably, there has been a recent substantial increase in claim notifications which demonstrates that errors can occur even in the best managed schemes particularly in the increasingly dominant environment of defined contribution schemes.

In particular we are seeing an increase in matters relating to investment issues. As noted above, it is not possible for a scheme's rules to excuse a trustee from personal liability in respect of the discharge of their investment duties. Importantly, investment issues for pension schemes have become much more complex and diverse. Classes of assets have widened and investment strategies have become more intricate with trustees making decisions relating to matters such as hedges, swaps and buy-ins. These factors have increased the potential for claims.

In addition, the conversion from defined benefit schemes to defined contribution schemes has also continued. This has generally meant potentially lower benefits under new schemes which has also given rise to closer scrutiny from members and trade unions with more issues arising for trustees to deal with as a result.

With this continued growth in defined contribution (DC) schemes, it is important to recognise that the trustees of such schemes face different legal risks and exposures from those of defined benefit schemes. DC trustees have ultimate responsibility for the accuracy of statements, market valuations and increasingly important, the selection and monitoring of investment vehicles offered. These factors increase the risk for claims occurring which has been borne out by claims experience

Wind up

Separate discontinuance and "run off" policies of insurance can be purchased to protect trustees once a scheme has wound up. Cover can be provided to protect trustees against loss for liability or defence costs arising from breaches of trust whilst the scheme was ongoing. Another relevant consideration is that there may be missing or overlooked beneficiaries who surface when all the assets of the scheme have been distributed. *(For further details see page 35).*

Cost

The cost of trustee liability insurance will naturally vary according to the size of the scheme but it is also dependent on several other factors. However, the cost starts at a few thousand pounds for a small scheme and an approximate indication of cost should be able to be obtained easily for any size of scheme without having to complete a full application.

Conclusion

By taking out insurance, trustees can be confident that they have protection against the liabilities that might arise in performing their duties while also giving members comfort that their interests are being looked after properly in preserving the fund assets which is particularly important today when deficits are common.

Jonathan Bull
Executive Director
OPDU Limited
jonathan.bull@opdu.com
www.opdu.com

Claims

Some typical examples of the subject matter of claims in which **OPDU** has been involved:

- **Incorrect formulas used for calculating benefits**
- **Interpretation of Trust Deeds**
- **Overpayment of Benefits**
- **Misapplication of Scheme Rules**
- **Seeking Court Directions**
- **Early retirement & ill-health disputes**
- **Rectification proceedings**
- **Accounting irregularities**
- **DC choices of investment funds**
- **Pension Sharing Orders**
- **General administration errors**
- **TUPE issues**
- **Misrepresentations by trustees**
- **Transfer Values**
- **Incorrect quotations**
- **Discrepancies between scheme documentation and administration practice**
- **Delays in the transfer and payment of benefit assets**
- **PPF levy issues**
- **Equalisation issues**
- **Scheme amendment issues**

The issues have involved individual claim sums ranging up to £20m.

Comment

Assessing geographic exposure from an investor's perspective: revenue analysis versus domicile considerations

Ben Kottler, CFA, MFS *Institutional Portfolio Manager*

Why revenue matters

As companies increasingly derive income from sources outside of their home country, it may be misleading to look at issuers' domiciles to determine a portfolio's regional exposures.

Large multinationals such as Diageo, Johnson & Johnson and Toyota already earn the majority of their revenues from outside of their home regions.

1 Revenue sources may provide a better proxy for understanding where a company operates in the world, and whilst few companies globally disclose where they source profits, most are required to provide a regional revenue breakdown in their annual accounts. Also, unlike other financials such as profits or assets, revenue figures are more consistently defined (and less likely to be manipulated) around the world, making like-for-like comparisons feasible.

From an active-management perspective, understanding revenue sources makes sense as stocks are typically valued on estimates of future income. Fundamental analysis incorporates a business's prospects across a variety of measures, whether company-specific or influenced by regional, macroeconomic, and demographic factors. All of these can affect revenue growth rates and the stability of company profits. In other words, revenue streams are already considered within bottom-up research and, hence, active portfolio positioning. Revenue analysis can augment in-depth fundamental analysis, but it does not replace it.

Importantly, while a revenue-based approach to assessing geographic weightings seems intuitive, collecting and analysing information entails numerous considerations. For example, although revenue numbers are regularly updated, global accounting rules allow for substantial flexibility in how companies choose to report and define their regional groupings. An effective methodology requires assumptions in mapping company-provided data into a consistent framework. This analysis is thus intended as a high-level consideration for investors that are increasingly dissatisfied with the regional picture presented by traditional, domicile-based methodologies.

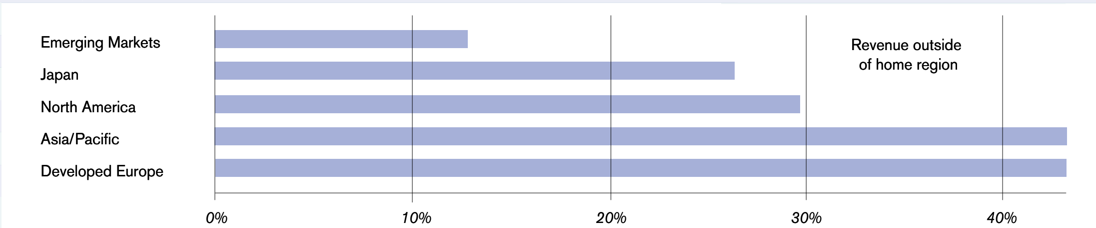
For this study, MFS examined data for more than 2,000 companies in the MSCI All Country (AC) World Index, mapping results to five regions: North America, Europe, Japan, Asia/Pacific ex-Japan, and Emerging Markets (EM).

A broader perspective: revenue versus domicile

We found that in every region, companies derive a significant proportion of revenues from outside their local area. Approximately one third of revenues for companies in the MSCI All Country World Index (ACWI) are derived away from their home region (Exhibit 1).

Exhibit 1

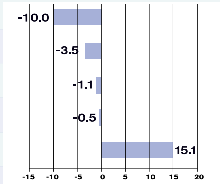
Proportion of revenues outside region of domicile for MSCI ACWI Constituents



	Raw Data	*Developed Europe*	*Asia/Pacific Ex-Japan*	*North America*	*Japan*	*Emerging Markets*
Revenue	North America	0.201964233	0.04697882	0.703312591	0.105692923	0.059565281
	Developed Europe	0.502787362	0.052988924	0.123416183	0.060434648	0.062195707
	Asia/Pacific ex Japan	0.014360652	0.540677878	0.009494205	0.005891225	0.002787852
	Japan	0.019345891	0.0171624	0.018461659	0.7370187	0.003593808
	Emerging Markets	0.261541862	0.342191979	0.145315362	0.090962505	0.871857351
	Chart Data	*Developed Europe*	*Asia/Pacific Ex-Japan*	*North America*	*Japan*	*Emerging Markets*
	Ex-Home Region	0.497212638	0.459322122	0.296687409	0.2629813	0.128142649

Exhibit 2

MSCI AC World	Domicile (%)	Revenue (%)	Difference (ppts)
North America	51.8	41.8	
Europe	23.0	19.5	
Asia/Pacific ex Japan	4.9	3.8	
Japan	7.8	7.3	
Emerging Markets	12.5	27.6	



	Domicile	Revenue	GDP
ASIA/PACIFIC EX-JAPAN	4.90	3.75	3.51
EMERGING MARKETS	12.50	27.63	33.10
DEVELOPED EUROPE	23.04	19.54	28.01
JAPAN	7.78	7.29	9.37
NORTH AMERICA	51.78	41.79	26.01
First Total (add residual to Europe)	100.00	100.00	95.83 (Residual added to Europe)

Clearly, using the standard approach of classifying regional exposure based on domicile can distort analysis of the underlying opportunities and risks for each individual company.

Viewing global conglomerations through the traditional domicile lens no longer yields a clear picture of a company, index, or portfolio. World economies and international trade are inherently intertwined: nearly half of developed Europe's revenues are based outside the region; the Asia/ Pacific ex-Japan region's non-domestic revenues are also high, largely due to exports. Some markets have stronger global interconnections than others. Europe and the US have relatively higher exposure to foreign markets than do Japan and Emerging Markets, for example.

Applying this concept to the MSCI AC World Index, we found that regional exposures changed significantly when viewed as an aggregate portfolio organised by revenues. For example, the weight in North America decreases from about 52% on a domicile basis to about 42% using revenues, while emerging markets exposure increases from nearly 13% to nearly 27% (Exhibit 2).

An even more dramatic shift appears when applying the revenue methodology to developed-only indexes. MSCI World, for example, has zero exposure to Emerging Markets under its domicile-based methodology. Investors may be surprised that when rebalanced on a revenue basis, exposure to emerging markets reaches over 18%. Investors concerned that they may be missing out on EM exposure by choosing a developed-market benchmark for their portfolios may find they have considerable indirect exposure after all.

Regional revenue differences

That Europe appears the most global of regions should not come as much of a surprise based on long-term market trends. Europe is fully industrialised, has experienced declining birth and business growth demands an export economy and building or buying subsidiaries outside of Europe. Consider the global business models for some of the largest European corporations such as BMW, LVMH and SAP, for instance.

Japan provides an interesting counter-example as a more inwardly focused market, despite an already shrinking population. This may in part reflect national trade barriers, which keep foreign businesses from listing on Japan's stock exchange. Also, Japanese overseas subsidiaries tend to be smaller and more recently formed than those of its global competitors. Only relatively recently did businesses like Toyota respond to currency headwinds by shifting from an export model – shipping vehicles from Japan – to building factories overseas in the US, UK and, more recently, Brazil, Canada, Russia and Mexico. This transformation is further along for certain other economies, with some long-established global brands extending back even to the European colonial period (e.g. Unilever in India).

Perhaps more surprising is the apparent regional coherence seen in the Emerging Markets category. One should keep in mind, however, that in reality 'emerging markets' constitute nothing close to a homogenous group. Significant trade takes place between different Emerging Market countries, often of intermediate goods which are then sold on as finished goods in other regions. (One example would be trade in iron-ore from Brazil to China.) The Emerging Markets category is thus much more of a 'catch all' than other groups.

Viewing relative advantages across sectors

These types of differences can be further highlighted by examining more closely certain sectors and industries, exemplified here by consumer staples and technology. A sector perspective provides additional insight into regional comparative advantages and the dynamics of competitive opportunities.

While the domicile view of consumer staples shows a substantial weight to Europe and North America, consumer staples companies tend to be more global when viewed by revenues. Additionally, MFS' findings support other research suggesting that as the EM consumer class increases its disposable income, shoppers are trading up to established global brands.

The technology sector displays even greater global disparity. The United States dominates the world in the sheer number of technology companies domiciled there; however, these firms export their products and services all around the world. As a result, US-based technology companies generate a significant portion of revenues outside their home countries.

