PART I

TRUSTEESHIP IN LAW

1

INTRODUCTION

The arguments against the non-contributory principle....

1 The cost of non-contributory pensions would be enormous...The present British system of non-contributory pensions cost about $40,000,000 for the first year....

2 The non-contributory scheme is unjust in principle. It involves taxation for the rich for the benefit of the poor. It is class legislation...

3 The effect on individual character would be debilitating; the non-contributory scheme puts a premium on thriftlessness. Its adoption would be disastrous to the voluntary agencies for the encouragement of saving...

4 The effect on the family would be disintegrating. It would cause children to withdraw the support which they now give to aged parents. There would follow a general loosening and breaking of family ties....

5 The grant of gratuitous subsidies to aged members of the working class would tend to lower the rate of wages. This would follow not merely through the direct competition of pensioned workers, who would be able to underbid the prevailing rate in the occupations in which they were engaged, but through the indirect influence of the prospect of a subsidy in old age, which would lead workers to accept less in regular wages than they would otherwise be disposed to demand...

Report of the Commission of Old Age Pensions, Annuities and Insurance, Massachusetts, 1910

Background

You are a trustee responsible for a pension fund, which is perhaps worth quite a lot of money, money that represents the security and peace of mind of people looking forward to retirement.

To have so many other human beings resting their hopes and expectations on you could be intimidating. In fact, most trustees just get on with it. In practice, despite portentous warnings from lawyers and others, the ever-present threat of litigation, the continual introduction of fresh trustee obligations sometimes backed by a raft of penalties for their breach and the apparent unimaginable complexity, the job is pretty simple – provided you know what the job is. And where difficulties *do* arise, you need not feel ashamed nor embarrassed at being a little lost. Even the most professional of trustees find themselves in a quandary from time to time.

The job of a trustee is a *legal* one, not actuarial, managerial or accounting. This book sets out the legal obligations – and how to deal with them in a relatively painless manner. Provided you are honest, sensible and take proper advice, you can do a lot of good – and come to very little harm.

Yours is not a rare position. There are about a quarter of a million schemes, with perhaps a minimum of two trustees in each scheme – so there may be half-a-million pension scheme trustees. This book explains, simply and practically, just what you are expected to do – and almost as importantly, what not to do. The appendices contain information that you may need in order to find out the answer to particular problems. In sum, this book is intended as the ultimate bluffer's guide to pension fund trusteeship.

Why the law is involved

The object of a legal system is to give some form of remedy and protection to persons who would otherwise be adversely affected. This is particularly the case in pension funds, where:

- obligations can last for many years,
- complexity is such that few understand the detail,
- the amounts involved are substantial, and
- a few people hold a great deal of money on behalf of many other people.

The value of a pension can, and often does, exceed the value of someone's house, so the law needed to protect those interests is highly necessary. But the law is not perfect in any field, and it has particular problems with pensions.

First, since the growth of pension rights is a relatively recent phenomenon, so is the growth of pensions law. In recent years, a major problem has been to develop a legal system, and help the judges understand a legal structure, designed originally many years ago for very different purposes. The particular legal structure that applies to pension funds has had to cope with the rather odd, from a legal point of view, nature of pension funds. The reason is that the law (trust law) that looks after the interests of scheme members was developed for family trusts and not for pension trusts.

Secondly, many Acts of Parliament apply to pension rights (involving social security, taxation, investment protection and other fields) – and these do not always relate properly to each other. Indeed in some cases they actually conflict.

And thirdly, the sheer size of the current regulations and controls is immense – around 9,000 pages at the most recent count, and growing fast. The size of the system is often considered counter-productive and there is a general consensus that it needs radical reform; previous reforms have added to, rather than, resolved the issues.

What is *not* in this book

This book does not tell you how to run a pension fund. Your job as trustee is non-executive, and is to ensure that the people who do run the fund (the managers, the investment house, the advisers) are doing their job properly. You are supposed to be more of a non-executive director than a 'hands-on' manager.

