

Myners Revisited

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In March 2008 a consultation paper was issued seeking views on the update of the Myners principles - a voluntary set of principles designed to improve the decision making of pension scheme trustees on investment issues. Most STEP members probably have limited involvement with occupational pension schemes, which over the years have developed into a specialism in their own right. But for those of us whose practices cover pension schemes as well as private and charitable trusts, this revisit of Myners prompts some thoughts on the contrast between pension scheme trusteeship and other forms of trusteeship when it comes to an issue common to almost all trustees - the efficient investment of the trust fund.

The background to Myners

Ever since the Maxwell scandal back in the early 1990s, pension schemes have been the one form of trust consistently in the news, and, consistently the focus of government attention and legislative intervention. The torrent of legislation to which pension schemes have been subject since 1995 mainly addresses issues that are peculiar to such schemes. But some themes have emerged that have a resonance for large family and charitable trusts as well.

A major theme of pension scheme legislation has been the affirmation that trusteeship is a function that can, and indeed should, be performed by lay people, in particular by people who have a real stake in the fortunes of the trust. This is now enshrined in sections 241 to 243 of the Pensions Act 2004, which provide for compulsory member-nominated trustees, or member-nominated directors of trustee companies. There are circumstances where a professional trustee must be appointed to run the pension scheme, most notably where the employer becomes insolvent and the scheme (usually) has to be wound up. But in an ongoing scheme the purpose of the legislation is to ensure that on issues such as the degree of risk to be taken in investment policy, and the terms on which the scheme is to be funded, there should be a substantial input from representatives of the beneficiaries of the scheme. It is uncommon to have professional people appointed as trustees of an occupational pension scheme outside those situations where professional trustees are compulsory.

One obvious problem facing lay trustees is how to take decisions that are something more than a rubber stamping of professional advice. Investment and funding strategies for pension schemes can be highly technical in nature involving, as they do, a combination of actuarial and investment considerations set in a complex legal framework. If the policy of lay trusteeship was to be worthwhile, lay trustees needed educating about their duties, and needed help in managing their relationships with their professional advisors. There needed to be an equalising of arms, if lay trustees were not to be reduced to rubber stamping advisors' advice.

The Myners Review

With a view to improving the standards of investment management, HM Treasury commissioned Paul Myners to carry out a review of institutional investment (ie occupational pension schemes, life companies and pooled investment vehicles) in 2000. In 2001 he published his review 'Institutional Investment in the United Kingdom: A Review'. He paid tribute to the efforts of pension scheme trustees, but identified a number of weaknesses in the way that they went about investing the assets under their control. He found that 'savers' money is too often being invested in ways that do not maximise their interests'. He sought to set out 'a blueprint for change, to drive clearer

incentives and tougher customer pressures throughout the savings and investment industry'. The review identified a range of weaknesses in investment decision making, which showed that trustees were not getting the best out of their investment managers. It set out a number of principles that trustees ought to follow, in order to improve their own decision making, and to ensure, through the setting of explicit mandates, clear objectives and appropriate benchmarks, that the scheme's investment performance was optimised. The principles were accepted by government, and became a set of principles that occupational pension scheme trustees are expected to comply with, or, if not, to explain why they are not complying.

The Report also recommended that there be a legal obligation on pension scheme trustees to be familiar with the issues on which they took decisions. This has been enacted as section 247 of the Pensions Act 2004. This requires every pension scheme trustee to be familiar, amongst other things, with the trusts of the scheme and the scheme's investment policy, and also with the law in relation to pensions and trusts. It is striking, when one thinks about it, that 'ordinary' trust law and charity trust law contains no such requirement. There was already an incentive for pension scheme trustees to take their investment duties seriously, because section 33 of the Pensions Act 1995 provided that the trustee's duty of care in relation to investment matters could not be excluded or restricted by the terms of any instrument (such as a trustee exoneration clause).

Seven years on, the Treasury, the DWP and the Pensions Regulator are consulting on progress made since the original review was published. The consultation paper (www.hm-treasury.gov.uk/consultations_and_legislation/myner/consult_myners_index.cfm) summarises the considerable progress made since 2001, and the areas where it is perceived that more work needs to be done. Among the new proposals is one that trustees should periodically assess their own performance as a body, and should have in place a mechanism to assess the performance of individual trustees as well.

All this raises the question of what lessons might be learned from the pension scheme experience for large private and charitable trustees with assets comparable in value to occupational pension schemes. Although final salary pension schemes pose particular challenges from an investment management perspective (due to the need to match investment returns against fixed future liabilities), the Myners principles also apply to money purchase schemes (where the member simply gets the benefit of the investment return on his contributions). The basic objective of all trusts with funds to invest is the same - how to maximise the growth of those investments when striking an appropriate balance between risk and return.

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Key points

Key points that Myners emphasises include:

- An arm's length relationship between the trustees and the professional advisors, with appropriate benchmarks, timescales and performance reviews to ensure that the professionals are delivering the best possible return for the trust
- The avoidance of setting investment objectives by reference to indices or the performance of other investment managers ('the herd mentality')
- The education of trustees to ensure that they have the competence, and indeed the self-confidence, to be able to carry out their duties and manage their relationship with their professional advisors
- The willingness to spend enough money to get the best quality advice, but with a clear understanding of the cost to the scheme of the manager's charges.
- As Myners observed, all this looks like little more than common sense. But as the Report makes clear, pension scheme trustees, although for the most part conscientious and apparently well advised, were not delivering the

best value for their beneficiaries before the Myners principles were put in place. The consensus in the pensions industry is that Myners has improved the investment decision-making capacity of pension scheme trustees. So if the principles can improve investment performance for pension schemes, should they not be considered as capable of being adapted by other types of trustees as a possible way of enhancing the performance of the assets under their control?

Lessons to be learned?

Approaches to investment decision-making vary widely among large family trustees. Offshore trusts will invariably have professional trustees anyway, but keeping track of their performance, and the way they select and monitor the trust's investment managers can be very difficult. More similar to pension scheme trustees are the trustees (or trustee directors) of large UK charities, who manage funds in the public interest. Standards of governance here are no doubt generally very good, and in some cases excellent (especially where eminent investment advisors (such as Paul Myners himself) sit on the trustee board). But as the Myners experience shows, dedicated trustees who are well versed in the principles of trustee investment can still improve their investment performance by the adoption of more rigorous investment practices, as recommended by the Report. Arguably, pension scheme trustees are now leading the way in their approach to the management of trust investments. Is there a case for other trusts to look at what they are doing?

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"Trustees should assess their own performance as a body, and of individual trustees as well."

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