Consumer-facing companies such as Apple and Google are obvious examples of genuinely global businesses, but so are corporate-focused behemoths like Microsoft and IBM. Indeed, eight of the top ten largest technology companies are based in the US, yet they are all global businesses.

The utilities sector may offer a counter example to this globalisation trend. Electricity, water, and natural gas tend to be viewed as basic essentials that should be available to all (at a price). Capital requirements and a complex distribution infrastructure usually mean that utilities enjoy limited monopolies. They thus tend to be government owned or otherwise tightly controlled and regulated, with oversight at both the local and national levels. Even here though, given a rise in cross-border acquisitions and the cost-basis impact of globally traded commodities such as oil and coal, a narrow domicile-led view may mislead investors.

Conclusion

Analysing a company's revenues instead of its headquarters can significantly alter the apparent composition of an investment portfolio.

In an era of increased globalisation, a company's domicile is less relevant. MFS' revenue-focused methodology may more accurately portray a company's regional exposures and, therefore, provide a clearer picture of a global equity portfolio's geographic risk. Furthermore, this methodology can help build better insights into a sector's or a company's exposure to country-specific or regional economic events that may affect future earnings potential.

"In an era of increased globalization, a company's domicile is less relevant. From an active management perspective, examining a company's regional exposures may provide a clearer picture of a global equity portfolio's geographic risk."

This approach shows that global indexes and, by extension, portfolio strategies based on those indexes are more geographically diverse than may be indicated by a domicile-based methodology. It also highlights the benefits of incorporating revenue analysis in assessing a company's prospects. But while our methodology presents a robust means of revealing a portfolio's geographic dispersion from a top-down, historical perspective, it is silent on business strategies and company initiatives, and thus cannot replace fundamental research in an active stock-selection process.

Ben Kottler, CFA,
MFS Institutional Portfolio Manager
b.kottler@mfs.com
www.mfs.com

Appendix

MFS' Revenue-based methodology
Unlike profits and cash flows, which are rarely disclosed by large multinationals, revenue figures capture regional exposure fairly well at the portfolio level. Disclosure is mandated globally, defined reasonably consistently, and more difficult to manipulate than many other data points.

For this study, MFS Research established five regional groupings: North America, Europe, Japan, Asia/Pacific ex-Japan, and Emerging Markets. Groupings were populated using a revenue database developed by Citigroup, comprising proprietary analyst estimates augmented with data from FactSet Fundamentals. Data covered more than 95% of the MSCI AC World Index's market capitalisation.

In addition to reviewing and standardising revenue data, MFS applied certain technical adjustments to account for residual data gaps. For example, companies not covered by available databases (often smaller or emerging market issuers) or with no regional revenue breakouts were allocated to their country of domicile.

Lastly, after calculating a target portfolio's revenue-based exposures, MFS allocated any remaining 'Unassigned' holdings in proportion to the resulting aggregate regional weights, effectively excluding them from specific analysis.

For further insights into this topic, including discussions of index analysis using GDP, please read MFS' white paper "Revenue Analysis: A Better Way to Assess Regional Exposure" at mfs.com.

Do members benefit when trustee teams work in isolation?

Tony Hodges *Chairman, AHC*

Are the challenges trustees face unique?

Trustee groups are rather like football teams. They have a captain (Trustee Chair), a goal (protecting the assets), rules (trust deed), a referee (ombudsman), linesmen (actuaries), a backer (employer) and a manager (pensions manager or scheme secretary). They play a common game but on different conditions and in different leagues.

There's just one problem. There is no 'trustee league'.

Unlike the football analogy, trustee teams play in splendid isolation. Even though there are many commonalities the unspoken mantra is "why on earth should we be interested in what other schemes are doing? Besides that's what we pay our adviser for."

The result is the continual reinvention of the wheel, advisors making a packet from recycling broadly similar guidelines and advice (all at the price of the original), and trustee teams paying far more than they need to pay.

And it's all because trustee groups think their individual game is so unique there isn't much to be gained by active and frequent dialogue with others facing exactly the same challenges. Just a little 'helicopter view' reveals an inefficient system where everyone, except the advisors and lawyers, lose out.

The silence in the industry over this is presumably due to it being a case of 'the Emperor's new clothes'. So powerful are the large advisor and legal groups in the industry that even to raise the issue is tantamount to heresy.

Let's look a little closer and see if there isn't a better way. We'll find that there is. We'll also find that there will still be the need for plenty of advisor and legal help so, actuaries and lawyers please relax, the ideas below aren't going to drive you out of business.

The typical trustee regime

The typical trustee regime consists of a mixed group of specialists and lay people meeting three or four times a year, receiving inputs from other specialists and wading through papers in between. Specialist sub-committees often attend to investment or technical matters, administration and communication. Apart from the odd attendance at a conference, reading the industry press and adviser input, information flow between trustee groups is virtually non-existent.

In an age of information highways, social media and the highest levels of online business interactivity the world has ever known, the continued isolation of trustee groups and the constant reinvention of the wheel at unnecessarily high fee levels simply does not make sense any more.

Why keep reinventing the wheel?

It is true that each trustee team is faced with a different set of operating conditions in the particular. No two teams have the same funding objectives, member demographics, strength of employer covenant, relationship with the employer, risk-governance model or skill around the trustee table. All these and many other factors argue the case that each trustee team is truly unique.

In stark contradiction however, trust law affects all those not in contract schemes (but may yet come to affect them too), similar asset classes have to be assessed, the procedural structure of meetings is similar, adviser appointments follow a similar process, decisions over whether to appoint an independent trustee rely on many of the same factors, adviser fees are compared. These and many other factors argue the case that while there are doubtless individual special differences, there is much that is in common.

The cost and inefficiency of isolation

The cost of trustee teams working in near total isolation is high. The learning curve is shortened by advisers who have learned elsewhere what works and what doesn't and bring that knowledge to the table. Despite earlier comments to the contrary, advisers bring value, expertise and a balancing view. The industry is staffed by bright people and consultants don't last very long if they don't deliver. As someone who himself has eaten from the table of consultancy for 25 years I know that the law of the jungle operates very effectively in the field of pension consulting. If you're not good, you die.

No one knows the true cost of isolation. One of the things I am interested in as I slip past the line into retirement is a study to discover just how cost effective team sharing of knowledge and learning among trustee groups could be. It's unknown, never been tested and is likely to provide interesting answers. In Pensionweb, our own unmoderated knowledge sharing community for pensions managers, the answer last time the question was asked concerning savings in adviser fees by using the community was "around £5,000 a year".

Further downsides - over reliance on the Chair

There are other downsides to trustee teams working in isolation. Besides the over reliance on advisers resulting in higher fees, there is also an over reliance on the trustee chair. Life is quite stressful enough and one would have thought this fact alone would have driven trustee chairs into more collegiate action. Several trustee chair settings exist where Chairs can meet to discuss ideas, my own company has its Trustee Chair dinners and each of the major consulting houses offer opportunities for occasional get togethers for trustee chairs. Nationally though, considering the importance to national life of effective trusteeship, no integrated system that networks trustee groups currently exists.

Is there a better way?

Recognising that opportunities for interaction exist at a personal level, it is worth mentioning that the PMI and the NAPF work hard to bring trustees together. AHC runs its online trustee community Trusteeweb, sister to the by successful Pensionweb, the online community for Pensions Managers. An Association of MNTs exists and each of the larger professional trustee houses have additional means of bringing trustees together.

The problem however, going back to the football analogy, is that there is no single co-ordinated trustee networking structure that recognises the similarity of the game being played by each team and functions accordingly to ensure synergy occurs.

That is why, a number of years ago, I initiated the idea of TrusteePlus - a national trustee network that took the 'football league' concept seriously and created a structure, supported by online networking, whereby trustee teams could learn quickly from each other what they were doing to respond to new challenges. The idea still has merits and there will be others in the industry with their own ideas.

The fact is that a current system of integrated national trustee knowledge sharing is non-existent and therefore, overall, the national system is not as efficient as it could be. All the while, the pace of learning increases as do the dangers and costs of poor or bad decisions. The need for a way of further minimising governance risk and insurance claims by better knowledge sharing is compelling.

What are the obstacles to a national knowledge sharing system for trustees?

The obstacles to the establishment of a new national network, a 'federation of trustee teams', are not small but nor are they insurmountable. As with most things, where there is a will there is a way.

It would be my hope that a few hardy souls, whose thoughts have been stimulated by the possibilities described above, will contact me to discuss holding a workshop about the possibilities. What is needed is a think tank of open, enlightened and insightful minds who share my concerns.

The trend to increased online interactivity is set to continue and the opportunities for professionally facilitated online knowledge sharing to reduce costs and accelerate learning but a few button clicks away. All that is required is the awareness of the value, the will to explore and the expertise to experiment. Given these a working solution is not vary far away.

Properly managed, a well facilitated network of trustee interaction and collaboration will minimise risk, accelerate better learning and should, in theory, reduce insurance claims. All this has to be to the good of trustees, members and sponsors alike.

As Socrates taught us, all good solutions start with dialogue.

To close

I started this article asking "Do members benefit when trustees work in isolation". I hope as a result of considering the above, the industry will be stimulated to look at the challenge afresh because the answer cannot be "yes".

Tony Hodges
Chairman, AHC
tony.hodges@ahc.uk.com
www.ahc.com

Comment

News from the Pensions Regulator

Michael O'Higgins *Chair, the Pensions Regulator*

There is perhaps one thing so far this year that everyone involved in the pensions industry can agree on: 2013 has got off to an exceptionally busy start. When I addressed the OPDU annual meeting back in January, I acknowledged that defined benefit (DB) schemes have faced an unprecedentedly long period of economic turbulence that has impacted on their funding. In the weeks since, there's been a wider debate around the fundamental issues underpinning funding agreements. The broad range of views that have been expressed has been both interesting and welcome. As you will be aware, in the Budget, the Chancellor announced that the regulator will receive a new objective, the precise wording of which is expected to be set out in legislation by the Department for Work and Pensions later this year.

DB scheme funding outlook

We will work with our stakeholders and the industry to consider the changes that may be required in our approach – including considering the 2004 funding regime in the light of the new objective. This will be done as part of a review of the Code of Practice for DB funding.

The objective will not become law until the legislation has passed through Parliament. Trustees should continue with their valuations bearing in mind our current guidance that they can make use of the flexibilities available in the scheme funding regime. To further assist, we will shortly publish our second annual funding statement, which will set out guidance to trustees in the context of current economic circumstances.

The DWP's call for evidence on asset and liability smoothing did not reveal a strong case for changing legislation to permit smoothing and the Government has decided not to pursue this measure. We welcome the decision, and had made clear our view that dealing with the numbers in a way that risked masking the underlying economic realities would not help anyone; whilst in other situations smoothing risked worsening the funding outlook. The better approach is to allow schemes and sponsors to use the flexibilities in the regulatory regime – smoothing payments of contributions over several years, not valuations.