Accordingly there is very little about:

- Actuarial science; computerisation; management; the skills of communication; and the rest. These are jobs that you can, and normally should, delegate. **A pension fund trustee is not supposed to be an expert**.
- Ancient problems of trust law relating to the administration of family estates, dating back to the times when you could be expected to manage a duke's estate. **A pension fund trustee is not supposed to be a lawyer**.
- Abstruse details of pensions systems, such as contracting-out, preservation, and lower and higher earnings limits. These are the domains of your advisers. **A pension fund trustee is not expected to be an administrator or benefits consultant**.
- The complexity of a range of laws that were introduced partly in the decade following a major scandal in pensions known as the Maxwell Affair, and later scandals in the early years of the twenty-first century themselves occasioned largely by the impact of the Pensions Act 1995, and which were to be cured by the Pensions Act 2004. **A pension fund trustee is not (with some exceptions) expected to comply personally with most of the legislation, but should ensure that his advisers do so on his behalf**.

You are required, however, to have knowledge and understanding of three things:

1. the scheme deed and its rules and certain other scheme documents,
2. the law of pensions and trusts, and
3. the principles of funding and investments of pension funds.

Since the first is something that only you and your advisers can supply; this book covers the other two elements.

These requirements are not as frightening as they may look. A reasonable knowledge of this book, and the codes issued by the Pensions Regulator, is normally enough. The requirements follow a Treasury report issued in 2002 (called the Myners Report after its chairman), which thought that it was not only inappropriate for trustees not to know about investments, but that it was affecting the investment returns as well (although in a rare joke-footnote, the report suggests that if the trustees were as well trained as some investment houses, training might actually be counter-productive).

The concept of trained trustees is a rather new one. Trustees, especially in pension funds, were not necessarily supposed to be expert in investments, pensions and trusts. Indeed, the concept of the member-nominated-trustee presupposes a non-expert. In any event, trust law – and more recently pensions law – has for generations insisted that trustees should hire lawyers, accountants and actuaries to be able to manage the scheme. Trustees have never been expected to be experts themselves – although they have been expected to hire the right experts, and take, or at least listen to, their advice. As long as trustees were honest, and used their judgment, they were immune from most complaints.

The current law requires us to have 'knowledge and understanding' (a phrase unconsciously lifted from Proverbs – get wisdom, knowledge and understanding – language familiar to Mancunian students who find it inscribed around the dome of Manchester Central Library).

Full knowledge and understanding of pensions and trust law, and of investment matters, is something of a tall order for amateur trustees – and it's not too easy for professional trustees. Few non-lawyer professional trustees have a true understanding of trust law – even specialist trust lawyers struggle with the application of trust law to pensions, witness the somewhat bewildered discussion in some of the leading textbooks about the operation of what are known these days as commercial trusts. And a knowledge of pensions law is something that some might argue takes a lifetime to acquire, certainly until the utopia of simplification of the system is achieved.

The government is anxious not to impose too high a degree of expertise under these rules. The then Pensions Minister (Malcolm Wicks) said during one of the parliamentary debates leading to the enactment of the Pensions Act 2004 that:

> 'The clauses do not mean that we expect all trustees to be expert in every aspect of pensions law and administration. Rather, we expect them to be able to demonstrate a good, solid understanding of the scheme rules, and a broad knowledge of the issues.'
>
> (*Hansard*, Standing Committee B, 10th Sitting, 23 March 2004).

Even this might be ambitious; but the good news is that there are no tests imposed to be a trustee – and that failure to comply with the law involves no penalty. And in real life, few expect many trustees to achieve that level of knowledge: the 80 hours set down to achieve a now discontinued pension trustees diploma issued by the NAPF would have needed about two months full-time study, coupled with a high level of educational attainment beforehand, which would exclude many member-nominated trustees. Such a level of education is not required by, for example, MPs. In the worst case the Pensions Regulator can require individuals to attend training sessions if he feels they need it – and if you do not want to do it, you can simply resign. Sadly the law does not require you to have wisdom (the third and most important of the three terms referred to in Proverbs).

