SQUIRE PATTON BOGGS

Protect Against Unmitigated Liabilities #meetPAUL #How2DoPensions

Campaign Overview

Earlier this year, we conducted a survey to assess how confident trustees and corporate sponsors felt about 10 fundamental areas of pensions risk. We focussed on areas not directly covered by the Integrated Risk Management Framework, and asked respondents to rank the risks in order of their "stay awake" factor. We have now produced a series of 10 factsheets, each one commenting on one of the survey risks. Our red risk flags highlight some key warning signs, and our mitigation tips are designed to supplement existing areas of risk mitigation. Each factsheet assumes there is an established risk management system on which additional measures can be built.

Risk 8: Trustee Governance Gaps and Key Person Risk

Survey Result

This risk ranked eighth in our survey overall, but was identified as the highest risk of all by schemes with more than £10 billion of assets.

Comment

From time to time, it is almost inevitable that trustees will rely on a key individual – this may be the pensions manager, an adviser who is helping with a special project or a co-trustee with a specific area of expertise. However, short-term dependency should not lead to long-term vulnerability. Cover and succession planning should be put in place wherever possible. Trustees with specialist knowledge should be encouraged to share that knowledge, and key advisers should have a deputy, or a team, with whom their knowledge is shared.

Forming sub-committees can be an efficient way to conduct business if clear terms of reference have been agreed. It is important to schedule time in trustee meetings for sub-committees to report back so that their expertise is shared rather than concentrated. The membership of sub-committees should be reviewed and rotated periodically to allow other trustees to broaden their expertise.

It is common to consider skills gaps when appointing an independent trustee (e.g. whether an individual with a legal, actuarial or investment background is preferred), but this approach can also be helpful when appointing lay trustees. In addition to specific skills, it is important to have broad representation and diversity of thought within the group.

Red Risk Flags

- Trustees routinely follow the advice of advisers without questioning that advice.
- The same one or two individuals take the lead in most decision-making.
- Trustees struggle to fill member-nominated trustee vacancies.
- The sponsoring company does not engage with the trustees when making company appointments to the trustee board.
- Trustees do not have open discussions about learning needs.

Mitigation Tips

- If any trustee or adviser resigned today, would the trustees find it difficult to operate the scheme? If the answer is "yes", succession plans should be formed urgently.
- Review the terms of reference and the membership of sub-committees to ensure that they enhance the effectiveness and knowledge of the trustee board.
- Review the member-nominated trustee procedure, especially if there are unfilled vacancies or if nominations will be sought in the near future.
- Discuss the best ways of knowledge sharing. How do individual trustees learn, and what expertise is available within the trustee group, within the sponsoring employer or from advisers, to help to fill skills gaps or improve the team dynamic?

A Word from The Pensions Regulator

"The power of appointing new trustees often sits with the employer, but existing trustees should give advice on the needs of the board. Succession plans should reflect the size and complexity of the scheme and take into account the strengths and weaknesses of the board, with the aim of selecting individuals who'll fill any gaps identified."

(From 21st Century Trusteeship)

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