We do not require trustees to take a risk free view for managing their scheme and have cautioned trustees against 'reckless prudence' in a number of areas. Valuation assumptions, funding demands and asset allocations are a scheme specific choice and should take into account the overall position of the scheme and sponsor.

Legislation requires discount rates to be chosen prudently, but allows flexibility for the specific circumstances of schemes and does not oblige trustees to use a gilts-based approach. Our published data shows that schemes have used a wide range of discount rates since the introduction of scheme-specific funding; and there is a wide variation, relative to gilts, from below zero outperformance to over 200 basis points, reflecting the individual circumstances of schemes.

Trustees can welcome the employer's investment in growth where it is expected to improve the sponsor's ability to fund the scheme over the longer term (the employer covenant)

– and where they are satisfied that this is better for the scheme's and the employer's long-term prospects than contributing to the scheme. There is sufficient flexibility in the funding regime to balance the interests of the scheme and employer in this way.

Nor does the regulator insist that all schemes must be fully invested in near cash or liability-matching instruments. Those schemes with a strong employer underpinning pension promises may not only be able to contribute more to the scheme, but may be able to afford to take more risk. Trustees should ensure they are aware of what the risks are and that the employer can support these in the long term.

Taking a businesslike approach, planning for an uncertain future and having a good understanding of scheme risk is, in our view, key to the work of DB pension trustees. We view integrated financial management plans as central to achieving good outcomes. Such plans can help trustees to manage and mitigate the risks and ensure that the three key elements of covenant, investment and funding are fully integrated. Many schemes are already doing this. However, feedback on our April 2012 statement indicates that, for some, this area is less well understood. Therefore we intend to say more later in the year to support trustees and help them plan ahead.

Transparency

It is key for us that those who have contact with us understand how we act and why. We are committed to taking as transparent an approach as possible to our casework and publishing important information, where it is appropriate, on consideration of the use of our powers in certain cases.

I hope it's been noted that there has been an increase in our use of reports published under s89 of the Pensions Act 2004. They describe, at a high-level, the strategic principles the regulator has applied to certain situations. I hope that sharing our approaches in specific cases is helping you to understand the type of principles we may apply in different situations.

Automatic enrolment: getting the message across

Whilst events in DB are significant, the spotlight has understandably been on the revolution that is automatic enrolment during the last six months.

The Pensions Regulator has two key roles in this area: maximising employer compliance with the new duties; and supporting the pensions industry to deliver quality defined contribution (DC) products with the characteristics necessary for good outcomes.

The challenges for the regulator in this area include persuading medium and small companies to prepare well in advance, ensure their software, data and communication is in place and that the schemes they choose will be suitable.

Our research and direct feedback suggests that large numbers of employers remain complacent about how long it will take them to be ready to comply with their duties. We continue to advise employers to find out their staging date as soon as possible – and allow 18 months to get ready for it.

We are developing information products aimed at medium employers as they prepare. Our work includes providing online tools, webinars, signposting employers to sources of expert advice and building capacity amongst advisers. We are also working with bodies such as membership and trade associations to spread key messages, best practise and helpful information.

The regulator has an industry liaison team, which is working with IFA networks, regional and national IFA firms, employee benefit consultants and their professional bodies to raise awareness and understanding and also help us to understand the propositions that are developing in the market place. We are also engaging with other industry sectors key to auto enrolment including pension scheme providers, administrators, payroll and software.

Enabling quality in the DC market

The majority of new savers will be saving into DC schemes – and many people will have little or no previous experience of pension saving. The challenge for the industry is to ensure new members are enrolled into quality schemes run in members' interests.

Quality DC is a key component in delivering successful automatic enrolment. Disclosure against our six DC principles and quality features by providers will help to give employers confidence that schemes they choose for their workers meet certain standards.

We have broken down the various schemes into five main segments to help us target our regulatory approach, including communications, at the risks in each segment:

- Large employer-sponsored schemes
- Multi-employer schemes ('master trusts')
- Medium and small schemes
- Micro schemes
- Work-based personal pension schemes, also known as contract-based schemes.

We want large employers and their advisers to help create demand for products that incorporate the principles and quality features and this will help influence market behaviour. Going forward, as set out in our recent consultation, it is hoped that schemes adopt a 'comply or explain' disclosure framework to demonstrate how they comply with the DC quality features, or to be able to explain any inconsistencies.

'Master trusts' will be encouraged to obtain independent assurance that can help demonstrate the presence of DC quality features in the scheme. I think this is a reasonable position for us to take, given the numbers of people expected to be automatically enrolled into this segment. There are also risks that need to be mitigated such as low barriers of entry for new providers, with business models predicated on attaining scale, and the potential for conflicts of interest where the trustees are closely associated with the provider.

Decumulation

Our guidance to trustees on retirement planning encourages them to provide a high level of support to members to help maximise retirement incomes. Many well-run trust-based DC schemes have made significant strides in this area. Evidence from our recent governance surveys show that 95% of large trust-based schemes encouraged members to obtain independent advice and 70% appointed an annuity broker to search the market on the member's behalf.

But in my view, there's even more we as an industry can do to support individuals in the choices they have to make. I'm concerned that in the present low-interest economic climate, purchasing an annuity may not provide the best retirement outcome for many people, yet the majority of DC plan members follow that route, quite possibly because they are unaware of the alternatives. Furthermore, as an industry, we seem to have set the bar for some alternatives, like flexible drawdown, too high to be accessed by the majority of DC members who have only modest pots. We cannot allow a two tier retirement regime to emerge where those with small pots have no practical alternative than to buy an annuity which may represent poor value for money. This issue deserves to be examined in more detail.

I believe that DC trustees can add value for members by communicating the alternatives available, in particular the availability of flexible drawdown and its place in retirement planning particularly in a low interest rate environment.

This would require early communication to members some years before retirement since the default 'lifestyling' approach, which insulates individuals from fluctuations in the annuity market as they approach retirement, would not be appropriate for those wishing to drawdown. Instead, an investment strategy anticipating flexible drawdown would need to be structured more around growth assets.

But the role of trustees is only part of the equation. For income drawdown to be a viable alternative for all DC members, we need the market to bring forward drawdown products suitable for people with small and medium DC pots - and to structure them as managed products which do not require high levels of financial sophistication of the members. Perhaps a master trust approach to managed drawdown would be more suitable than individual products? The work of trustees to educate members in their options could help to create that demand. I believe there is also a case for a greater use of equity-linked annuities as an alternative to those linked to gilts. Alternatively, or additionally, perhaps small pots could be put in some ISA-like equity investment with access only to the income.

There is also an important question for policy-makers as to whether the current requirements should be relaxed for individuals to have a secure £20,000 per annum from state pension, occupational pension and annuities before they are able to use 'flexible drawdown', in light of present annuity rates.

I welcome the significant steps the Government has already taken, including removing the need to purchase an annuity before age 75 and the announcement in the Budget that the limit for 'capped drawdown' would be increased to 120% of the value of a comparable annuity.

Beware the sting in the tail

I'm sure by now you are familiar with the cross-government 'scorpion' information campaign on pensions liberation fraud. Our hope is that the campaign really hammers home the risks associated with such offers. The industry has a role to play in disrupting this activity and I'm encouraged by its response to the campaign, with frequent downloads of our action pack, transfer insert and member information leaflet.

We've also launched a 'bite-sized' e-learning module for trustees and administrators. The aim is that by completing the module, users will be able to identify what pension liberation is and when it can be fraudulent; early warning signs to look out for when reviewing a member's transfer request; and next steps trustees and administrators should consider taking if liberation fraud is suspected, including deciding whether it is appropriate to pay the transfer.

Moves afoot at the regulator

I am very pleased that we recently recruited a new director for DC, governance and administration, Andrew Warwick-Thompson. However we have also received the news that our chief executive Bill Galvin will be leaving the position at the end of June in order to take up a new role as group chief executive of the Universities Superannuation Scheme Ltd.

During his five years at the regulator, the last three as chief executive, Bill has displayed inspiring leadership and an impressive grip on strategic, operational and technical issues. I will be very sorry to see him go, but wish him all the best in his new role at one of the UK's biggest pension funds. We will now look for a successor and make an announcement as soon as we are able.

For his remaining time at the regulator, to avoid any potential conflict of interest arising from his future role, Bill will have no further involvement with any matters related to DB regulation, including regulatory strategy and policy, and discussions with external stakeholders and European regulatory authorities. I will personally provide oversight for these areas, with executive director for DB regulation Stephen Soper reporting to me.

Conclusion

I began by remarking how busy the first quarter of 2013 has been – I don't expect the rest of the year to be any less challenging. As millions more people find themselves saving into a workplace pension scheme, we all have our part to play in ensuring they do so with confidence. I would like to thank **OPDU** members and the wider pensions sector for your continued help and support, and look forward to keeping you updated about our activities.

Michael O'Higgins
Chair
the Pensions Regulator

Annual Risk Conference

As **OPDU** is focused on providing protection for trustees, this conference examined the risks to which trustees are exposed and how to manage them.

Given the state of the world economy and the near record low gilt yields, we felt that an appropriate theme for the conference would be "Managing Pension Schemes in an adverse environment".

Our keynote speaker, Professor David Blake, Director, Pensions Institute, Cass Business School, addressed the subject of "Pension Fund Investing in an Era of Population Ageing". In a wide ranging review he demonstrated how the future will be different from the past and focussed particularly on investing for accumulation and for decumulation by DC schemes.

Paul Thornton OBE Chairman, Pension Advisory Team, Gazelle Corporate Finance Ltd spoke about Covenant risk in DB schemes, what to expect from a covenant advisor and gave some practical tips.

In the present difficult circumstances it is particularly important that trustees minimise mistakes in decision making. Paul Craven, Managing Director, Goldman Sachs Asset Management and an expert on Behavioural Finance, talked to the conference about "avoiding behavioural mistakes in an adverse environment".

There is a growing trend among some pension funds to adopt Fiduciary Management and also an increase in investment in alternative asset classes. While these are fine in many cases, both these approaches carry with them legal risks for trustees. Jeremy Goodwin, a partner at Eversheds examined these risks and how to deal with them.

Bill Galvin, Chief Executive of The Pensions Regulator gave a wide ranging overview of the major current developments in UK pensions from the regulators perspective. He focussed particularly on The Regulator's expectations of pension fund trustees.

With DC having overtaken DB globally, the issue of how we make Defined Contribution work better even in a difficult environment, becomes a very important one. Nigel Aston, Head of Defined Contribution at State Street Global Advisors, addressed this issue. He discussed some of the innovative thinking that is now going on and looked at lessons which the UK could learn from overseas.