So while the legal and administrative details are important, in practice you will delegate most of them. But what you do need is enough knowledge and experience to enable you to ask the right questions of your adviser – and understand the answers.

What is in this book

This book is intended as a handbook for pension fund trustees, probably the most numerous group of trustees today. You and your colleagues collectively manage around £1000B of assets – a sum that, even with stock market reverses and unhelpful taxation, is growing. This is despite attempts by political anarchists, at either end of the political spectrum, to disband one of the most effective, efficient and appreciated forms of retirement provision ever invented. Nonetheless, pension schemes do have their imperfections, and the main ones are set out in the next chapter.

How to use this book

The book is in three parts:

- Part I gives a basic grounding in the duties of a pension fund trustee. This is considered essential reading; without this, or something like it, it is difficult to understand just what is expected of a trustee;
- Part II looks at some everyday practical problems faced by trustees, and suggests some ideas for dealing with them;
- Part III includes a list of abbreviations, a 'pensionspedia' and sources of further information.

Throughout the book an attempt has been made to avoid jargon; unfortunately it has been sometimes unavoidable. There is a short guide to some of the common terms in Chapter 33 and a list of abbreviations used in this book is also set out there.

The book is also designed to be used in conjunction with the Pension Regulator's web-based training modules available on www.trustee-toolkit.com. It does not always agree with the modules' contents or approach of the Pensions Regulator's website which is mildly idiosyncratic and you might find it useful to compare and contrast the differences.

Finally, the best way to use this book is not to try to read it from cover to cover, but to dip into it from time to time.

With this volume you should feel free from fear and intimidation, and have knowledge enough to manage the job of pension fund trustee.

2

WHY HAVE A TRUST?

Now that almost every soldier who enlisted in the armies of the Union and suffered even from a cold in his head has been pensioned, the Republican party are looking out for some fresh scheme for keeping the surplus under. They seem to have found a pretty substantial one in the Bill which will shortly be introduced into Congress by Mr Connell, of Nebraska. His plan is to pension the emancipated Negroes. Mr Frederick Douglas, the most prominent person of Negro blood in the States, has written a letter warmly supporting the plan. He declares that "the nation has sinned against the Negro, robbed him of the rewards of his labour for a period of two hundred years, and its repentance will not be genuine or complete until, according to the measure of its ability, it shall have made retribution." "There never was," he continues, "and never can be a proposal more just and more beneficent than that contained in your Pension Bill." Apparently, Mr Douglas holds that the Negroes, instead of being merely emancipated, should have been endowed with the means of subsistence, as was the Russian serf, who received three acres of land and farming tools: and he now wants to set this wrong right. The proposal is of course utterly absurd and fantastic, and is not meant to be carried out. If it were it would entirely deprave the Negroes, whose only hope of moral improvement lies in hard work. It may, however, have a considerable effect on the Presidential election. Hitherto, the Negroes have been content not to vote, or to vote, as the Whites direct. It is possible that the hope of a pension may make them break away from the control of the Democrats, and vote the Republican ticket.

The Spectator, 22 August 1891

Why have a pension fund?

A pension fund seems to have an immensely complicated structure. It is governed by: deeds, booklets and legislation. It has to take account of the needs (sometimes conflicting) of employers, members and trustees. The calculations that need to be undertaken seem to be understandable only by an Einstein. Its advisers and managers have to worry about transfer values, equal treatment and HMRC rules.

Why bother with all the expense of administration, and with the fees of lawyers, actuaries, accountants and investment managers? Would it not be simpler for the employer simply to pay the employees a little more each week that they can use to save for their old age – or just put them on a reduced pay scale after retirement?

