

TRUSTEESHIP MODELS

Challenges to conventional wisdom

One professional flies a kite. Another digs in her heels.

Should the role of trustees in the governance of retirement funds be diminished? Should their roles be different on umbrella as opposed to standalone funds? What then of member representation?

The questions are topical because, unlike single-employer standalones, multi-employer umbrellas have been exempted from the legal provision that trustees be elected by fund members. On the other hand, wanting to improve the quality of fund governance, National Treasury and the Financial Services Board propose that all trustees meet “fit and proper” requirements which include minimum educational qualifications.

At the annual conference of the Pension Lawyers Association, David Gluckman and Samantha Davidson appeared poles apart. Gluckman, although managing director of Sanlam Umbrella Solutions, emphasised that he was speaking in his personal capacity as his provocative views had yet to be passed through colleagues. Davidson, a pensions lawyer at Shepstone & Wylie, spoke as provocatively from her perspective as principal officer on the boards of several standalones.

Gluckman felt that there were certain weaknesses in the present trustee model, but it didn't mean that he was opposed to member representation. “Quite the opposite,” he was quick to qualify. “In my model there

would continue to be say quarterly meetings with a ‘member representivity forum’ at the umbrella-fund level in much the same way as the current trustee model”.

But then came the rider that these meetings be held “with the understanding that final decisions on product structuring are best left to the sponsor”. Even more contentiously, he submitted that member representation could be strengthened “once member representatives are freed from the burden of governance”.

It could sceptically be contended against Gluckman that he wants unduly to increase the power of sponsors for their own gain. But no, he insists. He's looking purely to “optimisation of integration benefits, compensating for the massive investment required to build a major umbrella fund, which can give clients access to an appropriate product range at affordable cost”.

He'd also be mindful that the supposed benefits of member representation might be overrated. Research in the Sanlam benchmark survey, and others, show that few members of standalones actually vote for trustees and still fewer know who their trustees even are.

“If we can develop an appropriate and transparent market, then clients (participating employers) will force optimal product designs over time at appropriate



Gluckman . . . present weaknesses

charging levels and with appropriate degrees of independence,” he's argued. “If we do get a lower overall cost structure in the industry, it can only be by removing inefficiencies and layers of cost in the current model.”

So why bother with member-elected trustees, either in umbrellas or standalones? And won't the introduction of formal “fit and proper” standards, now envisaged by National Treasury and the Financial Services Board, impede the board participation of shop stewards, for example, who don't meet stipulated educational minima?

Davidson is forthright. There have always been, and still are, trustees who willingly and without charge undertake the responsibility and liability to look after other people's money even better than their own, she told the conference: “This is at the heart of a trustee's fiduciary duty.”

In her experience, these trustees properly discharge their fiduciary duties. Without knowing at this stage



Davidson . . . present strengths

what the “fit and proper” requirements will be, it would be a “great pity” if they deter or prevent these trustees from continuing.

Elaborating on her remarks, Davidson suggested a clearer focus on what “evils” the proposed requirements would be trying to address: “It might be that the remuneration or financial reward of trustees, who are not professionals or experts, has been an incentive for people to become trustees for the wrong reasons. I am unconvinced that new ‘fit and proper’ requirements will necessarily ensure that we filter out those whose primary purpose is not to look after other people's money even better than their own”.

She admits, as do others (implicitly including Gluckman), not to having a perfect solution. Anybody who does is presumptuous, especially with the rapidly-moving evolution of umbrellas. It makes the debate over trustee models, which go to the core of fund governance, all the more piquant. ■