Finally Dan Schaffer, Partner and Head of Pensions at Herbert Smith Freehills discussed the whole area of claims, potential claims and how to minimise the risk of claims. He looked at claims arising from drafting and from trustee miscommunication, how to avoid claims by reversing trustee mistakes and gave practical advice on claims management.

Most of this edition of the **OPDU** Report is devoted to articles by our conference speakers. I hope that you will find them informative and useful. As I write this article, gilt yields remain at near record lows, there are signs that inflation may not be as well controlled in the future as it was in the previous decade and the problems with the UK economy and in the Euro zone persist.

All of these could have serious consequences for DB funding levels and for retiring members of DC schemes. These factors plus the ever increasing expectations of trustees of pensions funds by members and regulators alike, will inevitably increase the risks to which trustees are exposed. There will be much to discuss at next year's **OPDU** Pension Risk Conference and I look forward to seeing you there.

Peter Murray
Chairman
OPDU Advisory Council

"It's a great credit to OPDU that it attracts such high calibre speakers"

"Excellent speakers"… *"A quality event"…* *"A fascinating discussion"*
















The current state of covenant assessment

Paul Thornton OBE *Chairman, Pensions Advisory Team Gazelle Corporate Finance Ltd*

The context

Very few schemes have come through the past few years without significant stress.

The Gazelle research into the experience of the FTSE 100 companies of 1985 over the ensuing 25 years showed that few schemes came through without some stress. ("The past 25 years covenant experience of the FTSE 100 constituents.")

In 1985 the big issue was protecting scheme surpluses from asset strippers, but events turned out differently. In 7 cases the company defaulted; 26 cases saw companies experiencing a level of financial stress that was likely to have been detrimental to pension funding; 83 experienced one or more major corporate transactions, of which 55 experienced take-over (half of which were by overseas companies), 40 experienced demerger and/or restructuring and 33 experienced substantial merger transactions. Many companies experienced more than one of these.

In fact only 11 schemes can be said to have had a "benign" covenant experience.

A more insidious finding was that there was a "downward migration" of covenant quality, as a result of the covenant provided continuing to relate to the mature and declining businesses within the company group, rather than the growing and dynamic ones. Conclusion: there is no room for complacency amongst pension trustees.

Sponsor Covenant

Most schemes have already had independent advice on the sponsor covenant. After initial scepticism, most trustees now see the value in having an independent view of covenant strength from experienced professionals.

In present conditions however most schemes face major changes in risk profile from moves to cap liabilities such as:

- Scheme closure,
- Liability reduction - enhanced transfer values, pension increase exchange, changes to retirement age, pensionable salary definition, cutting back on discretionary benefits,
- De-risking, and buy-out.

The risk profile can thus be expected to change considerably over the remainder of a scheme's lifetime, typically the next 10 to 20 years. We have always faced change, but never before in my experience at such pace.

Sponsor covenant assessment therefore has to be forward looking and to address the changing liability profile of the scheme.

What next for covenant assessment?

Optimising sponsor support for scheme and sponsor

For trustees to achieve a reasonable outcome to recovery plan negotiations in terms of funding payments is not too challenging when the covenant is strong. When it is not however, they have to make a difficult judgement how hard to push for higher contributions and when to accept the sponsor's views on what is affordable, what assets can be provided as contingent security, whether a parental guarantee can be offered and the like. Advice from independent professional covenant advisors can certainly help but it is difficult for sponsors to accept the need for what trustees may legitimately seek, when it is based purely on a qualitative assessment – it can become difficult to reconcile differing views of covenant strength between sponsor and trustees.

Quantitative assessment of sponsor covenant risks

The way to go is quantification – namely to move to a conversation based on a monetary assessment of sponsor covenant risk. This is then expressed in a currency the Finance Director can relate to – money.

This is very much on the agenda with the current consultation by the European Insurance and Occupational Pensions Authority (EIOPA) on the idea of a Holistic Balance Sheet.

The Holistic Balance Sheet

The Holistic Balance Sheet is driven by a European Commission push for additional capital requirements for pension funds, equivalent to those for insurance companies, under Solvency II. The politics are that in some European States there is concern that there is not a "level playing field between pension funds and insurance companies." This is in fact irrelevant to UK pension funds where the issue simply does not arise, which is ironic since we are probably the country where the greatest impact of the proposals would be felt. The EC push is also driven by the desire to encourage cross-border pension schemes, despite there being a notable lack of enthusiasm for this idea from companies operating across different European territories.

There is a wealth of technical detail included in the EIOPA consultation papers and in the various industry responses, but suffice to say that the idea is that the assets and liabilities of the scheme are compared in the Holistic Balance Sheet. The components brought on the assets side include: the actual assets in the pension fund, the promised deficit recovery contributions, any contingent assets, the value of any pension protection scheme (such as the Pension Protection Fund in the UK) and the potential value of the sponsor covenant. This is then compared with the liabilities on a risk-free basis, together with the solvency capital required on an actuarial stochastic basis to establish the intended level of security.

The idea of a Holistic Balance Sheet is conceptually appealing, just as the pensions industry has always maintained that for pension schemes the sponsor covenant stands in the place of the capital requirements that provide the security for insurance contracts.

This is meat and drink for actuaries, but it is clear that placing a value on the covenant would involve a great number of subjective assumptions, and it would be extremely challenging to prescribe anything in legislation that would encompass the huge diversity of scheme circumstances.

Furthermore there is a big unanswered question – what happens if the covenant is not sufficient? If the covenant is strong, the solvency capital requirement should be well covered, and there would be little need to measure the covenant value with any precision. If the covenant is inadequate however, what use will the Holistic Balance Sheet be put to? If it were used for example to reduce the benefits to balance the Holistic Balance Sheet, the precise calculation of the value of sponsor covenant would be absolutely critical.

What is lacking is any measure of sponsor covenant risk as opposed to value.

Covenant Risk

Covenant risk may often be the biggest risk that trustees face. Trustees are accustomed to looking at risk – such as market risk, inflation risk, interest rate risk, or longevity risk – and the most natural way for trustees to deal with sponsor covenant risk is by having a quantified measure for it. Gazelle has developed a model to address this. ("Quantifying sponsor covenant risk for defined benefit pension schemes.")

Covenant risk is assessed by reference to risks of default and constrained affordability of deficit recovery contributions over the period till self-sufficiency. It is not enough just to look at default, as sponsors are able to renegotiate deficit recovery contributions in times of stress, thus pushing out the period for which the scheme is at risk, into a period when the default risk is expected to be higher.

The Gazelle model produces specific outputs in £millions terms, which can also be expressed in terms of the equivalent adjustment to the discount rate used to calculate Technical Provisions. Sensitivities can be explored and can be used to inform discussions on how to strengthen the covenant.

Quantification of sponsor covenant risk enables investment strategy and funding assumptions to reflect covenant risk accurately. It might be assumed that sponsor covenant risk is correlated with general equity market risk, but this has not been borne out by recent experience. Defaults are in practice delayed beyond the low point of equity markets until prospects are improving and creditors can improve their recovery. However this point is dealt with in the asset liability modelling, sponsor covenant risk should be a factor in choosing the optimal investment strategy.

Sponsor covenant risk is less complex and costly to assess than sponsor covenant value, and is a far more practical way of equipping trustees to negotiate better security for their members.

What to expect from your adviser

It can be taken for granted that the adviser will provide a covenant assessment, but going forward what is needed is an assessment of covenant risk.

The adviser should also probe the nuances of corporate structure, intercompany cash flows, strategic and business risks, as most participating employers are part of a larger company group.

According the circumstances it may be appropriate for the adviser to play a leading role in negotiation of Recovery Plans, contingent assets and targets for self-sufficiency.

Last but not least the adviser should provide support when the covenant is changing, for example when the company is driving changes, such as demerger or refinancing, which affect the covenant, or when the company is subject to a takeover bid – often in pressured and stressful circumstances. Recently proposed changes from the Takeover Panel will improve disclosure of a bidder's pensions intentions to the trustees of a scheme attached to the target company, and give them an opportunity to put their views in the public domain in the target company's board circular on the bid. In Gazelle we feel that more is needed to put the trustees in a less vulnerable position (by requiring the bidder to state whether they are able to fund any pension deficit and if not reach an agreement with the trustees) but this would require the Pensions Regulator rather than the Takeover Panel to step up their requirements.

Practical tips

Finally, three practical tips for trustees to get the best out of covenant advice:

- Plan ahead for both routine valuations and for possible corporate changes – this could take the form of a general scenario planning exercise, or it could lead to the equivalent of the Defence Manual sometimes prepared in the corporate sphere.

- Ensure covenant risk is assessed before setting investment strategy and funding assumptions – it should inform the investment strategy and hence the funding assumptions, not be treated as a health check.

- Set up a business-like dialogue with the sponsor on affordability and security, neither passive nor antagonistic. There will of course be a dialogue in any case, but it behoves the trustees to take the initiative on how it will be approached in their particular circumstances.

Paul Thornton OBE
Chairman
Pensions Advisory Team
Gazelle Corporate Finance Ltd
paul.thornton@gazellegroup.co.uk
www.gazellegroup.co.uk

Behavioural finance – from biases to bubbles

Paul Craven *Head of EMEA Institutional Business, Goldman Sachs Asset Management*

"How far that little candle throws his beams! So shines a good deed in a naughty world."

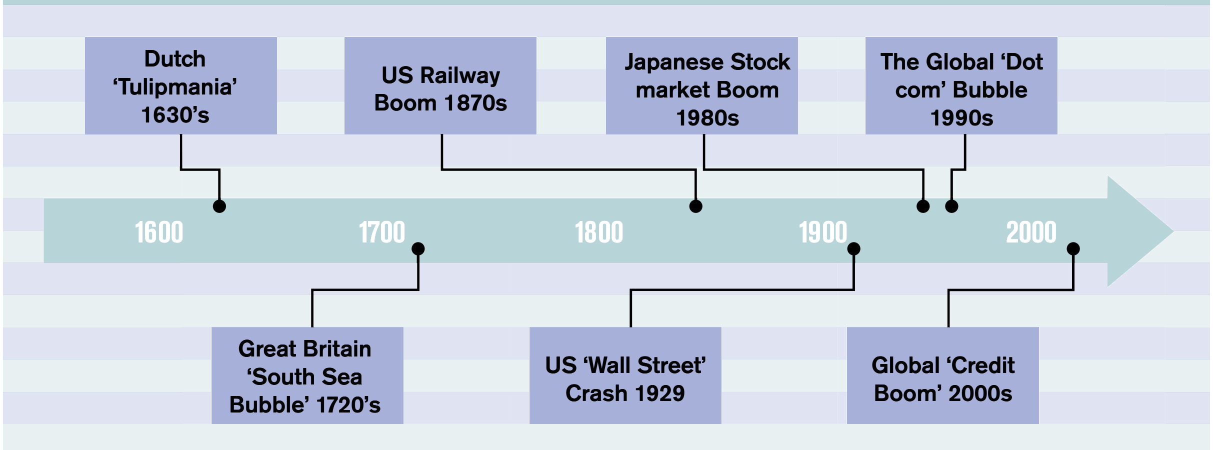
William Shakespeare, The Merchant of Venice

In all countries of the world where one has to 'opt-in' to become an organ donor, there is a shortage of donors; in Germany, for example, the organ donation consent rate is a mere 12%. In dramatic contrast, those countries with 'opt-out' donor legislative systems in place (also known as 'presumed consent') have significantly higher donor rates than 'opt-in'. In neighbouring Austria, for example, the consent rate is over 99%[1].