That is, in fact, just what used to happen in the nineteenth century – and in practice what happens to civil servants and the higher-paid even today. But there are major problems with the simple approach:

- The difficulty with people making their own provision for their own old age is simply that in practice most do not. There are always more pressing needs – housing, food, holidays – and by the time old age becomes a worry, and the urgency to save increases, it is a little late. Just before the turn of the nineteenth century a social reformer called Charles Booth discovered that the main cause of poverty was simply old age – and that exhorting people to save for their old age was fruitless; most people simply could not afford to save. For example, to save enough today to provide simply a state pension would cost around £400,000 (about double what was needed 10 years ago), and if you include other old age benefits, very much more. Few employers want their longer-serving employees coming back to them in years to come looking for financial support.
- The drawback with an employer simply promising to look after an employee in old age is that (unless he is the government) there is no certainty that he will still be there to meet his promise when

it falls due, or even if he is there that he can afford to. In any event, few employees now work for their entire career with one employer. It is more sensible for funds to be set aside each working year to meet the employer's promise, as a guarantee fund. However, the Germans manage very well with unfunded pensions supported by a national guarantee fund, a model which may soon come to the UK.

- Finally, whatever the administrative costs of most company pension schemes, they are a major bargain compared with the extreme costs of personal pensions. And they invariably offer immensely better value-for-money.

Many progressive employers have established pension schemes using a system that is (or was until recently) the envy of much of the rest of the world. Even the French, who have a very different and much praised system are still planning to copy the UK arrangements just as the UK system paradoxically declines largely because of inappropriate regulation.

The statistics are rather confusing: in theory government statistics suggest that scheme members rose to 9M in 2010 (the latest figures), of which around 30% were in defined benefit plans. The figures are overleaf.

Number of members of occupational pension schemes: by membership type and sector, 2006-2010 (www.statistics.gov.uk/pdfdir/ops1009.pdf) (millions)

	2006	2007	2008	2009	2010
Active members	9.2	8.8	9.0	8.7	8.3
Private sector	4.0	3.6	3.6	3.3	3.0
Public sector	5.1	5.2	5.4	5.4	5.3
Pensions in payment	8.2	8.5	8.8	9.0	9.0
Private sector	4.6	4.8	5.0	5.1	5.0
Public sector	3.5	3.7	3.9	3.9	4.0
Preserved pension entitlements	9.4	9.4	9.9	10.1	9.8
Private sector	6.5	6.3	6.7	6.6	6.6
Public sector	2.9	3.1	3.2	3.5	3.2
TOTAL	**26.7**	**26.7**	**27.7**	**27.7**	**27.2**

The figures are inevitably dated, but there is no doubt that membership is declining, particularly sharply in defined benefit schemes. Employers are more reluctant to offer pension arrangements, and over time, as increasing numbers of people are found to struggle on inadequate incomes in retirement, there will inevitably be pressure to design new company-backed pension systems.

Drawbacks to pension funds

Pension funds are not perfect – and they do not suit everybody:

- a defined-benefit workplace scheme (see below) may not be appropriate, for example, for a young person who expects to stay only a year or two with the company;
- transfer values offered by most defined-benefit schemes, while they are immeasurably superior to those offered only a few years ago, will not necessarily be adequate to buy the corresponding length of service with the new employer;
- sometimes communications are not all they should be;
- sometimes, fortunately very rarely, assets can be fraudulently removed from the scheme, as they can from any other form of savings arrangements, or investment returns may be less than expected;
- the intentions of the employer in a defined benefit scheme, or the expectations in a defined contribution scheme, can be frustrated by unexpected changes in the value of the underlying assets, the continued viability of the employer, and tax and law policy changes;
- the benefits in defined contribution schemes will not usually offer the kind of income that most of us have come to expect we will need when we retire;
- for those on modest incomes, small contributions into a defined contribution scheme may simply take them out of means tested benefits – or would be more tax-efficiently placed into an Individual Savings Account (ISA), with the bonus (or temptation) that the funds are immediately accessible.

