

**SOAP BOX** is a periodic opportunity for ITS Directors to pen a few thoughts on industry issues of particular interest to them. In this third edition, Nita Tinn considers some of the some governance issues currently faced by Trustees.



---

## **Governance Matters**

That is the clear message coming from the Pensions Regulator.

In November 2009 the Regulator announced its campaign against poor governance and bad administration in its statement to trustees, "*Good governance-keeping pensions safe*". The Regulator has certainly been true to its word and since that date trustees and those advising them could be forgiven for feeling under siege from the amount of material coming from the Regulator in the form of revised guidance, consultation documents, an updated Code of Practice on Trustee Knowledge and Understanding and new trustee training modules, all of which imposes an ever increasing strain on the limited time and resources available to the embattled trustee.

There is no doubt that the Regulator intends to get tougher on trustees who do not follow its guidance. The consultation on proposals for regulation on record keeping spells out the Regulator's intentions. It would seem that 'good practice' guidance alone is not enough to achieve the objectives set by the Regulator, and new, tougher measures are being proposed including directions to carry out certain tasks, as well as penalties for failure to comply. In extreme cases the Regulator may prohibit trustees from acting and publish details of the action taken. In other words if the trustees cannot 'comply or explain' the Regulator may adopt a policy of 'enforce and shame'.

### **So what are hard pressed and busy Trustees to do in order to meet these increasing demands?**

It would be a very brave trustee indeed who argued against the principles of good governance. However, given that trustees' time and budgets are not unlimited, where should they focus their efforts and energy to ensure they meet their legal obligations as a minimum as well as adhering to best practice wherever practicable?

- **Keep informed**

The Regulator would like pension schemes to be run more professionally in order to meet the statutory objective. Just keeping up with the flood of regulation, guidance, consultation materials etc. One way around the time constraint problem is to dedicate time at trustee meetings for regulatory updates so that advisers can keep the trustees up to date on what is in the pipeline and highlight what is of particular significance for them and their scheme and consider any necessary action points.

- **Keep on top of your Data**

It is almost certain that the requirement to maintain and measure the accuracy of common data and conditional data will become enforceable following the current consultation on record keeping. The Regulator was clearly disappointed in the lack of improvement in administration following the initial guidance issued in 2008, and trustees therefore need to consider with their administrator whether there are gaps in their records. Data cleansing exercises need not

necessarily be scary or expensive. Trustees should think carefully about exactly what is needed i.e. whether to conduct a full, in depth investigation, or whether they can get sufficient comfort on the adequacy of their data from a high level review.

- **Keep an eye on your Administrators**

Legally trustees remain accountable to the members for the proper administration of the benefits, even if they delegate the administration to third party administrators. Trustees should have a robust set of service level agreements with their administrator, including meaningful measures focusing on quality and accuracy rather than just timeliness. They should receive regular reports on performance against these targets and reasons for any failure, including details of complaints received and how these have been addressed. It is important that the trustees have the opportunity to meet and question the administrators, and that they keep member communications under review so that letters going out in their name are accurate and compliant from a legal perspective, and are readable and understandable from a member's perspective.

- **Keep on Top of your Investments**

The Myners principles were updated in 2008 and trustees should, as a part of their ongoing governance, review their compliance with these principles on an annual basis. With the advent of the National Employment Savings Trust and auto enrolment, focus has now turned to defined contribution investment governance and a similar set of principles and 'Best Practice' guidance is currently under consultation. Trustees with DC or hybrid schemes will need to think about how they comply with these principles and as a start point check that they understand who is responsible for the various decisions to be made in respect of DC investments.

### **In Summary**

Whilst all of the above may seem daunting, with proper planning and the right structure a trustee board can manage the governance responsibilities in a sensible way without it becoming a burden. Trustees may well feel some of the requirements are onerous and question whether they are strictly necessary for the sound governance of the scheme. Each scheme and each board of trustees is different and there is no one solution that fits all. The Regulator makes clear that its guidance is just that, and if Trustees choose not to follow it and have good reasons for not doing so, they will not necessarily attract a penalty. However, ignorance is not an excuse and Trustees must at least be able to demonstrate that they have considered the guidance and taken it into account when reaching their decisions.

Nita Tinn  
June 2010

To contact Nita, telephone 0207 173 2727 or e-mail [nita\\_tinn@itslimited.org.uk](mailto:nita_tinn@itslimited.org.uk)

**4<sup>th</sup> floor, 2 Seething Lane, London EC3N 4AT**  
**[T]: 0207 173 2690**  
**[E]: [trusteeship@itslimited.org.uk](mailto:trusteeship@itslimited.org.uk)**  
**[www.itslimited.co.uk](http://www.itslimited.co.uk)**