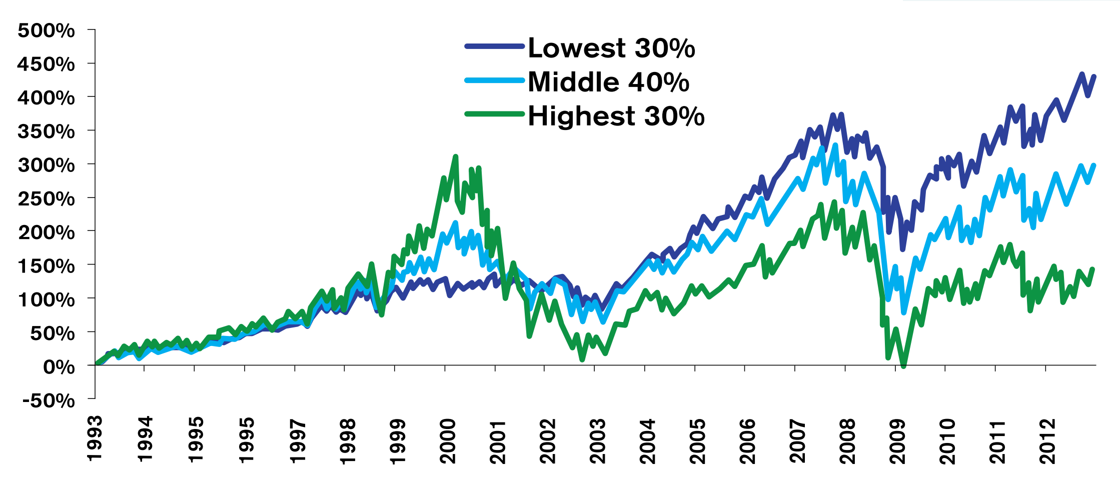
In the less exciting but certainly no less important world of pensions, auto-enrolment, with its emphasis on 'opt-out' rather than 'opt-in,' is clearly designed to have a similar effect in increasing the number of long term pension savers. Why is there such a significant difference between these two concepts given both effectively offer the same choice – but are framed in a different way? The reason is the inherent biases of human beings, in this case a strong instinctive bias towards the status quo. As Richard Thaler and Cass Sunstein explore in their brilliant book 'Nudge: Improving Decisions about Health, Wealth and Happiness', we human beings are not always as rational or logical as traditional economic models might suggest. We are often influenced by biases and heuristics – put another way, we make mental shortcuts. In the examples of organ donation or defined contribution pensions, the appropriate nudges can be of benefit to society. More broadly, the fascinating subject of Behavioural Finance shines a light on such mental shortcuts and the psychology of those who participate in financial markets, both individually and as part of a group or crowd. In particular, it seeks to understand how markets might be distorted or inefficient due to the influential biases of its participants. Warren Buffet himself once said "I would be a bum on the street with a tin cup if markets were always efficient."

As someone who has worked in the investment management industry for over a quarter of a century, it is clear to me that such biases can affect a range of variables, relating to judgment, conviction, implementation and investment styles. Failing to recognise these, and other types of behavioural biases, can result in misguided analysis – and as a historian, I am particularly interested in booms, bubbles and busts in market cycles. These are often viewed simply in terms of fear and greed, but in reality they reflect many underlying behavioural patterns, such as the 'Herd Instinct', that were just as prevalent in the 'Tulipmania' bubble in seventeenth century Holland as they were during the 1990s 'Dot-Com' boom. As Mark Twain is alleged to have said, "History does not repeat itself, but it does rhyme".

Some Famous Bubbles in History [2]



Total returns of low, medium and high volatility stocks in the global developed index, 1993-2012 (3)



Psychologists estimate that the human brain is potentially subject to over 120 different biases, and other examples include 'Base Rate Neglect' (ignoring the statistical facts and figures, often in favour of an emotionally appealing or attractive story – a real life example is the popularity of some 'Pseudosciences' despite minimal supporting evidence); or 'Anchoring' whereby we might consciously or subconsciously latch on to a number as a reference point. One of the pioneers of Behavioural Finance, Daniel Kahneman, once conducted an anchoring experiment asking his subjects what percentage of African nations were members of the United Nations. Those who were asked whether it was more or less than 10% guessed on average the answer 25%; whilst the answers of those asked if it was more or less than 65% averaged 45%.

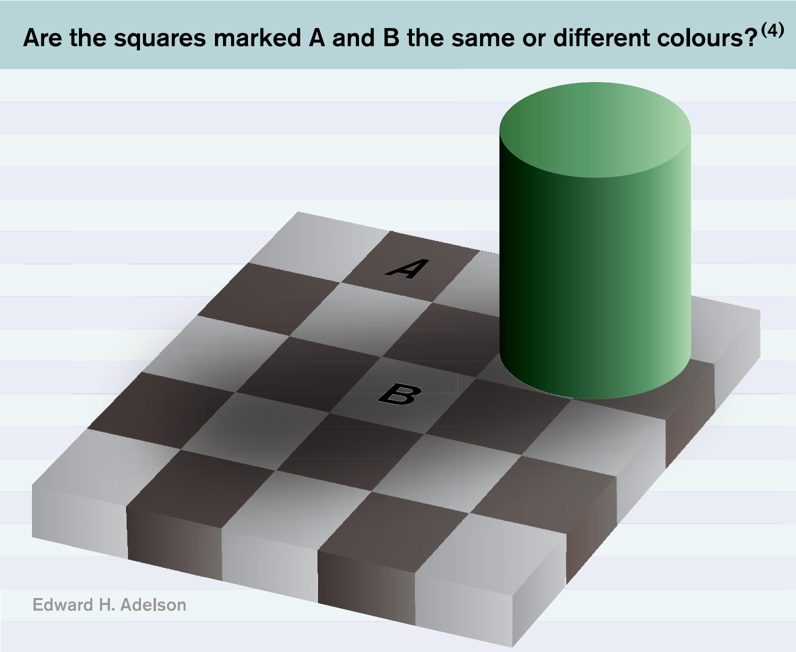
Professor Kahneman, incidentally, was awarded the Nobel Prize for Economics in 2002, no mean achievement for a psychologist. The point is that Behavioural Finance is important because it relates to real people in the real world, whereas traditional economic models assume that people are always rational decision makers who fully analyse data and act logically before they reach conscious decisions. A growing awareness of this means that Behavioural Finance is becoming increasingly mainstream as investors question previously held beliefs and recognise the dangers of biases such as the Herd Instinct.

One area in financial markets that is coming under increasing scrutiny is the inefficiency of market capitalisation weighted equity benchmarks. Almost by definition, such benchmarks will overweight what is overvalued and underweight what is undervalued. It can be enlightening to see how poorly these market cap benchmarks generally perform in comparison to those constructed using different methodologies. Indices containing low and medium volatility stocks, for example, have generally had superior risk-adjusted returns compared to higher volatility stocks, over most meaningful time periods and across most countries and regions. In the case of the global developed index (see chart below), the highest volatility stocks have performed the least well over the last 20 years.

Once again, the Behavioural Finance candle lights up and exposes the questionable nature of long perceived assumptions, including areas traditionally held sacred such as the Capital Asset Pricing Model (CAPM). Interestingly, if one combines minimum volatility strategies with a fundamental indexation filter, one can construct indices with even better risk-adjusted return characteristics than each component, both of which are superior to market cap indices.

Moving away from investment, human biases can also lead to sub-optimal decision making around board tables and within committees, so understanding key aspects of social psychology – above all recognising and preferably avoiding mental shortcuts – is an important defence against what is often referred to as 'Groupthink.' Conformity is another bias to be particularly wary of, and the importance of having a 'devil's advocate' in a decision making group cannot be underestimated, if only to challenge the consensus.

One of the most relevant quotes about decision making when I talk to trustee boards or at conferences such



as the **OPDU** Annual Pension Risk conference comes from Jonathan Haidt who says, "The emotional tail wags the rational dog." An awareness of Behavioural Finance helps investors and trustees guard against this aspect of human nature.

Interestingly, outside of work hours it is a privilege to be a member of The Magic Circle, not least because of magicians' fascination with the human brain; in addition, I like to illustrate various aspects of Behavioural Finance using psychological experiments. I refer not just to highlighting the most important psychological experiments of the twentieth century, including the Solomon Asch Conformity and Stanley Milgram Authority examples, but also live interactive demonstrations of the wonderful, if sometimes strange or quirky ways in which the human mind works.

Take for example one of my favourite optical illusions, the Checkershadow (see image above). If Behavioural Finance teaches us anything, it is the importance of challenging your own instincts or assumptions...just as you should challenge the view that the squares marked A and B are different colours. They are, in fact, the same colour. On first inspection you almost certainly will not believe it, so feel free to find a pair of scissors and cut them out to compare them.

In conclusion, therefore, whether in the fields of investment or more general decision making, it is important that we challenge our hardwired beliefs and in-built biases in order to optimise our chances of reaching the correct conclusions. Behavioural Finance is indeed a candle that can illuminate our thinking.

Paul Craven
Head of EMEA Institutional Business
Goldman Sachs Asset Management
paul.craven@gs.com
www.goldmansachs.com

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[1] Richard Thaler (September 26, 2009). "Opting in vs. Opting Out". The New York Times.

[2] Source: GSAM

[3] As of December 2011. The Global developed region includes 26 countries (US, Japan, UK, Canada, France, Germany, Switzerland, Australia, Korea, Hong Kong, Spain, Italy, Sweden, Netherlands, Singapore, Norway, Belgium, Finland, Denmark, Israel, Luxembourg, Austria, Ireland, Portugal, New Zealand, Greece) based on the S&P BMI's definition.

Time period selected due to data availability. For illustrative purposes only. The universe of stocks for the global backtest was members of the S&P Global BMI and the Market Cap Index. The Market Cap Index for a given region is an equity portfolio that is based on internal calculations through 2001 and uses the corresponding component of the S&P Broad Market Index from 2002 onwards due to data availability.

These performance results are backtested based on an analysis of past market data with the benefit of hindsight, do not reflect the performance of any GSAM product and are being shown for informational purposes only.

