



In the pensions war, who'd be a collaborator?

Brian Critchell, Principal at PAN Governance LLP, reviews how trustee boards know which side they are on in an increasingly confrontational, media driven and regulated world.

Who'd be a collaborator?

Pension trusteeship has become something of a military operation and a trustee board can be forgiven for thinking of themselves as brigade headquarters planning campaigns for their pension scheme. The current pensions environment has more than a whiff of the battlefield about it. To survive this, collaboration is essential!

In the two World Wars, the word 'collaborator' acquired an unfortunate association, often leading to summary justice on an individual or group being caught at it. In the pensions context, the reverse is

likely to be the case. It doesn't help that much pensions 'propaganda' put out by interested parties is written in highly charged adversarial language. How do we overcome this? When might collaboration not work? Here are some principles that might show us the way.

Consensus decision making

Good trustee boards functioning well should be having full, fluid, open debate leading to decisions by consensus. All the trustees don't need to be pensions experts to achieve this but it requires one

Trustees cannot delegate their responsibility for setting appropriate investment strategy but can delegate its implementation and tactical management

If you have confidence that you 'know your customer' and have the right weapons in your armoury to engage with each of them effectively, then you need be combative only when necessary in the interests of the scheme.

Not every situation requires the whole brigade. A smaller group or sub-committee with the right skills and ammunition can be more effective, as long as they keep in close contact with the wider team and can call up reinforcements if they need to.

Delegation

Modern trustee boards are in the business of delegation, as mentioned earlier. They are the generals – they are not the officers in the field. Sometimes, this distinction gets lost – trustee boards find themselves leading the platoon into battle and not setting the strategy and direction for the scheme. Even effective generals cannot make good decisions entirely from headquarters, however, and need to visit the front line from time to time. The maxim "delegate but don't abdicate" is clichéd but states the case.

Many administration, management, communication and compliance processes are commonly delegated or outsourced, even for the largest schemes. The processes for reporting back are quite time consuming but can be shared by sub-groups.

Delegation of investment activity is different altogether. The interaction of legal, regulatory and voluntary governance codes has created a monster to make many trustee brigades quail at the prospect of hand-to-hand encounters. Trustees cannot delegate their responsibility for setting appropriate investment strategy but they can delegate its implementation and tactical management. There are still many trustee boards that spend so little time on setting strategy, they may be excused for feeling they are getting shot of everything when they appoint a fiduciary manager or implemented consulting adviser – but they're not. The rules of engagement are still being drawn in this area, so adherence to the basic principles of modern customer relationships is essential.

More businesslike or like business?

There's no doubt in my mind that many trustee boards need to become more businesslike and assert their independence. Pension schemes aren't themselves a business but can learn a lot from business. Independent representation on boards can help this journey and for (smaller) schemes where lay trustees can't be found or don't have the time or appetite, going full circle and appointing a sole independent trustee can be very effective.

Is this a pitch for all trustees to be professionals? No, it isn't. But it is my firm view that effective independent representation on a trustee board is becoming close to essential. Of course, just because a trustee is independent doesn't make them effective and the term 'independent trustee' is a very broad church. What schemes really need is a non partisan presence with knowledge of how the pensions industry works in practice. The more 'action' their war veterans have seen – and the more fight still in them – the more effective use can be made by schemes of the complementary skills at their disposal. An independent trustee should help schemes avoid fighting battles again by sharing experience of what does and doesn't work 'in theatre'.

Conclusion

To continue my metaphor: in modern warfare, success increasingly requires collaboration and engagement with all sides, as I believe Winston Churchill once said "to jaw, jaw is always better than to war, war." Recent well-publicised cases like Uniq/Greencore indicate what can be achieved by this approach.

It's not rocket science. It's a principle that applies to boards and governing councils in all walks of life. Hopefully, trustee brigades who collaborate with all their stakeholders will win the peace their members deserve. ■



or more board members to have a grasp of the real world of pensions – who know the rules of ‘engagement’ - to help focus the debate. One or two dominant personalities can sometimes hinder consensus, but they won’t if each board member feels a valued member of the team and has trust in their colleagues and ‘senior officers’. This calls for really good leadership and communication skills, to ensure each trustee has a role to play that embraces their particular strengths.

Consensus is very important when legal and regulatory consequences take time to emerge. A proper record of the options considered is desirable, as trustees are increasingly being called upon to defend decisions made and how they arrived at them. Recent reported cases include challenges by regulators, employers and scheme memberships.

Collective responsibility

Irrespective of level of knowledge, trustee team members are equally and jointly liable for their decisions. A professional trustee may have more technical knowledge but ego should be taken out of the mix. A good team will forget differences of background, roll up their sleeves and get on with it, as I know from personal experience.

Collective or cabinet responsibility carries with it an obligation to support a decision once it is taken. Sometimes tough and unpalatable decisions have to be taken and you won’t agree with everything. Make sure you have made your views known in the debate – and work hard to understand the reasoning behind your colleagues’ views – but be supportive of a decision that has been made legally, fairly and reasonably. Resignation is really something you should countenance only if the legality, fairness and reasonability of the process underpinning the decision have been compromised. As a general principle, it is better to remain a trustee and fight for your views than relinquish the responsibility and by doing so ensure your views get lost.

Managing conflicts

Potential conflicts surround our doughty trustee brigade, like grenades ready to explode at any moment. Can conflicts be eliminated? No, they can’t. They can be identified, rationalised and monitored, however. There are so many risks that you have to manage them in a proportionate and realistic way.

Firstly, address potential conflicts within the team itself. The Pensions Regulator has been spot on here. If these aren’t tackled, the team won’t function as an effective fighting unit. Conflicts of interest are perhaps easier to spot for employer nominated trustees who hold senior management positions but member trustees also need to consider in whose interests they might support or oppose particular decisions. Rarely does a trustee decision get taken without something having the scope to distort the decision.

Our team will be better placed if they think widely and understand what is happening on other trustee boards. This is an area where the input of an experienced ‘officer’ can help, who is likely to have seen action in these conflicts:

- trustees deciding where to devote their time and not wasting time on battles fought elsewhere or tactics that have failed before
- ever more complex investment solutions being presented, where sometimes the knowledge of a scheme’s advising consultant is running behind their organisation’s development of the ideas – though they wouldn’t admit it
- consulting firms coming up with great new in-house investment products for the implementation of strategy but losing their trusted adviser status in the process
- governance needs not being taken seriously enough by scheme sponsors. The trustee board needs to operate as an independent unit and be seen to do so. Accounting numbers may be the key driver for an employer with a DB scheme and the focus of UK plc finance directors has been well mapped. The map of what good governance means for a DC scheme is still being drawn

The rules of engagement

In avoiding conflict, trustees negotiate with a range of interested parties: scheme sponsors, contributing employers, the regulator, HMRC, service providers and scheme members. In considering their tactics, how many trustee boards seriously regard each of these as their customers?

The secret of successful modern customer relationships is a collaborative approach based on dialogue, where both sides appreciate what’s in it for them, how they are affected personally and what’s good value. In my experience this is a better starting point for trustees than a combative one. ►



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