

## Corporate governance



# Two board members walk into a bar...

Trustees, unlike those in contract schemes, are unfairly held to account for investment governance, says **Clive Gilchrist**

**T**rustees' responsibilities have always been onerous, though not always taken seriously. That should have changed many years ago, and after the Pensions Regulator came into existence five years ago it would be a foolish trustee who didn't take the role seriously.

All of the boards I work with are aware of the requirements for trustee knowledge and understanding (TKU). Having successfully established a base level, the regulator has since been trying to raise the bar at appropriate opportunities, whether through codes of conduct, press statements, or pronouncements at conferences.

One result of that is the 'another nail in the coffin' concern regarding defined benefit (DB) schemes. I have some sympathy with that view – but not a lot. As trustees, we are charged with the responsibility of managing more than £1trn of assets on behalf of our members. It is easy to become blasé about large sums, but that is a million, million pounds – a one followed by 12 zeros. To the man in the street, that sounds like the sort of sum that deserves to be looked after properly.

One aspect of scheme governance, and one that will become more important, is its impact on defined contribution (DC) schemes. Many boards of trustees are responsible for both defined benefit and DC schemes, generally because the former is closed. But the majority of new DC schemes do not have trustees, as they are contract-based.

Clearly, as an independent trustee, I am deemed to have a conflict of interest and to be biased in favour of trust-based arrangements. But the fact is

they are generally governed better. That has been recognised in a current consultation paper, issued by the Investment Governance Group (IGG), which is seeking better "investment governance of DC pension schemes, both trust-based and particularly contract-based arrangements".

This little-known group – which includes representatives of relevant government departments together with the National Association of Pension Funds, the Association of British Insurers and others – has been established under the auspices of the regulator to promote best practice in investment governance – in other words, to carry forward what the Myners principles started.

Since the Myners principles were published, and indeed before, I have been concerned at the lack of a level playing field. Demands are made of trustees that are not made of other institutional investors. For example, shareholder activism, voting of shares, and regular monitoring of managers or funds are all important issues, but why is the pressure to comply applied just to trust-based schemes and not to other investors, including employers who establish contract-based schemes?

The IGG consultation paper attempts to address this, stating it intends its proposals to apply to contract-based schemes as well as trust-based ones. It proposes that all schemes have a document recording the roles and responsibilities of the decision-makers for investment governance. Trustees are already required to have a statement of investment principles, and the paper proposes that employers have something similar.

Unfortunately, the consultation paper does not go far enough. When selecting a 'provider' – investment manager or administrator – it refers to "including delegations of responsibility".

A principle of trust law is that trustees can delegate activities, but they retain ultimate responsibility; in contrast, employers can establish a contract-based scheme and delegate all subsequent responsibility to the provider.

Not only does this fail to address the level playing field issue but, more importantly, it leaves members without a guardian. The fund choices and their charging structure may be entirely appropriate on day one, but not a few years later. The provider may introduce new funds to the range, and even remove funds that become inappropriate or perform poorly; but a provider is unlikely to point out when the market has become more competitive and volunteer to reduce its fees.

Some employers are very responsible and establish a management committee to monitor their contract-based DC scheme, or ask their trustee board to do it for them. All too many, however, think their responsibility ends once they set up the scheme. These proposals will do little to change that position.

**Clive Gilchrist is managing director of Besttrustees**