[4] Edward H. Adelson, 1995

The legal risks involved in current investment trends

Jeremy Goodwin *Partner and Head of London Pensions, Eversheds LLP*

Fed up with thinking about investment decisions?

Being sold the fiduciary management pill?

Read the instructions first…

On the back of the drive for pension schemes to make better use of investment expertise and to invest in more diverse investment classes in a more nimble fashion, many trustees are now looking at fiduciary management (or similar structures from various providers) as the future.

I believe it to be a good option for many schemes, but adopting it will not be straightforward for most.

What is fiduciary management?

Fiduciary management means different things to different people. However, a key theme is that it changes the traditional division between advice and execution in relation to investment decisions.

Under a traditional model:

- consultants advise
- trustees execute that advice by taking investment decisions; and
- fund managers implement those decisions.

Under the fiduciary management model however:

- trustees focus on risk management and wider investment strategy, while (broadly)
- either consultants or fund managers give the investment advice, take the investment decisions and implement that advice.

Please note that the extent to which the fiduciary manager adopts all these roles will differ by manager and by appointment. There is no 'one size fits all' approach: trustees thinking about fiduciary management will need to decide what is suitable for them.

Why is this a good thing?

Fiduciary management potentially enables trustees (through the fiduciary manager) to take better investment decisions, faster. This can be particularly attractive where trustees look back and see missed opportunities (such as whether to de-risk or to invest in assets that were particularly good value).

By delegating the execution of their investment strategy to consultants, the likelihood of missed opportunities may diminish (through them having the expertise to know about the opportunity and the systems to act on that knowledge quickly).

So, should all trustees appoint fiduciary managers?

While it will be a useful tool for some schemes, fiduciary management is unlikely to be suitable for all.

Factors for trustees to consider include:

- Is there a problem currently? In particular, does a trustee board consider that it has insufficient investment expertise or the inability to act 'nimbly'?
- If there is a problem, what are the costs associated with the fiduciary management model and is there another alternative available which achieves a similar result at a lower cost?
- If fiduciary management still looks attractive, do the trustees have sufficient resources to manage the risks associated with it?
- What type of fiduciary manager should the trustees choose?

Potential current problems

There has been some talk over the last few years of the end of the traditional model of investment decisions, which are taken in quarterly meetings by well-meaning amateurs trying their best on the basis of advice received. Everything must be 'better' and 'faster'.

It is sensible for trustees and employers to challenge this: do they believe that others could have done things materially better, and how much does performance that is (arguably) less than the optimum matter in practice?

It may be that the employer and trustees are comfortable with the current cost benefit analysis: the returns being achieved are sufficient given the costs of achieving them and the risks of the alternatives. The strength of the underlying employer covenant could be a material factor here: if the employer is weak, it may be more important to ensure that any investment underperformance is addressed.

Fiduciary management and its alternatives

If the trustees and employer consider there to be an issue with the trustee's previous performance, they could sensibly consider fiduciary management as an option.

As a fiduciary manager is assuming more risk and responsibility, this will usually be more expensive than a simple traditional approach. Whether this is good value for money will depend on the trustees' and employer's view of the current problems, and their view of the alternatives.

Finding alternatives to fiduciary management means looking at two things:

- greater investment expertise; and
- more nimble investment decision-making.

In terms of expertise, further trustee training (in particular for any investment sub-committee) might help. It may also be worthwhile appointing an independent trustee with particular investment expertise. In addition, the trustees could ask for a greater budget so that they can get better quality investment advice, or appoint a chief investment officer. These resources of course might not be available.

In terms of the speed of investment decisions, this could be addressed through changes to the way in which decisions are taken. For example, is there an investment sub-committee? If so, does it have decision-making powers? If not, would this be sensible to increase the ease of decision-making? Is anything else stopping the sub-committee from meeting on an ad hoc basis whenever a decision is needed?

The need for nimble decisions may be such that the trustees decide they should be taken without the need for a meeting to approve them. In this instance, the trustees may pre-agree triggers with their investment consultants for changes to the scheme's investments.

These alternatives show a limitation in the traditional model: it is not very scalable. Adapting the traditional model in the way set out above can work reasonably well for larger schemes. However, these schemes can also find that the traditional model will never be as nimble or sophisticated as fiduciary management: a huge amount of time, effort and money could go into trying to make the traditional model work better when there is an alternative available (fiduciary management) which can be more effective.

In addition, the fiduciary management model enables trustees of smaller schemes to benefit from economies of scale that may not be available under the traditional approach.

Risks associated with fiduciary management

From a legal perspective, fiduciary management simply involves the trustees delegating their investment decisions to a third party.

The Pensions Act 1995 in essence provides that trustees can escape liability for their investment decisions if they have delegated these decisions to an authorised person, and they have taken all such steps as are reasonable to satisfy themselves:

- that that person has the appropriate knowledge and experience for managing the investments of the scheme; and
- that he is carrying out his work competently and complying with the scheme's statement of investment principles and the need to have a diversified investment portfolio.

This means that the fiduciary management model can help the trustees manage their risks if they comply with these requirements. This however is not simple.

Appropriate knowledge and experience

As set out above, fiduciary management involves consultants or fund managers doing more than they have done traditionally. For consultants, not only do they need to advise, they now need to take decisions and execute. For fund managers, not only do they need to implement, they also now need to give advice and take investment decisions.

This means that the fiduciary manager does not necessarily have material knowledge and experience of all the different areas covered by fiduciary management.

We believe that there are at least 25 companies offering a fiduciary management service to trustees. These services differ materially from one another and give rise to very different legal risks. In terms of their knowledge and experience, trustees will need to access independent research and testing to see whether the company which is marketing to them is viable: what lies behind the marketing material? It is central to the trustees' legal duties to ensure that the potential fiduciary manager is experienced and viable.

Carrying out work competently

If the trustees have delegated the actual decision-making to the fiduciary manager, and that manager is taking increasingly complex decisions more and more quickly, the trustees need to establish who has got the time and expertise to monitor the fiduciary manager.

If the trustees put in place a system for them to check decisions, this undermines a key purpose of fiduciary management: to take complex decisions quickly. However, if the trustees appoint a third party to monitor the fiduciary manager (which would often mean retaining the existing investment consultant in this role), this adds a further layer of costs to the trustees' investment decisions.

Trustees may also be uncomfortable delegating this much to a third party: they might consider investment performance to be central to their job, and something they should be doing on proper advice.

Other risks

The trustees should consider what lies behind the fiduciary manager. If a delegated fiduciary manager were to incur material losses in a big fund, could the manager stand behind those losses or would it simply not survive? If not, to what collateral (if any) do the trustees have access in order to protect the scheme? Trustees may accordingly consider scale to be key here.

The contract in place with a fiduciary manager would also commonly include limits on the manager's liability. Is this limit appropriate given the funds that the manager will be responsible for and the investments it will be making? These limits will often need to be negotiated.

Trustees should also address the manager's potential conflicts. These can arise in various ways. Most obviously, if the fiduciary manager is investing in the fiduciary manager's own products, who is checking to ensure that this product is the most appropriate for the relevant pension scheme? Different fiduciary managers take different approaches to investing in their own products, and this is something that trustees should investigate.

(The quid pro quo for fiduciary managers investing in their own products is that this often makes the fiduciary management service cheaper than a competitor who does not do this. This means that there is often a 'price' for the trustees not having a fiduciary manager with potential conflicts of interest.)

Conclusion

Fiduciary management is a useful new option available to trustees who are looking to improve the quality and speed of their investment decisions. It is however not without risk, and trustees would be sensible to consider the alternatives before deciding whether to adopt it.

Jeremy Goodwin
Partner and Head of London Pensions
Eversheds LLP
jeremygoodwin@eversheds.com
www.eversheds.com

DC default funds – creating the perfect colour scheme

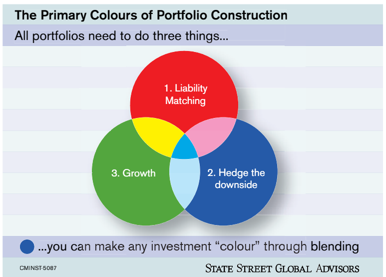
Nigel Aston *Managing Director and Head of UK Defined Contribution, State Street Global Advisors*

The vast majority of DC scheme members are invested in the default fund, so its efficacy is crucial to ensuring they are on the right path to retirement readiness.

In a difficult environment characterised by fragile economic recovery, continuing volatility in the financial markets and low interest rates, now more than ever DC schemes need to create better solutions for their members.

What's wrong with existing defaults?

Every investment portfolio, whether defined benefit or defined contribution, needs to achieve three objectives. First, the portfolio needs to meet some sort of liability – typically a future income stream. Second, it needs to provide growth (taking a chosen level of risk to achieve real returns) and third, it needs to protect against the downside. We can perhaps visualise these requirements as the three primary colours, combining or blending growth and downside protection to meet anticipated liabilities, much as an artist mixes the paints in his palette. This can create the right investment 'shade' for each scheme.



Regrettably, however, the way in which the three 'colours' have been mixed hasn't always created a masterpiece. It doesn't have to be this way.

Before assessing how default funds can improve, it's important to state that, by its very nature this article deals in generalisations. A number of well-governed plans have implemented default strategies that are thoughtful and effective. However, here we'll review the flaws in the design of those existing arrangements that do not benefit from ongoing diligent stewardship.

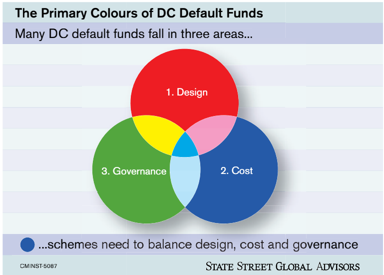
There have been three distinct eras of default fund. The first 'vintage' were balanced managed funds. Consumers see these as misnamed. A fund that never really changes its asset allocation doesn't tend to be perceived as 'managed' in any real sense. The second era of default funds was characterised by low-cost, passive offerings with 100% invested in equities in the growth phase followed by steep de-risking close to retirement. These funds suffered from significant volatility and while equity markets typically deliver growth over time, savers weren't prepared for the swings in value that accompanied the returns. Annual benefit statements that show a saver that his or her pot has fallen since the previous year do not land well. Default funds that invested 100% in equities (and sometimes only in UK equities) now look too concentrated – there was no diversification. The third, and latest, era of defaults – diversified growth funds – delivers diversification but often at a comparatively high fee.

To date, the de-risking phase of almost all default funds has been delivered through a mechanistic administration process, rather than investment design, typically using a lifestyle overlay whereby the funds are moved from equities into less-risky assets on pre-determined dates corresponding to age over the last five or so years of an individual's lifespan within the scheme.

This approach gives what can be considered an illusion of precision in two ways. Structuring the de-risking to a member's exact birthday seems to offer personal-isation and accuracy but what reason would there be to make an investment allocation decision simply because it's the member's birthday? In addition, few thirty-year-olds know exactly when they will retire – and the decision may not even be in their hands. It is unhelpful to exactly define a de-risking date 40-odd years away from an individual's retirement date.

