



Occupational Pensioners' Alliance

**Survey of Pension Schemes' Member
Nominated Trustees Arrangements**

October 2008

1. The Occupational Pensioners' Alliance (OPA) comprises members from 36 occupational pensioner organisations nationwide and represents the interests of over 50 pension schemes with over two million members.

2. **Contact Details**

Roger Turner
Executive Officer
Occupational Pensioners' Alliance
c/o UNITE
Unit 6, Imperial Court
Laporte Way
Luton, Bedfordshire
LU4 8FE

Telephone 01582 721 652
Email rogerturner@pensioneronline.com

Website: www.opalliance.org.uk

3. Executive Summary

3.1 The OPA is concerned that the government's commitment to bring scheme members views to bear by raising the level of Member Nominated Trustees to 50% shows signs of wavering. The OPA's recent survey shows that there are many schemes already with 50% or more MNTs. However it is worrying that as many as 32% of the sample did not consider that the new arrangements for nominating and selecting MNTs were "fair, transparent and proportionate".

3.2 It is suggested that The Pensions Regulator's findings that small numbers of schemes which are alleged to have experienced recruitment difficulties for MNTs could be best addressed by utilising more of the recently retired members. Pensioner members are often being artificially limited in becoming MNTs by the manipulation of the nominating constituencies in a manner which is contrary to TPR's Code of Practice. These members very often make the best trustees.

3.3 The report also recommends that scheme governance could be improved by encouraging more schemes to appoint an independent chairman and also that deferred members should not be disenfranchised in the way that many schemes appear to be doing at present.

4. Introduction

4.1 The 2004 Pensions Act included the provision that the one third Member Nominated Trustees could be raised to 50% and the government gave a commitment to introduce the 50% level by 2009. There are disturbing signs that government is now cooling on this commitment.

4.2 James Purnell, Secretary of State for Work and Pensions said in a speech to the TUC on 27th June '08:

*"I want to speak on the issue of our commitment to 50% member nominated trustees. We stand by the commitment. **However** given the ever greater demands on trustees we need to ensure that they have the greater understanding, expertise and technical competence necessary to fulfill their role. Therefore I want to commission some formal research into these issues, so that we can see what impacts would be of getting more MNTs. We will continue to move towards delivering on the commitment, but need to do so in way that is safe, in line with concerns expressed by the Pensions Regulator."*

4.3 In other words there will at the very least be a considerable delay to the introduction of 50% by 2009 and at worst the commitment may be kicked into the long grass.

4.4 The TUC responded, signaling that the unions are to step up their campaign for trustee boards to be made up of 50 per cent member nominated trustees (MNTs) and the OPA has also voiced its support for this campaign.

4.5 Meanwhile the National Association of Pension Funds is saying on its website: "*The current requirement that 1/3rd of trustees be member nominated is, we believe, the right balance. We do not see any gain in increasing the number of MNTs. Some employers fear that increasing the number of member nominated trustees may result in them losing some control over the decision making process around the design and benefit structure of their pension scheme. This is particularly important for those employers operating in a competitive labour market.*"

4.6 In July 2008 the TUC published an independent study¹ based on a sample of 189 schemes which established that:

- About 24% of pension schemes already have 50% MNTs
- Only 12% of schemes have reported recruitment difficulties.

Also in July 2008 The Pensions Regulator in its annual report on scheme governance² concluded from a sample size of 517 that "retention of trustees is not seen as an issue for the majority of schemes (91%). Those who say that they experienced difficulties in retaining existing trustees in the past year – one in 14 (7%) of the total – were more likely to have such issues with employer-nominated trustees than member-nominated ones".

4.7 The OPA decided to conduct its own (web-based) survey of its members firstly to ascertain what their proportions of MNTs were and secondly to see to what extent the new arrangements for the nomination and selection of Member Nominated Trustee arising from the 2004 Pensions Act have been implemented.

