

ALLEN & OVERY

THE CHANGING NATURE AND FOCUS OF TRUSTEESHIP

How is the business of trusteeship changing, and what future developments are currently the focus of trustee attention? We conducted an informal straw poll of trustees in October, via email and at the PLSA Annual Conference, and while the answers represent the views of interested volunteers rather than a scientific survey, they make interesting reading.

TRUSTEE MEETINGS: HOW OFTEN, AND HOW LONG?

The traditional quarterly meeting approach to scheme governance is no longer sufficient for the business of running a pension scheme – for most schemes, quarterly trustee board meetings are now supplemented with a range of half-day meetings and committee or other meetings. Some schemes rely on delegation to sub-committees; others prefer supplementary half-day meetings – but only 10% of schemes reported managing on main trustee board meetings alone.

In addition, many schemes require a significant number of trustee hours per month outside meetings. You might expect this commitment as part of a professional trustee role, but member trustees reported spending anything up to 25 hours per month on trustee business (ten hours per month on average). This may reflect the growing impact of trustee knowledge and understanding (TKU)

requirements, and the apparently unceasing flow of new guidance and regulatory developments.

The burdens on trustees are growing all the time, and what's increasingly clear – for example, in the Regulator's DC compliance and enforcement strategy, and its 21st Century Trusteeship campaign – is that each individual trustee's level of TKU matters. It may affect the Regulator's assessment of fitness and propriety; it is a standard against which penalties may be assessed; and it forms part of the assessment for the Chair's statement, where applicable. The Regulator expects proper priority to be given, on a planned and assessed basis, to trustee training requirements, in order to raise standards of governance and improve member outcomes.

WHAT ABOUT TRUSTEE REMUNERATION?

Whether, and how much, trustees should be paid for their office can be a contentious issue. There is a view that the role of the lay trustee could be diminished by the 'creeping professionalisation' that comes with remuneration.

It's still the case that active member trustees tend not to get paid for the role – meetings are normally held during the working day, so the assumption is that they are being paid for their time as part of their employment. However, this may not fully recognise the commitment required, and there is a concern that as governance responsibilities increase it may become harder to attract new volunteers to take up the role.

As a result, the picture is starting to change: over 35% of our active member trustee respondents received an annual or per meeting fee. By way of contrast, two-thirds of pensioner trustees were paid an annual fee, though others serve on an unpaid or expenses-only basis. Out of hours time did not appear to be recognised at all.

The question of whether or not lay trustees should be paid will be for each scheme to determine (subject to its own rules); but there is a wider issue now in play. The Pensions Regulator has published a description of who qualifies, in its view, as a 'professional trustee', and while this does not turn specifically on whether or not an individual is paid, remuneration may be relevant to the Regulator's expectations in relation to TKU. It may also

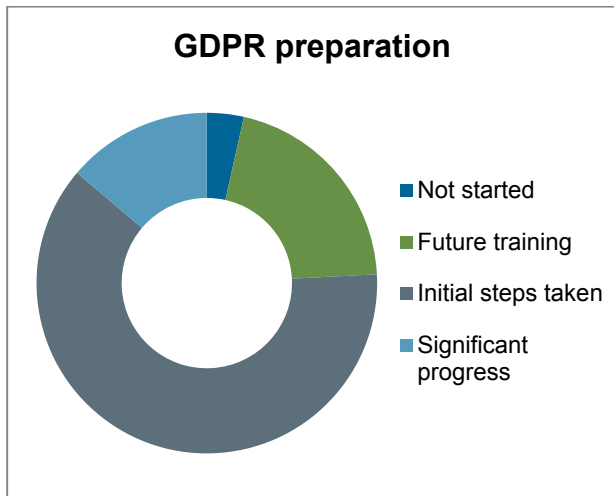
be relevant to penalties in the event of any breach of the law.

Trustees will have to indicate on the scheme return whether or not they are ‘professional’ according to this description – but a very high proportion (88%) of respondents to our survey who declared themselves to be non-professional were unaware of the description or unclear on its implications for them personally. Around half of those who said the description had no implications for them, or that they were unsure of the implications, were being paid as trustees and will in fact potentially be affected as a result, even if they are non-professional.

We also spoke to trustees who assumed that they would be categorised as professional simply because they have been in the role a long time. One of the ways in which the Regulator’s description was changed following consultation was to make clear that expertise or long service, on its own, does not change a lay trustee into a professional trustee. It’s important that trustees understand what the boundary between lay and professional trusteeship is, and when they risk crossing it. We expect that future work on 21st Century Trusteeship and other compliance issues may place increasing emphasis – and responsibility – on this difference, so understanding it is key.