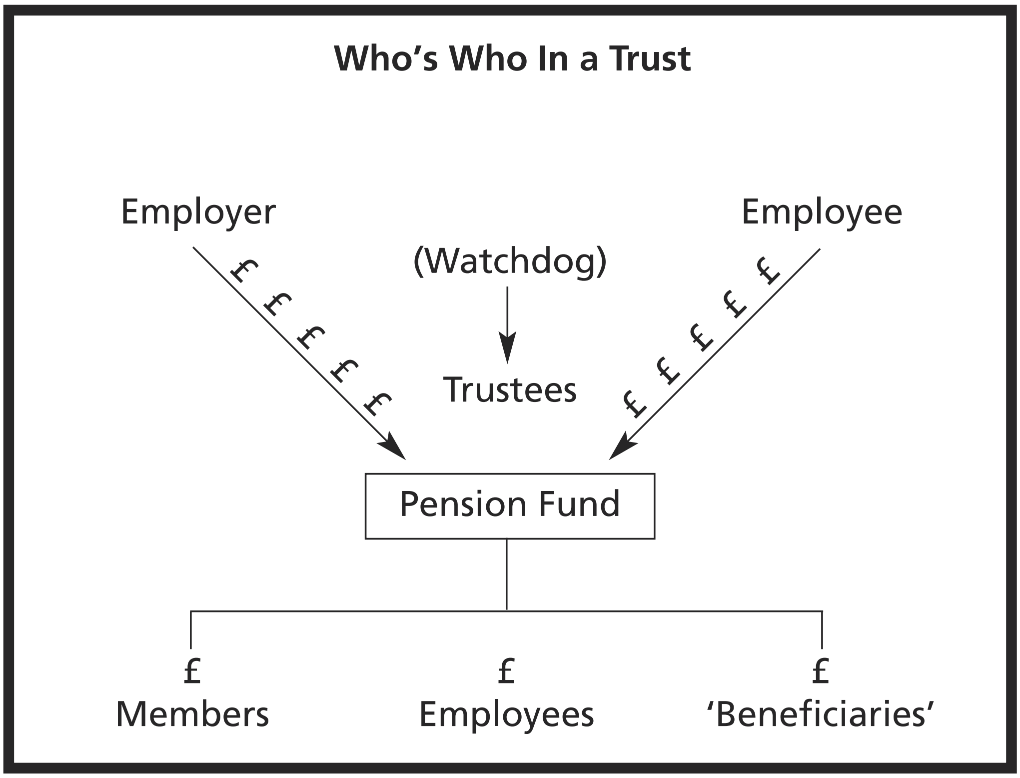
But for most people, in most circumstances, workplace (formerly known as company or occupational) pension funds offer better value for money, greater security and greater peace of mind than the alternatives. This applies to the employer as well as the employee.

Why have a trustee?

The relationship between the employer, the employee and the pension fund is a useful one to understand; in most pension arrangements:

- the employer undertakes to provide not only pay but also a pension (sometimes dependent on years of employment and salary levels, in other cases dependent on the amount of money built up over the years) in exchange for which the employee promises to work;
- both employer and (usually) employee agree to make contributions to the scheme. Even where it is a 'non-contributory scheme', i.e. the employee makes no actual contribution, the courts consider that for some purposes the employer's contributions can be seen as the employee's deferred pay.

As a trustee you hold the money on behalf of the employees (and employer) to make sure it is properly looked after. In most cases, it is not your job to interfere with the bargaining between employer and employee; you are merely a guardian of the pot. In exceptional circumstances, such as where an employer seeks a refund of a pension fund surplus, you may have a duty to bargain with the employer to ensure that members get a fair deal, and if there is insufficient money in the scheme (i.e. a 'deficit') you may have to explore



Why have a trust?

