

Trustee governance



CAMERON LAW

Red tape limiting trustee voting record

Much has been said about the need for engagement to help rein in excess, but trustees are limited in their ability to achieve this single-handedly, says **Clive Gilchrist**

Over many years I have become very critical of the increased legislation, regulation, rules, codes and so on, that beset pension trustees and scheme sponsors. I have complained at length about the regulatory burden imposed by the pensions acts and other legislation, just one aspect of which is the unfair governance burdens imposed on trust-based occupational pension schemes in the Myners principles and elsewhere. If it is important that trustees are encouraged to vote or to have a policy on activism, should that not also apply to contract-based schemes and other institutional investors? Why is it that pension trustees are always singled out as an easy target?

Following on from the banking crisis, this issue was raised again at the recent National Association of Pension Funds (NAPF) conference in Manchester, and subsequently in the pensions press. The government would like to suggest that trustees are to blame for not reining in the excesses of financial institutions, though at least Lord Myners had the good grace to accept that “no one group alone can be fingered for blame”.

It seems to me that non-executive directors are in a much better position than trustees to rein in excesses; after all they should have a more detailed understanding of a company’s business model than trustees can ever have. I also wonder what the reaction of politicians would have been if trustees had tried to change the way financial institutions conducted their business before the

disaster happened. I have more than a slight suspicion that we would have been told not to undermine the economic miracle brought about by our former chancellor and current prime minister.

Trustees’ clout in investing

The reality is that most trustee boards don’t really consider voting policies; they consider that there are more important issues for them to worry about. Equities, and in particular UK equities, represent a far smaller proportion of pension scheme assets than hitherto. Passively managed equities, and to an increasing extent actively managed ones, are likely to be held through pooled funds, where the trustees have no direct control over the voting rights; the most that trustees can do is to consider investment managers’ voting and engagement policies when selecting pooled funds. Yet at the numerous manager search interviews I have participated in, questions on shareholder activism and voting rarely, if ever, crop up. Managers report regularly on their voting record as part of their quarterly reports, yet it is not a topic for trustee discussion. It is not difficult to understand why this is; lay trustees carry major responsibilities, but trusteeship is not their day job. They must prioritise, and so it is not surprising that they focus on their primary duties. Voting policies will generally only have second or third-order effects on fund performance.

Ever-increasing regulation and bureaucracy have been major contributory factors to the demise of the defined benefit pension scheme, and there is no sign of that changing.

As Lindsay Tomlinson, incoming NAPF chairman, said in his opening speech in Manchester, “the government could generally deregulate and simplify things, but I approach this with some trepidation because I’ve never seen a government simplification initiative that ends up with the thing being simpler than when you started. It always seems to get more complicated”. I couldn’t agree more; simplification is essential, yet it never happens.

Following a recent outburst in these columns in which I commented on the disgrace that is our pensions system, I was asked what I would do to improve things. My cynical response was to promote, temporarily at least, the cause of anarchism – the belief that government is both harmful and unnecessary.

My suggestion was that if every law that has been introduced in recent years was repealed, we would be better off and could start again with the benefit of hindsight. It won’t happen, of course. But something radical is needed, we owe it to the next generation.

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