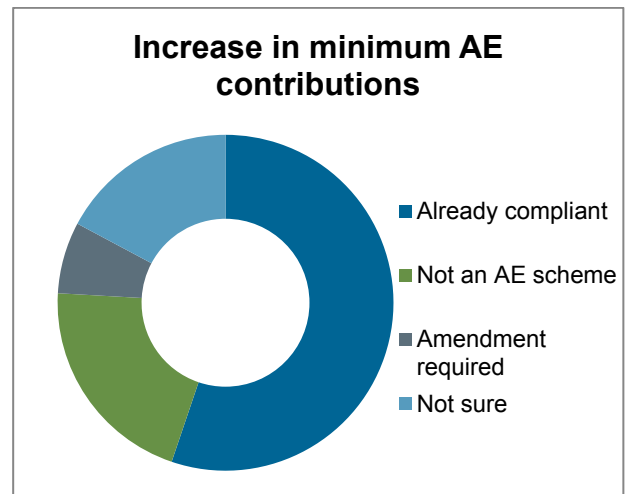
CURRENT AND FUTURE LEGAL DEVELOPMENTS

We looked at four significant current and future developments, and asked trustees how far their schemes had progressed in terms of compliance with requirements or the Regulator’s expectations.



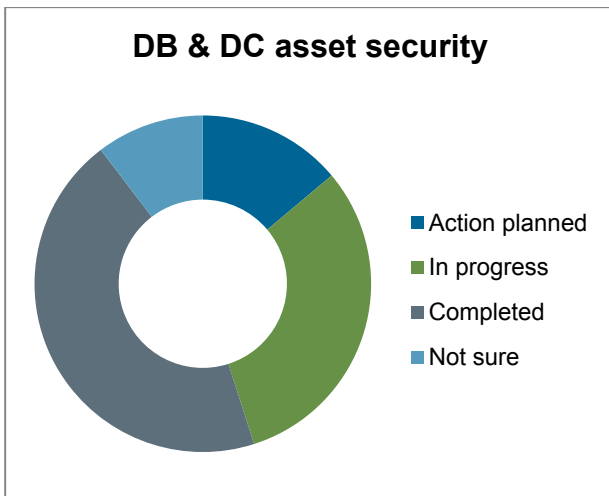
This chart looks reasonably positive in terms of preparation for the GDPR, though it is concerning that 1 in 4 trustees reported that their scheme had not yet taken even initial steps towards compliance.

In our experience, the initial data mapping process can be a significant undertaking; we encourage schemes to contact their data processors sooner rather than later to ensure that agreements are GDPR-compliant in good time. Leaving it until Q2 2018 could mean that a scheme gets caught in a provider bottleneck and ends up non-compliant by the 25 May 2018 deadline.



For some schemes and employers, the next 18 months will involve not only the two phased increases in minimum auto-enrolment contributions, but also a cyclical re-enrolment process – detailed planning may be needed to smooth the member journey.

Although this is primarily an employer issue, rule amendments may be required and, in some cases, this will trigger a need for a consultation process. For the few schemes that are not yet clear on their position, urgent action may be required.

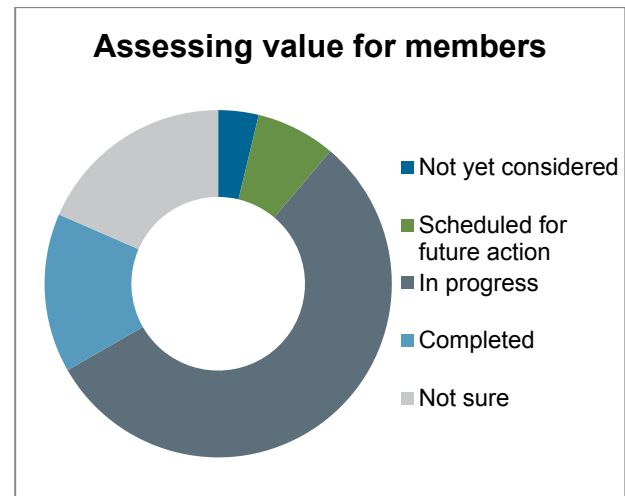


Again, it's reassuring to see that most schemes are well under way with the process of identifying and mitigating any gaps in the security of scheme assets.

However, 1 in 4 trustees said that their scheme had not yet started work on this, or were unsure if that was the case. Given the emphasis that the Regulator has placed on understanding DC (and more recently DB) asset security issues – including communicating conclusions to members in the DC Chair's statement – this is a surprisingly high proportion.

In our experience, some platform providers are very proactive at supplying the necessary baseline information, but in other cases obtaining the information can take much more effort, and the exercise can be a lengthy one.