Trusts seem odd animals; would it not be simpler – or at least more familiar – to use a company instead to run a pension scheme? Indeed many employers prefer to choose, especially in defined contribution plans, not to have trustees (i.e. not to use a trust based system) but to simply give the money to an insurance company and operate a 'contract-based system'. Contract-based arrangements have the advantage of lower compliance costs and simpler regulation; on the other hand they lack the kind of common-sense overview that trustees can give and it is much harder to switch supplier. There seems to be a gentle trend away from contract-based schemes back to trust based, even for defined contribution arrangements.

There are three main reasons why trusts are used:

- *First,* it is essential to put the money which represents the pensions intentions made by the employer, in a *separate pot*.

In that way, if the employer becomes insolvent, or is unable to fulfil his pensions promise, at least some money is there to meet at least some of the promise.

- *Secondly*, a trust is almost tailor-made (unlike a company) to cope with the problems of managing money on behalf of other people (the employer and employees). In some cases (especially defined contribution) schemes, see below) it is the employees' money, but they may not touch it (for tax reasons) for many years yet.
- *Thirdly*, double taxation is reduced by putting contributions in a trust.

Because trust law seems complicated, and there are costs and potential liabilities involved, it is sometimes suggested that pensions run under trust are unnecessarily complex; it might be better simply to have a contract with a provider – an insurer or asset manager. In some cases this is very sensible, but contract arrangements often lack the humanity and flexibility that are critical in running a pension scheme. It is sometimes forgotten that a pension arrangement is more akin to some form of private social security rather than a savings plan, and that human discretion is a very sensible thing to factor into the system, leading to savings in costs and improved employee relations.

Why is trust law so complicated?

Trust law is a special concept, now being copied throughout the developed world. It is special because it recognises that the same property can have two owners at the same time. In the case of pension schemes the legal ownership of the assets of the pension fund is held by the trustees. They can buy and sell the assets, or mortgage them.

But there are other owners – the members of the scheme (and their survivors and dependants), and the employer. They, however, can only touch their money in special circumstances (set down in the trust documents), e.g. on retirement or death. The law recognises their rights, and enforces them not through the ordinary legal system (which regulates the trustees), but through a special legal system, invented in the Middle Ages, called equity, since it is based less on strict law (contained for example in Acts of Parliament) than on fair play as the judges see it.

There are therefore two kinds of owners of the assets in the pension fund:

- the *trustees* who own the assets '*legally*', and
- the *members* and other *beneficiaries* (i.e. people who may benefit), who own the assets '*equitably*'.

When enforcing the rights of beneficiaries the court applies general principles of fairness, rather than statutory guidelines (i.e. set down by Act of Parliament). The court therefore plays a crucial role in the development of trust law – which is changing continually to meet changing social circumstances. It also depends significantly on trustees using their discretion to make many decisions. But with this great advantage of flexibility, comes a problem – the fluidity of ownership can cause as many difficulties as it solves. One, for example, is the (now diminishing) debate on deciding who owns the surplus (if any) in a pension fund.

Why were trusts invented?

Being a trustee is a legal position. Trustees own property on behalf of someone else, because the real owners cannot be trusted. It's an old system – it is said (without much evidence) that it started with the Crusades, when knights entrusted their property to men of repute in case they never returned, until their children were old enough to control their inheritance.

This lack of trust was normally because the real owners were too young, too female (married women had few property rights at that time) or too foolish to manage on their own. Managing property on behalf of others expanded when ownership was separated from control for tax purposes. The person who looks after the property is the trustee; the person on whose behalf the property is owned is called the beneficiary. Beneficiaries of course are not only the members of the scheme – they include anyone else who could benefit including survivors ('widows and widowers' is a bit of a mouthful, and this is an equal opportunity book), dependent children and other dependants, and possibly the employer as well.

Trust law has a slightly chequered history – it developed mightily in the time of Henry VIII as a device to help avoid tax. The system, however, was found to be useful in many other areas – and today is used to regulate charities, unit trusts and international securities such as Eurobonds. Its principles are applied to many other fields such as the duties of directors in companies.

What is a trustee?

