



Occupational Pensioners' Alliance

A Report on the Compliance Status of Trustee Boards

In respect of the requirements of the Code of Practice on procedures of nomination and selection of Member Nominated Trustees/Directors (MNTs/MNDs).

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Introduction

1. The Occupational Pensioners' Alliance (OPA)

Comprises over forty member associations nationally. Each member association focuses the views of the members of schemes for their company. An elected Council focuses the views from the associations. In aggregate, more than 2 million scheme members are represented in this way. Membership is open to formally constituted pensioner associations. For information on joining, or forming an association, visit our website at (<http://www.opalliance.org.uk/>)

2. Code of Practice

We are aware that, by the end of October 2007, schemes should have in place arrangements for the appointment of Member Nominated Trustees/Directors (MNTs/MNDs) that comply with the Code of Practice issued by the Pensions Regulator.

Under the new regime, trustees must ensure that at least one-third of the total number of trustees are:

- * nominated in a process in which at least all the active and pensioner members or organisations which adequately represent them can participate, and
- * selected as a result of a process which involves some or all scheme members.

The Pensions Regulator's Code of Practice on MNTs says that trustees should determine the new arrangements for their scheme taking account of the principles of **proportionality, fairness and transparency**.

Equivalent provisions apply to member nominated directors of trustee companies.

Under the previous MNT regime, it was possible for employers to propose trustee arrangements that did not provide for one-third of trustees to be member-nominated.

This employer opt-out route is no longer permitted under the new regime.

The Code states that a "reasonable period" for putting MNT arrangements in place (which the Regulator defines as considering, designing and building such arrangements) may be up to 6 months, with up to another 6 months allowed for implementation. The Regulator makes clear, however, that the full period of grace should not be seen as applying where existing opt-outs have continued to run: "trustees should consider what new arrangements are needed before the 'opt-out' period ceases".

3. Demography of the OPA Database

Member schemes have an overwhelming majority of non 'active' members. The percentage breakdown is as follows: Active members 24%, Deferred Members 31%, Retired members 45%. This shows that Active members are outnumbered by 3:1. Many member schemes have a very much higher ratio of Non-Actives.

4. Survey of Members

31 members responded to our request for information to establish the total number of Trustees, the composition of the Trustee Board, to what extent Pensioner Members are represented, and to what degree Board Chairmen are independently appointed.

5. Composition of Trustee Boards

Notwithstanding the database demography shown at 3. above, within the survey, out of 275 trustees, only 30 are Pensioner members – 11%, compared with 45% membership. This statistic is of serious concern to OPA. It is accepted that trustees should act in the interests of all members, but it is submitted that, in conflict situations, company policy is normally followed - sometimes at the expense of the pensioner members - due to the overwhelming majority of active members. This was particularly so during the period when apparent surpluses were present. “Apparent” rather than real, because hindsight has shown that longevity assumptions, for example, were, in the main, hopelessly out of date. Extensive contribution holidays were being taken by employers, with little or no consideration given to improving benefits for pensioner members.

There is an urgent need to increase the number of Pensioner Trustees in order that the majority of members are fairly represented.

Another aspect of this, deserving of consideration, is that pensioner members have more time at their disposal than actives, to enable them to undertake the necessary training to achieve the ‘understanding and knowledge’ requirement of a trustee, and applying themselves to trustee duties.

Deferred members are even worse off, with only two schemes in the survey having deferred members as trustees, even though they have as much interest in the health of their schemes as most other members, and represent 31% of the OPA database. Some of these will have the credentials to make ideal trustees.

An interesting statistic of the survey is the difference in the number of trustees. This varies from 4 to 18, with the size of scheme having no direct relationship to the number of trustees, and although smaller schemes tend to have fewer trustees, some quite large schemes have only 6 or 7 trustees.

5. Trustee Chairmen

Of the schemes surveyed, only 4 have truly independent Chairmen. Bearing in mind the dominance of Active Trustees, OPA believes it is of crucial importance to have independent Chairmen of Trustee Boards, who weigh the duties and responsibilities of employers against the rights and interests of the majority of members fairly.

6. Arrangements that meet the Code of Practice (CoP) Criteria

Out of the 31 member schemes surveyed, only 19 definitely have arrangements in place that are believed to comply with the CoP, but a worrying 12 either do not, or some elements of the process are open to question. Some employers are relying on opt out arrangements to avoid meeting the deadline. We believe concessions by the Regulator can allow up to another year before schemes have to conform. This is unacceptable. OPA can see no justification for such extended time limits. Various Acts and Green Papers proposed abolition of opt-outs as far back as the year 2000, but they are still in force.

7. Statistics

The Table of Responses is set out below

Scheme Ref.	Number of Trustees			Chairman	Procedure in place? Y/N	Comments
	Total	Company appointed	Member appointed			
A	8	5	3	C	Y	1 PMT
B	12	6	6	C		4 PMTs
C	9	5	4	CA	Y	1 PMT. Arrangements satisfactory
D	7	2	4	I	N	Trustees are aware of deadline
E	10	5	5	C	N	
F	7	3	3	I	N	MNTs are 2 TU and 1 PMT
G	9	6	3	C	Y	
H	9	3	6	CA	Y	3 PMTs
I	5	2	3	C	Y	MNTs are 2 Active, 1 Pensioner
J	12	8	4	CA	N	'C' is retired FD, 2 PMTs, 2 Active
K	8	5	3	CA	Y	2 PMTs
L	6	2	2	I	Y	6 th trustee is independent expert
M	9	5	4	CA	Y	'C' is Company selected - 2 PMTs
N	9	5	4	CA	Y	2 PMTs - appointed from elected members
O	9	5	4	C	Y	Process is 'legal' but lacks transparency
P	6	4	2	C	N	MNTs are both TU reps.
Q	10	6	4	CA	Y	2 PMTs
R	4	2	2	C	Y	1 PMT
S	7	4	3	C	Y	1 PMT
T	9	5	4	CA	Y	'C' appointed by Company in conjunction with TUs.
U	9	5	4	CA	Y	
V	12	6	6	C	N	1 PMT
W	5	3	2	CA(P)	Y?	Selection by small sub-committee
X	7	4	3	CA(P)	Y?	2 PMTs in each scheme
Y	14	7	7	CA	N	Procedures under review
Z	10	5	5	C	Y	1 PMT. Arrangements acceptable
AA	11	6	5	CA	Y	1 PMT
AB	9	5	4	CA	N	Arrangement under negotiation
AC	18	9	9	C	Y	
AD	9	5	3	I	Y	MNTs include 1 Deferred
AE	14	7	7	C	N	Procedures under review
Totals:	275	146	125			

Guidance notes:

In the Chairman column:

' I ' indicates Independent

'C' indicates Chairman is a Company employee

'CA' indicates Chairman is appointed by the Company

'CA(P)' indicates appointee is also a pensioner

In the 'Comments' column:

PMT indicates a Pensioner Trustee

Where the Chairman is truly independent, no figure has been entered in the 'Number of Trustees' column.