Colouring the next generation of default funds

Above all, what's needed is for schemes to achieve the right balance between the design, cost and governance of default funds – mixing the three primary colours to achieve the right shade for the scheme members.



Design

A significant issue with the design of default funds is the dislocation between the saving, or accumulation, phase and the retirement income, or decumulation, phase. There's little sense that what a member is saving for is a replacement income and, because this connection is obscure, it doesn't encourage people to contribute more. We need to get to a point where, as in defined benefit, there is a clear objective in terms of anticipated income – it's one journey not two. We should look for ways to lock in income at various stages in the glidepath using liability-driven investment (LDI) techniques, not necessarily for the whole fund but perhaps for the elements that cover the minimum income requirement. This type of approach should mean that members don't necessarily have to buy an annuity and can stay invested for longer.

The second key problem with the design of DC default funds to date is the lack of choice. Schemes have been presented with a virtually binary choice when it comes to default: either invest 100% passively in equities, with low fees but little protection from volatility, or choose a diversified growth solution to achieve smooth returns and some growth but at much higher fees. In other words, put up with the bumps in the road or pay for increased predictability. In reality, what tends to happen is that these strategies are blended together – some diversified growth combined with some passive investing to bring down the cost. The result is a somewhat inconsistent portfolio with competing elements potentially fighting against each other.

Cost

Default funds have often been more expensive than they need to be and, as alluded to above, the decision to invest either actively or passively has been led by cost considerations. Perhaps the debate over 'active or passive' actually misses the point and the right approach is 'active and passive' but combined in a more thoughtful and cogent way. Schemes can use passive funds in efficient markets to keep costs low, but with an active asset allocation overlay to determine which markets to invest in and in what ratios. This type of approach – passive components actively mixed – might be the place to go next.

Governance

The Pension Regulator's recent guidance highlights the fact that governance is an ongoing deficiency in many default funds, where a "set and forget" approach has been all too common. In the first vintage of default fund design, managed funds were defined in a split, say 60/40 between equities and bonds, but once that allocation was put in place, nothing would be changed. Even if that was the right asset allocation 20 years ago, it would be surprising if that were still true today. That is even more the case in a 100% passive equity fund, like those used as the growth stage in the second era of default fund design. It is essential to have a governance framework for a default fund to ensure that it remains fit for purpose and appropriate to the macroeconomic context as well as the changing needs of the membership. Unless there is some ongoing active governance, default funds quickly become obsolete.

No more painting by numbers

Understanding typical members' aspirations and creating the right investment 'shade' for their needs is a much more subtle approach than the blunt instrument of older default fund designs. Sophisticated asset allocation to support an approach like this is now possible at low cost and if you strive to understand the people you are serving, you can start to build default solutions to match.

We need to move away from the 'defined benefit good, defined contribution bad' debate. A well-designed default fund should be capable of delivering adequate levels of real income replacement through a combination of early participation, high contributions and age-appropriate asset allocation. The door is open to a wealth of opportunities for innovation. Consider the possibility, for example, of a system that self-corrects: might participants be comfortable with their plan sponsor automatically increasing or decreasing their savings rate to respond to market returns?

Of course, nothing's ever simple and while the design, cost and governance of default funds are critical areas for reform, scheme sponsors also need to urgently address the wider implications of auto enrolment, engagement and saving levels.

However, put simply, improving the default fund should be at the top of the list of DC schemes' most pressing concerns. A good default solution will encourage savings and, at the end of the day, that's what's it all about.

Nigel Aston
Managing Director and Head of UK Defined Contribution
State Street Global Advisors
nigel_aston@ssga.com
www.ssga.com

Claims, potential claims and how to minimise the risk of claims: 'lunch with your pensions lawyer'

Dan Schaffer *Partner and Head of Pensions at Herbert Smith Freehills LLP*

The reason for so many claims in the world of pensions was foreseen by the 1982 Euro chart topping singer of 'Words', F.R. David.

If only we had listened to him more carefully: 'Words don't come easy'.

OPDU tells us that it is seeing an increasing number of claims arising from interpretation and amendment of trust deeds and applications for rectification. No surprise.

Pensions drafting has to be evergreen to stand the test of time. But if the draftsperson was too brief the user is left simply guessing as to how to apply the provision. Too complex and detailed, mistakes through layered amendments can creep in over time.

What can we do to resolve and minimise drafting and deed of amendment process claims?

You should raise this question with your pensions lawyer next time you are at lunch with her. The way into the conversation to avoid the appearance of brazenly asking for free advice is to refer to (manufactured) memories of standing in the finishing area of a kermesse in Flanders in 1982 with FR David playing over the tannoy and a rotund local whispering in your ear "*de woorden komen niet gemakkelijk*".

The waiter hands you the menu. Take this as the cue to explore three important developments.

First, ask her about the increasing use of fast track cheap court applications for summary judgment for an order for rectification of drafting errors. This provides far greater certainty than simply executing a deed of correction and then hoping. If the evidence is so powerful that a High Court judge is prepared to order rectification without a full court hearing (and may even be prepared to make that order over the telephone) it is at least worth investigating as an option.

As the starter course arrives you can raise the second development.

Where there has been a procedural oversight in the execution of the deed it may be that a court would be prepared to apply the solution that Vos J applied in Re Wembley (2011). A court may well be prepared to overlook a procedural imperfection and treat it as complied with. It is almost certain that this 'cure' will be tested further in the courts in the coming year or years and may very well be applied further where the facts cry out for a sensible outcome. But advising on its application without actual court blessing is uncertain at best. There is a good case here for legislative intervention to give the courts clearer powers to cure administrative slips. What it would take is a shopping list of uncontroversial formalities set out in statute. Let's see what happens in this space. You may not need the breath hold of Jacques Mayol.

Third, when it comes to ambiguity or even that uncomfortable moment when it is realised that the words on the page of the trust deed do not say in neon lights what the trustee and employer always 'understood' would be the position, all may not be lost. There is a growing sense that the courts may well be prepared to interpret the words (if there are words to interpret) to reach the 'sensible' (i.e. preferred) outcome. The same approach is applied in construing pensions documentation as in commercial contracts. We are told there are no special rules of construction (Millett J in Re Courage Group's Pension Schemes [1987] 1 WLR 495 at 505F). The approach should be practical and purposive (see Mettoy Pension Trustees Ltd v Evans [1990] 1 WLR 1587 at 1610C).

The House of Lords and now the Supreme Court has signalled that a strict literal approach will not always be applied. In Rainy Sky SA v Kookmin Bank [2011] 1 WLR 2900 Lord Clarke said at [30]:

"…where a term of a contract is open to more than one interpretation, it is generally appropriate to adopt the interpretation which is most consistent with business common sense."

But the truth is all three developments have their limitations.

If the evidence simply does not to demonstrate what the parties intended then rectification will not be possible. As we have seen in the IBM case in 2012 witness evidence may be ancient and problems can arise where there are changes of trustees and consolidation of deeds. The *Re Wembley* 'solution', for all its promise, is still in its infancy. And the so-called 'purposive' approach to interpretation advocated in some decided cases will not always be possible.

So what can you do? This is where you fix your lunch companion with a watery stare. You may wish to reach out and gently rest your hand on their arm plaintively.

I want to suggest a solution that occurred to me during the AMP v Barker litigation in 2000.

I call it -
'AUTO-CORRECTION LANGUAGE'.

As the main course arrives ask your pensions lawyer for her views on using ACL in more complex deeds of amendment and for consolidations (where the aim is to reproduce the true legal position, not a replication of buried flaws).

How does it work?

The deed of amendment would contain an overriding provision which operates to encapsulate the intended principle/objective. It is expressing that principle/objective that is key. It provides both a means to aid purposive interpretation of the whole rules and it acts to correct (with greater confidence than a deed of correction). The detailed textual changes are consigned to the schedule to the deed of amendment.

The basis for such an approach is now judicially supported by the decision in Premier Foods v RHM Pension Trust [2012]. Warren J (who had extensive experience advising on pensions deeds whilst in practice as a barrister) had to decide whether a short deed setting out a principle but not the textual amendments to the rules was effective to effect sex equalisation changes. He held

> ***"19. The issue between the parties is whether equalisation took place at the date of the Deed of Intention, 15 November 1990, or at the date of the 1993 Amending Deed, 18 February 1993…***
>
> ***50. I reject any argument that a textual amendment is necessary if clause 7 of the 1990 Amending Deed is to be available. By textual amendment, I mean a change to the wording of the Scheme by express incorporation of replacement or additional text in identified places in the Deed…***
>
> ***53. It is perfectly clear that what clause (2) requires the Trustee to do is to operate the Scheme subject to the specified alterations. Those alterations impact on benefits and the Trustee is to operate the Scheme in all respects just as it would run it if full textual amendments effecting the alterations had been made."***
>
> What does an auto-correction provision actually look like? Here's some wording that you look at if the small talk begins to run dry:
>
> ***"1.In exercise of the amendment power in clause X, this deed amends the Trust Deed and Rules in order to: [describe the principle/objective] (the "Principles"). The Trust Deed and Rules shall be treated as amended accordingly.***
>
> ***For convenience these changes are reflected on the face of the Rules by the textual amendments in Schedule 1 to this deed of amendment.***
>
> ***2.The updated Rules shall be interpreted consistently with the Principles stated in clause 1 above. If an amendment in Schedule 1 is inconsistent with the Principles that amendment in Schedule 1 shall be void ab initio and the Trustees and the Principal Employer shall enter into a deed of correction to reflect the true legal position effected by clause 1 above on the face of the Rules"***.

The exercise of being forced to describe the principle/objective actually helps in the detailed drafting process. And if that schedule containing the textual changes does turn out to harbour an 'infelicity' this technique can boost the confidence in construing the rules purposively. It may well help to avoid a full blown rectification hearing.

FR David would be proud that thirty years on we may have found a way to help us "see what we mean", when - as he sang in that haunting melody - words don't come easy.

I'd like now to turn to another issue that **OPDU** is seeing coming across its proverbial desk - trustee mistakes. Examples include death payment discretion/payment of unauthorised benefits. To meet claims how helpful it would be if the trustee's mistake could be reversed. As you peruse the dessert menu may I suggest you ask your pensions lawyer how the law approaches the following:

- Trustee mistake where it can be shown that there was a complete lack of appreciation that a power was being exercised. Can it be demonstrated that on the facts there was no exercise of power at all? The basis for this is the case of Turner v Turner considered in Stannard v Fisons (1990), Betafence v Veys (2005), Smithson v Harrison (2007), IMG (2010)

- How easy will it be to show the trustee had no power (authority) to enter into the transaction so the whole transaction is null and void? The Rule in Re Hastings Bass interpreted by the Court of Appeal in Pitt v Holt. We are awaiting the judgment from the Supreme Court hearing in March 2013.