A trustee is simply a person who looks after a trust. He can be an individual, a group of individuals or even a company. His job is to ensure the assets of the trust are well looked after. Over the years the courts have set down the way in which a trustee should work, and have defined:

- some duties
- some discretions and
- some liabilities.

Each of these is discussed later.

You have been appointed as a trustee not to be an expert, but to apply your common sense, experience of the world, and integrity, to the care of other people's money.

What kind of trustee am I?

A trustee is usually a person, an individual (normally, there is more than one). Sometimes the trustee is a company, or 'corporate trustee', which offers advantages of continuity (you don't need to keep changing the deed every time someone retires or is appointed) and gives some additional protection against liability. In those cases you will be a director of the trustee company.

You might be a trustee of a *self-administered* fund, i.e. where the investment management and administration is dealt with in-house – or of an *insured* fund, where all that taken care of by an insurance company.

You might be elected by your colleagues in the workforce – or appointed by the employer. But whatever your origins, and however big your head, you can only wear one hat around the trustees' table – that of a trustee. All of your other obligations and interests must be set aside in favour of the members of the scheme and the other beneficiaries (which can include the employer as well).

Increasingly pension schemes appoint an independent trustee (i.e. someone unconnected with the company). However, trustees are supposed to be independent – you are supposed to represent the interests of the beneficiaries, if necessary at the expense of the interests of the employer, the trade union or any other group you may also represent the interests of. An independent trustee normally means in fact a trustee who does not have an internal conflict of interest, i.e. represents neither the interests of the employer or the employees. Independent trustees are often useful to give a lead where the ordinary trustees are a little bemused, and to bring external experience to the table. They need to be chosen carefully; some of them can create rather than diminish friction.

Who makes a trust and how?

Anyone can make a trust. In a pension scheme, normally it is the employer who signs a document (called a trust deed), which simply declares:

- that a trust shall exist;
- who the trustees are who will look after it;
- how it will get its income (contributions from employer and employees); and
- how it will be administered.

Trust law and other law

Trust law is only one part of the law that affects pension plans; other sources of regulation include Acts of Parliament, the discretions of government departments and regulators and the trust document itself, not to mention the contracts of employment. The sources that need to be checked when determining a problem are therefore widespread.

The law is normally applied, if necessary by lawyers and if the problem has to go to court, by judges. While many people quite rightly have the view that the law is an ass, and that judges, not to mention solicitors, do not have minds that think like the rest of us, it should also be noted that they are also human. In practice, many decisions are made not so much on the basis of the law but in accordance with common sense – although not always.

Jargon

Jargon is one of the drawbacks to pensions – and when coupled with trust law jargon, can make life highly confusing (there is a glossary at the end of this book). But in fact, in trust law there are only a few buzzwords, and it helps to sort them out at the beginning:

- the **settlor** – means the person who creates the trust and in a pensions trust is usually the employer;
- the **trust property** – means the assets of the fund;
- the **beneficiaries** – means not only the members, but also their family and dependants, and anyone else who may take a benefit from the trust – including sometimes the employer.

Why is trust law different from other law?

Trust law was invented to cope with the fact that the ordinary law clearly resulted in some injustice; it had become obsolete and oppressive. Trust law was designed to be flexible, to change with the times, and to use general principles of fairness and justice (not just strict rules of law) that would apply to a range of situations.

In time it developed its own arthritic tendencies, but several government inquiries into pensions law have concluded that the flexibility and equity performed by trust law has some major advantages. Few informed people now suggest that pension funds should be governed by anything else, such as an Act of Parliament, and the Pensions Acts are testament to that.

However, it does have its drawbacks. As it is based on principles of fairness and equity, it is not always possible to say with certainty what the outcome of any question might be. But the alternative of certainty, theoretically possible under an Act of Parliament, is now much less popular. Acts of Parliament (statutes) can create as many, if not more, problems than they solve. For example, The Financial Services and Markets Act 2000, which was designed to protect the investments of people has created a large infrastructure, and involved a great deal of regulation and paperwork, but it and its predecessors failed to prevent such scandals, for example, as the Maxwell Affair and a host of other financial market failures. And more recently formal regulation has tended to be part of the problem rather than the solution.