4.8 Members were also asked whether they considered these arrangements to be "fair, transparent and proportionate" in accordance with the spirit of the Act. The Pensions Regulator's relevant Code of Practice – "MNT/MND – putting arrangements in place"³ provides an example of "unfairness" as being where a constituency on 100 members nominates 2 MNTs whereas a constituency of 10,000 members nominates only 1. However the OPA has become aware that many trustee boards amongst its members' schemes appear to be completely ignoring this code and indeed an individual member has formally complained to the Regulator about a MNT selection process in his scheme in which about 1000 members of a constituency for active members select 3 trustees and a constituency of 10,000 pensioners select just one. TPR's response was that the Codes of Practice have in fact no legal force and therefore TPR can take no action on this issue. The OPA believes that TPR should be seen to be actively encouraging conformance of its Codes of Practice and not turning a blind eye simply because it lacks legal enforcement powers. Accordingly a question on the perceived "fairness" of the new arrangements was included in the survey.

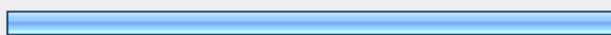


4.9 The survey was conducted over a period of 2 months from September to October 2008 and 32 responses from members were received. The results are presented in Section 5 and discussed in Section 6.

5. Survey Results

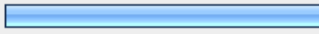
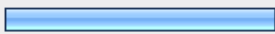
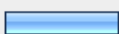
5.1 In answer to the question on the numbers and categories of Member Nominated Trustees/ Directors we found the following:

- 46% of trustees present in the sample were MNTs.
- 44% of the schemes had already 50% or more MNTs.
- Pensioners were involved in the nomination of 32% of the MNTs even though they together with the deferreds constitute 82% of the total membership.
- The size of the Trustees' boards varied between 5 and 17 though it was noted from the results of previous OPA surveys that some boards had taken the opportunity afforded by the change to the new arrangements of reducing the size of their boards.

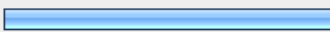
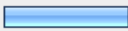

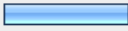
5.2 In answer to the question as to whether the MNT/Ds had been selected under the new arrangements from the 2004 Pensions Act we found that at least 84% of the MNTs were.

		Response Percent	Response Count
Yes		83.9%	26
No		6.5%	2
Don't know		9.7%	3
<i>answered question</i>			31
<i>skipped question</i>			1

5.3 In answer to the question on the term of office of the MNT/Ds we found that 45% were elected for a 3 year term with the remainder being for 4 or 5 years.

		Response Percent	Response Count
1 year		0.0%	0
2 years		0.0%	0
3 years		45.2%	14
4 years		38.7%	12
5 years		16.1%	5
More than 5 years		0.0%	0
<i>answered question</i>			31
<i>skipped question</i>			1

5.4 In answer to the question on the status of the chairman we found that 71% were either a company employee or company appointee and 19% were independent.

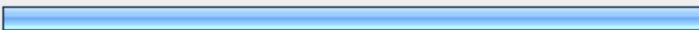

		Response Percent	Response Count
a company appointee?		51.6%	16
a company employee?		19.4%	6
a pensioner trustee/director?		9.7%	3
an independent trustee/director?		19.4%	6
		answered question	31
		skipped question	1


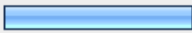
5.5 Analysis of the question on the demography of the scheme membership found that the active members within the combined sample constituted only 18% of the total membership.

		Response Total	Response Count
active members?		287628	31
deferred members?		518030	32
pensioner members?		798983	32
Total		1604371	32
		answered question	32
		skipped question	0

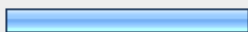
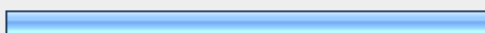
The maturity of the schemes ($[(\text{pensioners} + \text{deferreds})/\text{total}]$) was 82% and varied between 60% and 100%. Two schemes were fully mature.

5.6 We asked whether pensioners were involved in the nomination and selection processes for the pensioner MNT/Ds and found that pensioners were involved in 97% for the nominations but only 74% of the selections.

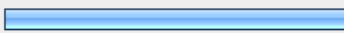
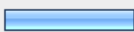
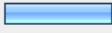


		Response Percent	Response Count
Yes		96.8%	30
No		3.2%	1
		answered question	31
		skipped question	1

		Response Percent	Response Count
Yes		74.2%	23
No		25.8%	8
		answered question	31
		skipped question	1

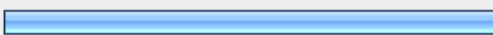
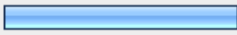
5.7 We also asked whether any deferred pensioners were involved in the nomination process and found that just 33% of the schemes did so.