- Trustee mental engagement but a failure to consider the right factors (and no legal adviser involved) – Rule in Pitt v Holt (2011) (formerly known as the rule in Re Hastings Bass)
  As you deliberate over whether to have a glass of sauternes with your dessert you might ask the lawyer whether:
  The Court of Appeal's statement that 'only rarely will it be appropriate for trustees to initiate proceedings' (Pitt v Holt (CA)) means the employer and trustee cannot access this remedy; and
  Whether pension trustees have a greater chance than private trustees when it comes to accessing the rule in Re Hastings Bass?

- When will reversing voluntary disposition caused by serious error be available in a pensions context Rule in Ogilvie v Littleboy interpreted in Pitt v Holt (CA)

Reversing mistakes will in practice meet with member claims as to reliance/change of position. The issue is then whether this has the effect of causing the trustee to be held to the error in the future. Handling this sort of claim effectively involves putting the member to proof to demonstrate:

- that the literature pointed to as the 'promise' contains unequivocal guarantee language

- that 'but for' the representation the member would have taken different action

- that the member has taken action that is irreversible and if the 'promise' is not held to he will suffer serious detriment which would be inequitable.

And even if the member can demonstrate all this and the stakes are high enough I still believe all may not be lost if the issue has to be litigated in the courts. It is true that Warren J in Catchpole and Etherton J in Hearn v Younger were willing to hold trustees bound to promises for the future based upon non-contractual promises/statements. Decisions of pragmatism and equity they may be, but they conflict with binding case law from higher Courts. As you eat the mints with your coffee look up on your iphone Baird Textile Holdings Ltd v Marks and Spencer plc [2001] EWCA Civ 274. Keep this on your favourites; you may need it one day.

This brings me finally to some practical advice on claims management. I will collect them under dos and don'ts.

Don'ts

- Don't send internal blaming or critical emails – they may be disclosable to the other side

- Don't circulate legal advice outside 'privileged' circle without speaking to your lawyer

- Don't destroy evidence

- Don't miss time limits – can a standstill agreement be put in place to stop time running?

- Don't conduct bad tempered dialogue – it is only likely to increase legal costs and reduce the chances of a settlement

Do's

- Make prompt notification on your (**OPDU**) insurance policy – all it takes is a phone call and *OPDU*'s experience may well help you handle your own claim

- Identify and obtain witness evidence (even informally)

- Think about the right forum to resolve your dispute (and think about whether you can successfully challenge the jurisdiction of Pensions Ombudsman)

- Ask yourself whether there is an opportunity to settle directly with members rather than involve lawyered rep bens who may reduce the chances of a settlement out of court

- Prepare early for worst case scenario

- Make sure any settlement agreement puts all issues to bed.

Conclusion

As you put on your coat and return to the office sated, you should now be far better prepared to avoid what Bob Marley called 'fussing and fightin'.

Dan Schaffer
Partner and Head of Pensions
Herbert Smith Freehills LLP
daniel.schaffer@hsf.com
www.herbertsmithfreehills.com

Insurance for schemes winding up

With the regrettable increase in the number of schemes winding up, **OPDU** has a separate Discontinuance Policy of insurance to cover trustees for the liabilities that can still potentially arise following completion of the wind up.

Even if a scheme or company has totally discharged its future liabilities in relation to the pension scheme, a past trustee remains personally liable, potentially for their lifetime, for any acts they undertook whilst in the role. The following is a brief summary of the cover provided and please email **enquiries@opdu.com** for further information:

What is covered?

- **OPDU Elite** Discontinuance will pay the loss a past trustee or employee is legally obliged to pay as a result of a wrongful act in relation to the named pension scheme(s).
- It provides cover for wrongful acts committed prior to the inception of the policy, from the date the scheme was first established
- It will also pay all reasonable legal costs incurred in relation to an official or fact finding investigation by the Pensions Ombudsman, Pensions Regulator or other equivalent body.

Who is covered?

- Past trustees
- Employees
- A corporate trustee company
- Lawful spouses, estates, heirs or legal representatives of past trustees or employees in the event of death, incapacity, insolvency or bankruptcy
- Any other natural person or entity who acted as trustee as attached by specific written endorsement.

Who is included in the definition of trustee?

- Any natural person, including a director or officer of a corporate trustee company, who was appointed as a trustee.

Who is included in the definition of employee?

Any natural person who provided services in relation to the pension scheme whilst in the employment of the sponsoring employer company, corporate trustee company, trustee or pension scheme, including:

- Directors and officers
- Committee and / or board members
- Administrators
- Pension scheme managers.

What is included in the definition of corporate trustee company?

- Any company appointed to act as a trustee, regardless of whether that company was a subsidiary or not of the sponsoring employer company.

What constitutes a claim?

- A written demand alleging legal liability
- A civil or arbitral proceeding
- A criminal suit
- An administrative or regulatory proceeding
- An official investigation.

What wrongful acts are covered?

OPDU Elite Discontinuance offers protection against a comprehensive range of allegations, including:

- Breaches of trust, duty and statutory provision
- Negligence
- Administrative errors
- Wrongful omissions
- Misstatements
- Misleading statements
- Maladministration
- Financial loss resulting from damage, loss or destruction of pension scheme documents.

What is included in the definition of loss?

- Damages
- Judgments
- Settlements
- Awards (including distress awards or compensation as determined by the Pensions Ombudsman)
- Defence costs
- Costs for legal representation in relation to an official or fact finding investigation instigated during the policy period (i.e. where there is no requirement for an allegation of a wrongful act) by the Pensions Ombudsman, Pensions Regulator or other equivalent body.

What is included in defence costs?

- All reasonable third-party fees, costs and expenses that are incurred to defend or appeal a claim.
- Provision for full advancement of defence costs, where required.

Additional features of Elite Discontinuance

- Limits of liability to £10m and higher if required
- Small retention might be applicable
- Policy periods ranging from 1 year to 12 years are available
- Optional extensions are available to provide cover for:
- Civil fines and penalties (where insurable and the premium is not being paid for out of the scheme assets; and
- Member-nominated trustees in the event of innocent non disclosure or misrepresentation.

OPDU Elite Discontinuance is underwritten by ACE European Group Limited.

Members

www.opdu.com

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Abacus Holdings Ltd
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Degussa Ltd
Dixons Group plc
Downlands Liability Management
DSSR
DT Assembly & Test-Europe Ltd
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East London Bus Company
E H Mundy Holdings Ltd
Eisai Europe Limited
Electricity Pension Services Ltd
Electrolux plc
Energy Institute
EPC United Kingdom plc
Equiniti Limited
Euler Hermes UK
Evonik Degussa UK Holdings Ltd
FirstGroup plc
Fives Stein Ltd
FKI plc
Former Registered Dock Workers Pension Fund
Foster Yeoman Ltd
Furness Withy (Chartering) Ltd
FW Terminals Ltd
Gartmore Investment Management Ltd
GB Ingredients Ltd
Getronics UK Ltd
Glass's Information Services Ltd
GMB
Goldschmidt UK Ltd
GSI Lumonics Ltd
Guinness Peat Group plc
Hapag-Lloyd (UK) Limited
Heating & Ventilating Contractors Assoc
HFGL Ltd
Highlands & Islands Airports Ltd
Highway Insurance Group plc
Hiscox plc
Honeywell Ltd
Honeywell UK Ltd
Honeywell UK Ltd (HIPS)
Howden Compressors Ltd
Howden Group Ltd
Husqvarna UK Ltd
Inchcape International Holdings Limited
Inspec Find Chemicals Ltd
Intercontinental Hotels Group Ltd
IPA Portable Pension Plan
J Sainsbury plc
Jabil Circuit UK Ltd
James Fisher & Sons plc
Jones Lang LaSalle
Kingfisher plc
KLM Royal Dutch Airlines Ltd
Lafarge SA
Landmarc Support Services Ltd
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May Gurney Integrated Services plc
McGraw-Hill International (UK) Ltd
Merchant Investors Assurance Co. Ltd
Merchant Navy Officers Pension Plan
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Midlands Co-operative Society Ltd
Miele Company Limited
Milk Pension Fund Trustees Ltd
Miller Insurance Services Ltd
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Muntons plc
National Association of Clubs for Young People
National Grid plc
National Irish Bank Limited
National Oilwell Varco UK Ltd
NCR Ltd
NDS Ltd
Neopost Ltd
NEST Corporation
Newman Labelling Systems Ltd
News International plc
NIAB Ltd
Norddeutsche Landesbank
North of England P&I Assoc Ltd
Northern Bank Limited
Northern Executive Aviation Ltd
Novar Electrical Holdings Ltd
Novar Ltd
NOW: Pensions Trustee Limited
Océ (UK) Ltd
P&O Ferries Division Holdings Ltd
P&O NedLloyd
P&O Steam Navigation Company
Panasonic Communications Company (UK) Ltd
Panasonic Europe Ltd
Parity Group plc
Paymaster (1836) Ltd
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Perivale-Gutermann Limited
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PNPF Trust Co Ltd
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PricewaterhouseCoopers Services
Protega Coatings Ltd
PWS Holdings Ltd
R Griggs Group Ltd
RAC plc
Radiocentre
Railways Pension Trustee Co Ltd
Rank Leisure Holdings plc
Rayovac Europe Ltd
Really Useful Theatres Group Limited
Reliance Security Group plc
Renew Holdings plc
Rexam plc
Richard Irvin & Sons Ltd
Royal Air Force Benevolent Fund
Royal Institution of Great Britain
Samsung Electronics UK Limited
Sara Lee
SAUL Trustee Co
SCA Pension Trustees Ltd
Scipher plc
Scottish Enterprise plc
Scottish Power plc
Seatrans Shipping Services Ltd
Shaw Energy & Chemicals Ltd
Simmons Bedding Group plc
Six Continents Ltd
Southampton Container Terminals Ltd
Southern Water Services Limited
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Standard & Poor's Credit Market Services Europe Ltd
Steria Ltd
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Sybase UK Ltd
Sygen International plc
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Thames Power Services Ltd
The Arts Council of England
The Carpenters Company
The Chartered Society of Physiotherapy
The Dutton-Forshaw Group Ltd
The Glenmorangie Company plc
The Goldsmiths Company
The Industrial Dwellings Society 1885 Ltd
The Institute of Marine Engineering Science & Technology
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The Ironmongers' Company
The Joint Industry Board
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The Shipowners Protection Ltd
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OPDU

Occupational Pensions Defence Union Limited
90 Fenchurch Street
London EC3M 4ST
T +44 (0)20 7204 2400
F +44 (0)20 7204 2477
www.opdu.com

OPDU IS MANAGED BY **THOMAS MILLER**

Members of **OPDU** have approximately **£180 billion** fund assets in trust with over **780** schemes insured