



# Turning pro

**The Pensions Act 2004 may pack some hard punches on trustees without adequate training. Bob Scott Lane Clark & Peacock, sets out the necessary preparations to stop them throwing in the towel**

**M**any trustees must have groaned as the now defunct Opra published its nine page scope guidance setting out what they must be conversant with by April 2006. But with trustees increasingly in the spotlight – thwarting corporate takeovers, negotiating with companies over deficit funding, and taking responsibility for the investment of hundreds of billions of pounds – the importance of structured training, regular updates and appropriate insurance cover has never been greater.

## More than you bargained for?

Who can remember the days, not so long ago, when being a trustee hardly represented a significant commitment? A cou-

ple of meetings a year, a good lunch occasionally with the investment managers, and once every three years, a meeting with the actuary to discuss how long the contribution holiday would last and what benefit improvements might be made. Mergers and acquisitions? No problem – the scheme actuary (acting for the company) would negotiate appropriate terms and the trustees did not have to think very hard before agreeing to pay or accept whatever the commercial agreement stipulated.

It all started to change when Mr Maxwell fell off his yacht and the pace of reform quickened giving the Pensions Act 1995, the Myners Review and now the Pensions Act 2004. The upshot is that the role of a scheme trustee in 2006 will be unrecognisable from what it was in 1986 or even 1996.

In 2006 trustees will need to be:

- *alert to conflicts of interest.* Can they carry out their role as trustee and hold a senior position at the sponsoring employer? And can they rely on advice from their actuary if the same person also advises the company?
  - *risk managers.* The stock market falls in the early part of this century highlighted the inherent risks in equity investment but funds face many others too. Are benefits properly calculated? Is the scheme documentation up to date? Are proper procedures in place to ensure nothing is overlooked? Trustees need to be aware of the risks they face in running what are essentially multimillion pound businesses and must put in place effective ways to manage them.
  - *accountable.* Trustees' decisions and actions are now much more in the spotlight. The WHSmith pension fund trustees effectively scuppered a takeover bid for the company, and Philip Green's bid to take over Marks & Spencer stalled because the trustees would not talk to him. Those who are going to take such bold positions must be confident in their decision making and satisfied that their actions will stand up to scrutiny.
  - *better trained.* In his report on institutional investment, Paul Myners said that "funds and their sponsors should increase their investment in training for trustees". He also said that he "viewed the lack of investment understanding in trustees in general as a serious problem" and he recommended that it be a legal requirement that those taking investment decisions should be "familiar with the issues concerned". While not actually saying he believed many were incapable of taking proper decisions, Myners placed the issue of trustee training firmly on the agenda. This has been followed through in the Pensions Act 2004, Opra's scope guidance and the draft code of practice.
- The 2004 Act not only introduces requirements for trustees to have knowledge and understanding of general trust issues and to be conversant with their own documents, it also made significant changes to other parts of the legislation.

Out goes the minimum funding requirement (MFR) and in comes scheme specific funding. Trustees have new powers and responsibilities when it comes to setting contribution rates and they must have regard to the employer's ability to pay when doing so. They must publish a statement of funding principles (SFP) and set out a plan for achieving it in full over a suitable recovery period. Their statement of investment principles must be expanded and strengthened and they must also get to grips with the changes brought in under the Finance Act 2004. These will probably lead to proposals from sponsoring employers for amendments to the fund's rules.

### Making the grade

How can trustees manage this burden? How should employers help them? And what training do they need? They have an interest in being well informed if only because the Pensions Regulator (TPR) said they have six months from next April to get up to speed or else face sanctions if they take decisions without the necessary understanding. But employers have an interest in ensuring their trustees are well trained too. Companies with underfunded schemes may face awkward conversations with theirs as they develop SFPs, let alone what will happen when prospective bidders start asking questions about the fund deficit. These discussions should take place with well trained trustees and not ones afraid to take decisions because of a lack of confidence.

Opra's scope guidance consists of 13 units of training. Spread over a period of 18 months and assuming one could get through 4 units a day, this still means more than 3 days of training just to comply with the Pensions Act. Specialist trustees (for example, members of the investment sub-committee) may need further training to ensure they can take the decisions entrusted to them.

Training needs could be met from a variety of sources:

- *basic courses* provided by a wide range of organisations including the National Association of Pension Funds (NAPF), the Pensions Management Institute

(PMI) and the major professional firms. They could be attended by individuals or by the trustee board en masse. They will continue to be the bedrock of general trustee knowledge. Eventually, there will need to be some form of assessment to demonstrate that the course material has been taken in and trustees have not spent the day on their Blackberries or half asleep

- *scheme specific courses*, to cover units 10-13 of the scope guidance, will generally be delivered to the trustee board as a whole. They will be bespoke courses based on each scheme's actual documents, and so more expensive to provide than general training courses.

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Once they have been established, it will be relatively easy to arrange for annual updates to cover new material and induction courses to deal with new trustees. Again, some form of assessment seems likely

- *web based learning* could fill an important gap for trustees of smaller schemes or those who are spread out across the country or overseas. It will never take the place of face to face interactive training but could be useful in some respects
- *specialist courses and qualifications* for trustees with specialist roles
- *on the job training* where investment managers or professional advisers provide a presentation on a topical issue as part of the regular trustee meeting.

### Take the challenge

From two meetings a year 20 years ago, trustees today can expect four meetings a year and as many training days on top. It is a very significant increase in commitment which reflects the importance of their position to the running of schemes.

Is it a burden too heavy for the ordinary trustee to bear? How will member nominated trustees (MNTs) cope with the extra demands particularly if we are to see 50% member representation on trustee boards in due course? And what about the liability if it all goes wrong?

In many respects trustees should welcome the new requirements. The role is surely less onerous if the individual is knowledgeable, conversant with the scheme's documents and familiar with the issues they are being asked to address.

The new requirements will put pressure on providers of trustee training to ensure they devote the necessary resources to updating course material and preparing new bespoke and specialist courses. And if things do go wrong, trustees need to be confident that they have the necessary protections in place: evidence of training courses completed, indemnity from the employer and appropriate insurance cover. Professional advisers including pensions managers have an important role to play too. Trustees are not expected to become pensions experts and therefore must continue to seek detailed technical advice.

What will the educated trustee need to survive in 2006? My checklist is as follows:

- a *welcome pack* including all the relevant scheme documents, procedures and precedents
- a good *basic training programme* to cover knowledge and understanding
- a *bespoke scheme specific training programme* to ensure familiarity with the scheme's documents
- confirmation or *certification* to show they have successfully completed the above courses, and
- financial protection or *insurance* to protect against the unforeseen.

Trustees will certainly face more responsibility and commitment, but their new role may give greater satisfaction than it did in the good old days. **PW**

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The views expressed in this article are those of the author and not necessarily those of Lane Clark & Peacock as a firm.