		Response Percent	Response Count
Yes		33.3%	10
No		66.7%	20
		answered question	30
		skipped question	2

5.8 We asked whether their nomination process used a constituency comprising pensioner members only and, if so, for how many places on the board. 47% of the schemes had such a separate constituency and the majority of these (20%) being for one pensioner MNT/D only.

		Response Percent	Response Count
No, there's no constituency for pensioners only		53.3%	16
One		20.0%	6
Two		16.7%	5
Three		3.3%	1
More than 3		6.7%	2
		answered question	30
		skipped question	2

5.9 Finally we asked whether the respondents regarded the process of nomination and selection of the member nominated trustees as conforming to the requirement that it should "fair, transparent and proportionate" in accordance with the Act. 32% of the scheme respondents considered that the nomination and selection process did not do so.

		Response Percent	Response Count
Yes		67.7%	21
No		32.3%	10
<i>answered question</i>			31
<i>skipped question</i>			1

6. Discussion

6.1 At least 84% of the schemes had selected MNTs under the new arrangements and the finding that 44% of the sample schemes already had 50% MNTs was very gratifying. The much larger (and therefore more robust survey) conducted by the TUC found only 24%. (A small minority in our survey was noted to have even exceeded the 50% level by a considerable margin.) A possible explanation of this difference is that our small survey covers a self-selected sample which is somewhat biased towards the larger schemes which are thus more likely to have thriving independent pensioner associations which then become members of the OPA. Furthermore many of our members' schemes were established during the wave of privatisations in the '80s and the negotiations over acceptance of the resultant loss of security in moving from a government funded scheme to a private one resulted in the 50% level of MNTs.

6.2 As with previous surveys it was found that there was a striking difference in the various governance arrangements of the schemes covered here, from the size of the trustee board (between 5 and 17), its composition and the specified procedures for the appointment of the chairmen. As many as 19% of chairmen were found to be independent which again is very welcome but is a figure which the OPA would wish to see increased. In the interests of best practice for scheme governance independent chairmen should be appointed to trustee boards whenever it is justifiable by the scheme size.

6.3 The global demography of the sample schemes' membership reveals an overall disparity from a completely democratic allocation of these MNTs in that the actives, who constitute 18% of the sample total, are involved in the selection of 84% of all the MNTs whereas the pensioners, who constitute 50% of the total, are only involved with 71% of them, 16% from constituencies for pensioners only and 55% for both pensioners and employees.

6.4 47% of the schemes had a separate constituency for pensioners, 20% being for one pensioner MNT/D only.

6.5 Only 33% of the schemes involved their deferreds at all. The Act doesn't require this of course but, in accordance with best practice principles and, provided the scheme management has their contact details, there is little reason why they should not be involved. Deferreds have the same reasons as other members to want good governance of their schemes. It would clearly be far more equitable if all the MNT constituencies were to be open to all classes of members, particularly those of closed schemes where the pensioners and deferreds constitute an overwhelming majority. One scheme chairman has said that deferreds should not be included because they may now be working for a rival company. However this restriction could of course equally well apply to the pensioners who do have the power to nominate and even to those trustees who are also pensioners. A connection with a rival might well justify their exclusion from becoming a trustee but it is hardly very likely that any deferred members would seek to damage their own pensions.

6.6 Given all the above circumstances it is hardly surprising that as many as 32% of the respondents felt that the new arrangements did not meet the "fair, transparent and proportionate" test.

6.7 The NAPF has stated that it is opposed to the introduction of 50% MNTs because some employers fear that increasing their number may result in their losing some control over the decision making process around the design and benefit structure of their pension scheme. Such fears can only be realistic if the nominated trustees are not carrying out their trustee's duty to act in the best interests of **all** members. Amendments to the design and benefit structure of a pension scheme are constrained by the regulations and by the scheme's deeds - they are not solely the province of the company. OPA is disturbed, but not surprised, to hear that companies associated with NAPF aim to use company appointments to alter the Trust's approach away from acting in the best interests of the members, towards extending the company's control. Furthermore the OPA is not aware of any existing scheme management problems being evident in any of the 46% of our respondent schemes that have the 50% level.