In part the solution is for all providers to come up to the standards of the best – it should be routine for managers to provide information to trustees about how members' funds are kept secure, and trustees should certainly consider this as part of any new fund selection, but it's also vital to understand the position for current investment options and mitigate risks if possible.



The 2016 DC Code and associated guidance set out the Regulator's expectations about how schemes should approach the assessment of the value they provide to members, and the wider factors they should bear in mind.

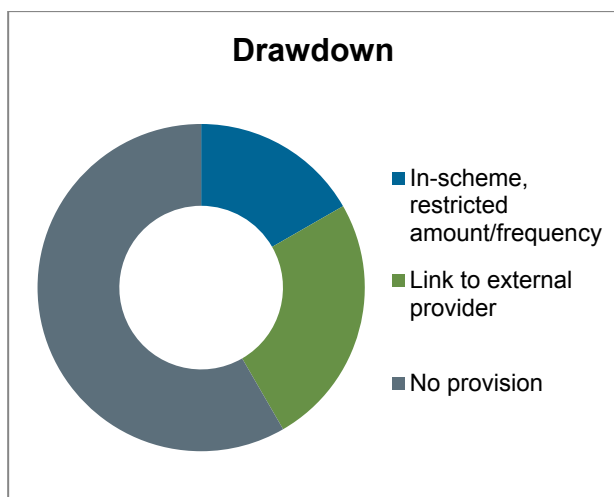
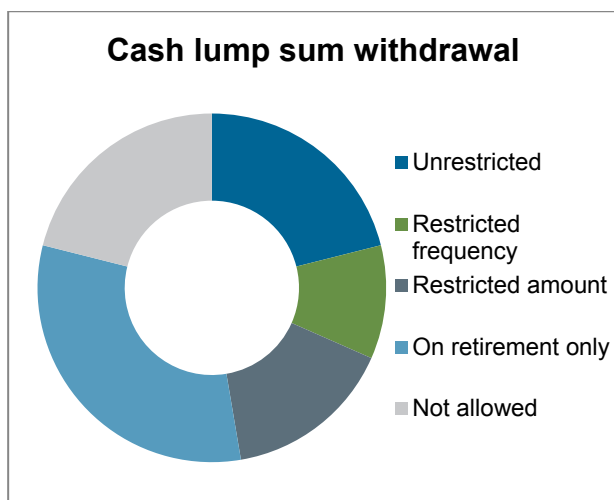
Each scheme needs to determine its approach and apply it throughout the scheme year, in relation to all decisions that affect member outcomes, in order to be able to report effectively in the Chair's statement in line with the Regulator's expectations.

It's good news that the majority of schemes have this on their radar, but perhaps worrying that so few have reached the point of defining their approach.

Some trustees told us that this was not applicable to their scheme – but even if the only DC benefits the scheme provides are AVCs in a DB scheme, the Regulator expects trustees to consider value for members in an appropriate and proportionate way.

FREEDOM AND CHOICE

As we approach the third anniversary of ‘freedom and choice’, we asked trustees what flexible access options their scheme currently offers in relation to DC funds. The charts below demonstrate the variety of approaches being taken.



In relation to DB arrangements, we also asked whether the scheme offered the option for members to take (non-statutory) partial transfers. Just under one-third of trustees told us that their scheme offered this feature, either on request or subject to trustee or employer consent. This is likely to become a more common feature for DB schemes, as it can be attractive to members to retain the certainty of a DB pension as a foundation, with additional flexibility from transferring funds to DC; it can also help to reduce scheme liabilities. Several trustees suggested this as a likely next step for their scheme.

A relatively high proportion of trustees – almost one in five – appeared unsure about what flexible access options their scheme offers to members. This is something the Regulator expects trustees to be aware of, inform members about, and keep under review over time.

A number of schemes have adopted a provider link to facilitate a drawdown option for members without permitting in-scheme drawdown. While this can appear advantageous for members, trustees should be aware of the trust law and financial services regulatory issues involved in this type of tie-up, as well as the ongoing governance responsibilities it entails – the three-year anniversary may be a good time to review current arrangements and structures, and look at other options.

CONCLUSION

Being a pension scheme trustee is a complex task. Trustees are dealing with everything from communications to highly technical regulatory compliance, and from big picture questions like ethical investing to the details of an individual ill-health or death benefit decision. The need for committed, knowledgeable trustees has never been greater, and with

regulatory burdens increasing all the time, it can be difficult to keep up with the pace of change.

The challenge for us, in advising trustees and sponsors, is to provide the proactive knowledge and resources you need to support good member outcomes, by helping you to continuously improve your scheme governance. Contact us to find out how we can help.

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