Trust deed and rules

The most important document is the trust deed. Usually it is in two parts:

- the deed itself, which is the constitution of the trust, dealing with appointment and removal, investment powers and winding-up the trust; and
- the rules, which set out the benefits, the contributions, the HMRC requirements and the 'contracting-out rules' (see below).

The deed and rules can also be changed from time to time – and how the changes are to be made will also set out be set out in the deed.

The deed is king…

The first duty of a pension fund trustee, in theory, is to read the deed. This can be hard work, even with a modern so-called 'plain English' deed. However, it is your duty as a trustee to administer the trusts, and in order to do this you must know what is in it.

In practice, the deed will allow you (and indeed expect you) to appoint '*delegates*', i.e. other people to do much of your work on your behalf. These people, including managers and advisers, are appointed to administer the terms of the deed – but there are some jobs that you have to do on your own and cannot delegate.

The trust deed now contains huge quantities of information (much of which is rarely referred to in practice, such as the contracting-out rules) and you can safely skip these. At one time HMRC issued model rules to do with tax to be incorporated in the deed, but these are now mostly obsolete (though older deeds may still not have got around to removing them), and they are sometimes kept as a way of capping benefits. But the former practice of trying to restate the entire law of pensions in the deed, which at one time was possible, is now rather pointless.

In practice, therefore, reading the entire deed is a counsel of perfection. But there are some clauses of the deed that you really should look at, and you should acquaint yourself with these points if nothing else (see *What to check is in the deed*, below).

WHAT TO CHECK IS IN THE DEED

- **The Delegation Power** – that you as a trustee can give your work to professionals to do
- **Power to Resign** – that you have a power to resign, perhaps in writing, to avoid having to apply to the court for the right to resign
- **The Indemnity Provisions** – that you as a trustee in most cases should be excluded from liability for acting as an honest trustee and that the employer will indemnify you against any costs or liabilities – and if necessary insure them.The problem with indemnities is that if the employer goes into liquidation they are worthless
- **Effect of Wind-up** – that the rules are clear on what happens if the scheme has to be wound up, and in particular what happens if there are any deficits, and who owns any surpluses
- **The Trustee's Powers** – where does the balance of power in making decisions lie between you and the employer? Sometimes in practice, trustees have few discretions or powers
- **The Amendment Clause** – how the scheme can be changed, and whether you have a part to play – and that you do not need to apply to the Pensions Regulator or the Court to keep the documents up to date

The Pensions Regulator's latest version of its code of practice on trustee knowledge and understanding (known in industry jargon as TKU) suggests you need to thoroughly read the trust documentation; that is probably overkill for most trustees since if there is a problem you will normally take advice (or look up the necessary clause) when the time arises.

The document also describes how trustees are appointed, how the trust is administered, and invested, and of course sets out the benefits and contributions.

How many trustees? In pension funds the trust deed does not usually lay down a minimum or maximum number of trustees; in practice there should be at least two and probably (except in the larger schemes) not more than half a dozen to avoid the decision-making becoming unwieldy.

But what about the announcements?

Nowadays the announcements to members about their benefits are also regarded as legal documents – despite any statement in them to the contrary. You need to make sure that the employer is not making pension promises through contracts of employment or benefit statements that may affect the solvency of the fund.

Do I need to be 'authorised'?

Anyone can be a trustee – and that includes the employer, a trust company, individuals, and employee representatives. Nor do you (usually) need the permission of anyone in authority to be a trustee. But there are exceptions to this general principle:

- if you carry out '*day-to-day*' management of investments (i.e. you give orders to buy and sell stocks and shares or other securities on a day-to-day basis) you need to be authorised under the