6.8 The NAPF also drew attention to a survey reported in TPR's Corporate Plan for 2008-2011⁴ which revealed that 19% of schemes had admitted to recruitment problems – compared to 15% in a survey conducted in 2007. However the more recent survey commissioned by the TUC found only 12% reporting recruitment problems. We did not seek any answers to this question in our survey because few if any of our members would be qualified to answer on this point. Nevertheless we can ask here whether these alleged problems be due to the fact that so few MNT appointments have so far been made open to pensioner members? Pensioner members often have both the time and commitment to acquire the knowledge and understanding required to fulfill the task whereas active members may well find it arduous and interfering with their main work. The recently retired are a resource which is not being fully utilised. Indeed one of our members has reported that they had an embarrassingly large number of well qualified pensioner candidates at their most recent election. With many schemes now both closed and mature there will be a rapidly decreasing pool from which to select any active members as MNTs

anyway. There is little evidence from this survey that the nomination processes currently in force are taking this into consideration.

6.9 The Secretary of State said that given the ever greater demands on trustees he needs to ensure that they have the greater understanding, expertise and technical competence necessary to fulfill their role and that this was sufficient reason for delaying the move towards 50% MNTs. The OPA is unaware of any evidence which, apart from that of professional independent trustees, suggests that there is any difference between the competence of MNTs and company appointed trustees. It may in fact be that retiree trustees are better because company appointees often have very little time to spare from their everyday activities as company employees. The extra time and effort which many retired MNTs can bring to bear on understanding the particular scheme and its scheme members makes them excellent trustees.

6.10 The NAPF's views on the 50% issue have been high-lighted in a number of places in this report but it appears that some crucial evidence from its own research has been conveniently ignored by that organisation. In a study of pension practices in 6 major developed countries it found that the UK having only one third had the lowest member representation for governance. Ireland, Australia and the Netherlands had 50% and in Germany member representation was described as extensive and in the US as "50% for some". The UK is therefore out of line with international practice on this issue.

7. Recommendations

The OPA recommends:

- that the commitment to the requirement for 50% MNTs should be implemented without undue delay
- that independent chairmen should be appointed to trustee boards whenever it is justifiable by the scheme size
- that all the MNT constituencies are to be open to all classes of members except where there is good reason to protect minority interests
- that deferreds whose current addresses are known by the pension scheme management or administration should be invited to be involved in the nomination of MNTs
- that the principles of proportionality, fairness and transparency should be actively policed by The Pensions Regulator and not, as presently is the case, totally ignored because the Codes of Practice have no legal force
- that independent research should establish whether or not there exists any real significant difference between the competence of company appointed and MNTs and, if there is, to require that this be rectified either by further training or seeking alternate appointees rather than use any such difference as a reason for not implementing the 50% requirement .

References

1. "The member voice in pensions governance", independent research for the TUC by IQ Research, July 2008
2. The Pensions Regulator Governance Survey. Research conducted by Ipsos Mori, July 2008
3. The Pensions Regulator, Code of Practice 08, "MNT/MND – putting arrangements in place", November 2006
4. The Pension Regulator's Corporate Plan for 2008-2011, April 2008
5. "UK Pensions Regulation Compared - A study of pensions regulation in several OECD countries prepared by John Ashcroft for the National Association of Pension Funds", October 2008

Appendix A

The list of the 32 schemes covered by the survey was as follows:

Alcan Packaging Pension Plan UK
Aon Alexander & Alexander UK Pension Scheme
BAE Systems Pension Scheme (Main Scheme)
BBC Pension scheme
British Steel Pension Fund
British Technology Group Pension Fund
British Telecom Pension fund
BT Pension Scheme
Chevron U.K. Pension Plan
Civil Aviation Authority Pension Scheme
EDF Energy Group of ESPS
EMI Group Pension Fund
Foster Wheeler Pension Plan
Hewlett-Packard (Digital Section)
IBM UK Pensions Trust Ltd
Imperial Tobacco Pension Fund
Independent Television News Pension Scheme
ITB Pension Funds
NTL Pension Plan
Ofcom (former ITC) Staff Pension Plan
Pearson Group Pension Plan [Incorporating the Thames TV Section Scheme]
Pepsico UK Pension Plan
Philips Pension Fund
Reckitt Benckiser Pension Fund
Royal Ordnance Pension Scheme
RWE npower pension Scheme
Serco Pension & Life Assurance Scheme
Thorn Pension Fund
Trafalgar House Pension Trust
TRW Pension Scheme
Unilever UK Pension Fund Trustees Limited
Western Power Group ESPS