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## Current Issues for Trustees

Danny Vassiliades  
Punter Southall

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## Agenda

- Trustee knowledge and training
- Assessing the employer covenant
- Conflicts of interest



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## Trustee knowledge and training

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## What are Regulator's aims for TKU?

- Increase trustee confidence
- Know about powers as well as responsibilities
- Understand own scheme & employer covenant
- Understand and challenge advice
- Recognise need to take advice
- Recognise conflicts of interest
- Become familiar with scheme documentation

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## How much do trustees already know?

- The smaller the scheme, the lower trustees rate their own knowledge
- A third of trustees of 'very small schemes' (5-11 members) 'knew nothing at all' about trust law
- Trustees more knowledgeable in funding, contributions and investment than in law
- Trustees less confident about general and legal issues than nuts and bolts of own scheme

Source: Opra Survey, February 2005

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## How much do trustees need to know?

- Trustees not required to become expert
- Level of knowledge appropriate to enable trustees to exercise functions as trustee
- Depends on role of trustee & nature of scheme
- More knowledge expected of professional trustees and schemes in wind-up
- 6 months for new trustees to get up to speed

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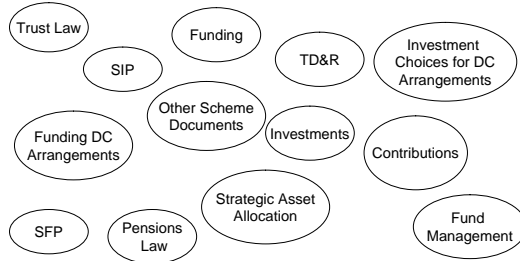
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## What do trustees need to know about?



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## How much training is provided now?

- Larger schemes more likely to offer training
- Only 4 in 10 schemes had trustee training plan
- Seminars and conferences most popular format
- Less than half received regular ongoing training

Source: Opra Survey, February 2005

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## What does the new regime involve?

- Scope Guidance – covers pensions and trust law, investment, funding, scheme documents
- Training Needs Analysis – identify gaps
- Learning Plan – to fill gaps in knowledge
- Demonstrating Knowledge – keep records for Scheme Return and in case asked by Regulator
- Keeping Up to Date – changes in trustee role, legislation, scheme or employer

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## How do the Myners principles fit in?

- Effective decision-making: trustees should have sufficient expertise to evaluate advice critically
- New recommendations:
  - Chair responsible for ensuring trustees taking investment decisions have requisite knowledge
  - For larger schemes, chair and at least one third trustees should be familiar with investment issues
- Missed opportunity to bring Myners into TKU?

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## Assessing the employer covenant

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## What does the Regulator say?

- Trustees should take account of financial standing of the employer (including that of the employer's group) and its prospects
- Trustees should take account of employer's ability (and willingness) to pay
- Pension scheme in deficit should be treated as any other material unsecured creditor

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## How to assess employer covenant

- Basic indicators
  - Company's own credit rating (if available)
  - Band rating for levy insolvency risk (Dun & Bradstreet already chosen by PPF Board)
- Monitoring corporate activity
  - Change in priority
  - Return of capital
  - Changes in control structure

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## How to assess employer covenant

- Obtaining information
  - Information in public domain
  - Arrange for early access to information from employer
  - May need to sign confidentiality agreement
- May need specialist financial advice

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## Problems with assessing covenant

- Who is the employer in question?
  - Not just sponsoring employer
  - Is the employer under s75 the same as the employer bound to meet the deficit under the scheme rules?
  - Need to know about all employers in group
  - Doubt over intentions of overseas employers
  - Need to know about potential sales and purchases
  - Conflicts for director trustees with inside knowledge

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## Problems with assessing covenant

- What to do if employer or trustees question validity of credit rating or D&B insolvency risk rating?
  - May need second opinion/independent advice
  - Risk of tension between trustees and employer
- How is credit rating affected by the existence of the pension scheme?

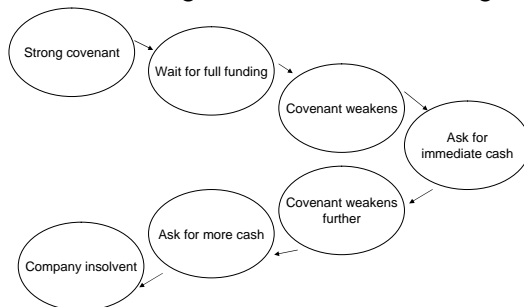
The Act of 2004  
Making Trusts of Pensions  
The Act of 2004

## Problems with assessing covenant

- What do trustees do with their employer covenant when it has been assessed?
  - Weak covenant – get money in as soon as possible?  
Or allow employer more time in order to prevent it going under?
  - Strong covenant – allow employer more time to pay contributions as likely to be there in the long term?  
Or get money in as soon as possible while trustees know it's available?

The Act of 2004  
Making Trusts of Pensions  
The Act of 2004

## Risk of waiting when covenant strong



The Act of 2004  
Making Trusts of Pensions  
The Act of 2004

## Conflicts of interest

### Conflicts for Board Directors

- Potential for conflict inherent in funding regime
- Plan in advance for when conflicts arise
- Triggers for appointing independent trustees?
- Trustees involved on both sides of negotiation:
  - Ensure trustees have early access to information
  - Draw trustees' attention to potential conflict
  - Absent self from discussions and decision-making
  - Consider resignation?

### Conflicts for other trustees

- Conflicts aren't just an issue for Finance Directors
- Potential conflicts for any trustee:
  - Union representatives – risk of losing jobs
  - Employees – risks to own employment?
  - Pensioner trustees – short-term approach?
  - Trustees near retirement – want to protect benefits?
  - Independent trustees – fees, influence of employer?

## Other conflicts

- Lawyers
  - Separate advice to trustees and employer common
  - (PS&Co survey showed half of schemes surveyed had separate advisers)
- Actuaries
  - Separate advice less common at the moment, but likely to increase with new funding regime
  - (PS&Co survey showed 75% of schemes surveyed had same actuaries)

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## Conflicts for scheme actuaries

- Draft code of practice envisages:
  - Scheme actuary provides calculation service to employer and advises employer as 'independent expert' with all advice being copied to trustees
  - Colleague of scheme actuary provides advice around scheme actuary's calculations
  - Scheme actuary provides calculation service to employer and employer has actuarial adviser from different firm
- Some scheme rules require actuary to advise employer on contributions

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## Potential conflict situation

- Trustee board consists of the Finance and HR Directors, a union representative, a pensioner member and a member-nominated trustee
- Trustees and employer use same legal and actuarial advisers
- Scheme is closed to new members

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## Potential conflict situation

- Employer proposes liability reduction exercise
  - Deferred members to be offered enhanced transfer values to be encouraged to transfer out
  - Employer says exercise is essential for company's continuing prosperity and to ensure that pensions in payment can continue to be met
- How many potential conflicts are there here?

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## The way ahead for trustees

- Employer-nominated trustees:
  - Increased risk of conflict
  - Trustee knowledge and understanding requirements
- Member-nominated trustees
  - Half the board by 2009
  - Recruiting difficulties
  - Trustee knowledge and understanding requirements
- More opportunities for independent trustees?

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## Current Issues for Trustees

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