

## Part 2: The Trustee Experience

### #PensionsTensions Overview

The global coronavirus pandemic has had a seismic impact on our economy and lifestyles. Whilst some of the challenges posed by COVID-19 are expected to be short-lived, the longer-term implications of the crisis remain unclear. The slower pace of life during lockdown has given many people an opportunity for reflection, and it is likely there will be some permanent changes to how individuals live, work and save for retirement, as well as new and ongoing challenges and opportunities facing pension scheme sponsoring employers and trustees. In this series of publications we examine the key areas of pension tension, in each case exploring four aspects, assigning them a #PressureMeasure (the higher the score the greater the pressure being faced) and giving our view on where further reflection might lead to welcome change.

### Resilience – How Well Have Pension Schemes Adapted to a New Way of Working?

#PressureMeasure: 1/10 

The pensions industry has successfully adopted a “keep calm and carry on” mantra: in a new world of social distancing and self-isolation, benefits have still been paid on time, virtual trustee meetings have gone ahead and key projects are progressing.

Virtual trustee meetings may have become the “new normal” but trustees should make sure that decision-making practices continue to be aligned with scheme documents. As lockdown measures are eased and working patterns continue to change it is important that scheme policies and procedures (such as reporting to The Pensions Regulator) are probed to ensure that trustees can respond urgently in a crisis.

The quality of a pension scheme’s data security measures may have been tested during the pandemic. Industry reports show that pension schemes remain a substantial target for cyber criminals and cyber risk has increased in recent months.

Data protection measures often leave room for improvement, with press reports of more than one serious data breach per week being reported to the Information Commissioner’s Office.

Are you sure your trustees know how scheme data is protected and what should happen if things go wrong? Trustees should review their data protection policies and procedures to ensure they remain fit for purpose in the current working environment, and take steps to ensure that data is as secure as possible from cyber-attack, particularly where a third party provider is responsible for holding data.

We are seeing contractual terms being updated to refer specifically to pandemics. This may become a new area of pension tension: if something goes wrong as a direct or indirect result of the pandemic, where should responsibility lie, and what steps can be taken to mitigate the risk (including insurance)? Future case law may clarify this, but in the meantime, trustees should seek legal advice on *force majeure* provisions and limitations of liability in any new contracts.

### Quality – Are Trustees Confident They Are Paying the Right Benefits at the Right Time?

#PressureMeasure: 5/10 

Data quality issues remain a concern for many schemes, and the advent of the pensions dashboard will shine a spotlight on the importance of accurate scheme data. Can trustees be confident that the scheme is paying the right benefits? Do member questions or complaints indicate a pattern that should be investigated?

Meanwhile, some trustee boards may find themselves under increasing pressure to take early action on GMP equalisation, as a prelude to a possible GMP conversion exercise, buy-out or other liability management activity.

Discrepancies between the scheme’s governing rules and administrative practice can cause delays to these exercises, and increase costs where historic underpayments and/or overpayments come to light.

Reviewing the scheme’s benefit specification at an early stage can reassure trustees that the correct benefits are being paid or highlight any issues that need to be addressed. Prompt action to verify benefit and data quality may position trustees to be “buy-out ready” and enable them to move swiftly to mitigate or secure liabilities if the opportunity to do so arises.

## Quantity – How Can Trustees Manage Their Business Effectively?

#PressureMeasure: 3/10 

With a seemingly never-ending list of new action points on their agendas, trustees' resources are often stretched, and it can be difficult to identify which of the competing demands on their time should be prioritised.

A robust risk management plan that is reviewed regularly is a useful tool for identifying where to focus resources. Undertaking regular, tailored training will ensure that trustees can meet The Pensions Regulator's expectations on knowledge and understanding and keep up to date with new legislative and regulatory requirements.

Trustees have the power to delegate certain actions – usually including a power under their scheme's rules to set up sub-committees. In particular, larger trustee boards may find that sub-committees lead to efficiencies, but the sub-committee's terms of reference should be clear and up to date.

Trustee boards may find themselves caught in the middle of the competing priorities of The Pensions Regulator and their sponsoring employer, which can place a strain on working relationships. We will look at areas of tension facing employers in part 3 of our #PensionsTensions series.

## Evolution – How Could the Pandemic Change How Pension Schemes Are Run in Future?

#PressureMeasure: 2/10 

Apart from member-nominated trustees who are already pensioners, the majority of lay trustees take on the role in addition to their day job. Many defined benefit pension schemes have been closed to new members for a long time and recruiting new trustees – particularly member-nominated trustees – can be a challenge.

Potential trustees may be nervous of exposure to personal liability, and for this reason trustee boards will usually have multiple layers of protection from liability, including under the scheme's rules and via insurance.

Risk can be further reduced by using a corporate trustee model, which gives individual trustee directors the same broad level of protection from personal liability as the directors of the sponsoring employer.

We may see a continued move to corporate trustee structures if trustee recruitment issues persist. It is also likely that the trend for appointing professional/independent trustees will continue, particularly as accreditation for professional trustees becomes a reality and evidences continued increase of standards.

### Reflecting on These #PensionsTensions

Trustee boards have risen to the challenge of working remotely, but the government's advice to "stay alert" is very apt. As well as being aware of the risks facing their scheme and taking appropriate action, trustee boards should look at the opportunities available to them.

Proper delegation to sub-committees may help with efficient scheme priority management. By ensuring that their scheme's data is up to date and identifying and dealing with discrepancies between scheme rules and administrative practice, trustees can position their scheme for any de-risking opportunities that may arise.



#PressureMeasure: the higher the reading on the gauge the more pressing the need for action/reform

## Contact



**Matthew J. Giles**  
Partner, Birmingham  
T +44 121 222 3296  
E [matthew.giles@squirepb.com](mailto:matthew.giles@squirepb.com)