

THE TRANSPARENCY TASK FORCE

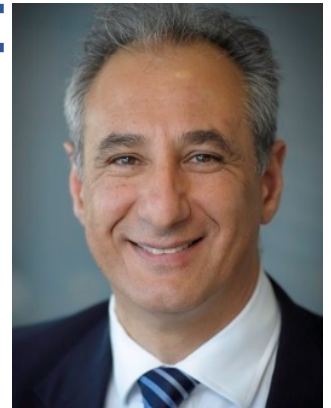
Can trustees control costs and charges?
Campaigning for more information:

Andy Agathangelou
Founding Chair

The Transparency Task Force

13th June 2016,

Capita, 65 Gresham Street, London EC2V



TRANSPARENCY

About the Transparency Task Force

- We are a campaigning community, dedicated to driving up the levels of transparency in financial services, right around the world
- We believe that higher levels of transparency are a pre-requisite for fairer, safer and more efficient markets that deliver better value for money and better outcomes
- Furthermore, we hope our work will help to improve the reputation of the financial services sector, which has had a pre-disposition to self harm for decades
- Our approach is collegiate, collaborative and constructive
- But it will also be **relentless.**

Can trustees control costs & charges?

- **Yes**, but it is needlessly difficult, because at the moment the regulatory framework in the UK (unlike Holland and possibly elsewhere) fails to mandate for:-
 - Transparency on costs and charges
 - Consistency in costs and charges data capture and reporting
 - An efficient, competitive and fair market.

What's the impact of all this?

- It is terribly difficult for trustees to manage costs & charges
- 'You can't manage what you can't measure'
- So you might not be managing costs & charges properly
- Whereby **you'd be failing in your duty as trustees**
- We don't blame you for this, it really isn't your fault
- **But it is your responsibility**
- For DC Schemes it's about achieving better outcomes
- For DB Schemes it's about protecting the sustainability of
 - The scheme (excessive costs contribute to excessive deficits)
 - The sponsor (excessive deficits undermine sponsor viability)
- For state-funded schemes it's also about reducing the adverse impact on the tax-payer and our society as a whole.

We mustn't be naïve

➤ **The problem is that for some, 'opacity = opportunity'**

- Turkeys don't vote for Christmas
- Those with the most to lose will fight hardest

➤ **For them, 'transparency = threat'**

- They have become very good at defending their position
- But their position is increasingly untenable

➤ **The problem is serious, structural and systemic**

- We need far-reaching reforms that mandate for transparency
- **And** we need a pro-transparency, cultural transfusion for the entire financial services sector; otherwise the rules will just get 'gamed', again (For example the 0.75% 'charge cap').

So what should **you** do about all this?

➤ **You should commit to OPTIMISING costs & charges NOW**

- You should do this
 - because it's the right thing to do
 - because it's your duty to do it
 - **because you might get sued if you don't**
 - Do you have trustee insurance?
 - Does it protect you from the risk of litigation on costs/charges?
 - Will what's happening in the USA happen in the UK?.

InvestmentNews

Attorney Schlichter preps new round of 401(k) suits

A pioneer in bringing lawsuits over retirement-plan fees is investigating several large plans, building on recent successes and a broader wave of litigation.

Jan 22, 2016
By **Greg Iacurci**



Jerome Schlichter (Dan Donovan)

Jerome Schlichter, a trailblazer of the 401(k) fee litigation that's proliferated in the U.S. over the past decade, seems to be gearing up for another round of class-action complaints. He is riding on a wave of success, broadening growth of

Is it a matter of time before a class action is brought against the trustees of a UK pension scheme that cannot **evidence** they carried out their duties to protect members' interests by managing costs & charges properly?

If so, are the (previous set of) trustees that 'looked after' this scheme completely 'safe'?



If they *were* successfully sued how likely is it that other cases would follow?

If many trustee boards 'found themselves in court' because their behaviour adversely impacted members' outcomes can your trustee board **evidence** that it carried out it's duties to protect members' interests by managing costs & charges properly?

It's our opinion that there aren't many UK pension schemes where the trustees can **evidence** that they are successfully carrying out their duties to protect members' interests by managing costs & charges properly

But there's at least one that can:



Can yours?

A selection of text taken from the website of Schlichter, Bogard & Denton:

In recent rankings of the most influential people in the 401(k) industry by 401kWire.com, Jerry has repeatedly ranked in the top 5. This is due to his handling of nationwide class actions on behalf of employees and retirees in large 401(k) plans alleging excessive fees and conflicts of interest that reduce employees' and retirees' retirement assets.

Throughout his career, he has also handled major precedent-setting class action and mass tort cases on behalf of individuals. He currently represents employees and retirees of large companies with claims of excessive fees in their retirement plans. He and the firm have obtained settlements in these 401(k) excessive fee cases of more than \$300 million for employees and retirees, in addition to significant improvements in their 401(k) plans. He also was lead attorney for the firm in the first and only full trial of an excessive fee case in the country. This trial resulted in a substantial eight-figure verdict on behalf of employees and retirees in the ABB 401(k) plan.

Jerry has been featured in numerous national publications, including the New York Times, Reuters, Bloomberg, USA Today, and the Wall Street Journal, for his success in obtaining precedent-setting results involving claims of excessive fees against large employers, and for the reduction in fees his cases have caused throughout the 401(k) industry. According to a recent article published in Reuters, the CEO of Brightscope, an independent company which evaluates 401(k) plans, stated, speaking of Mr. Schlichter's national impact on 401(k) plan fees, that "[h]is impact has been humongous." The New York Times has referred to Jerry as "a Lone Ranger of the 401(k)'s," and he has been referred to by Investment News as "public enemy no. 1 for 401(k) profiteers" and by Chief Investment Officer as "the industry's most feared attorney."

In 2014 and 2015, Mr. Schlichter's firm obtained the two largest 401(k) excessive fee settlements in history. The first was a settlement for \$62 million against Lockheed Martin on behalf of Lockheed Martin employees, which included significant changes to the Lockheed Martin 401(k) plan. The second was a settlement for \$57 from Boeing, which likewise included significant non-monetary relief.

Also in 2015, Mr. Schlichter won a unanimous 9-0 decision in the U.S. Supreme Court in *Tibble v. Edison*, the first U.S. Supreme Court case to consider fees in 401(k) plans.

In an order in the case of *Nolte v. Cigna Corporation* in 2013, the U.S. District Court judge stated: "... Mr. Schlichter and the Schlichter, Bogard & Denton firm's actions have led to dramatic changes in the 401(k) industry, which have benefited employees and retirees throughout the country by bringing sweeping changes to fiduciary practices."

The U.S. District Court in *Tussey v. ABB* similarly found of "special importance . . . the significant, national contribution" made by the team led by Mr. Schlichter, which has "educated plan administrators, the Department of Labor, the courts and retirement plan participants" about the fiduciary obligations of 401(k) plan administrators.

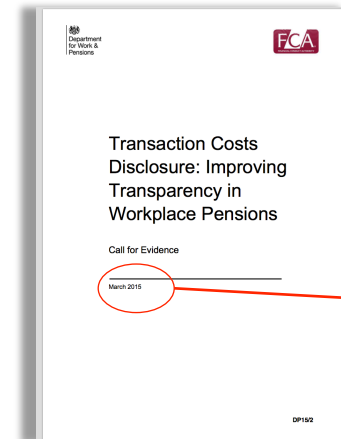
So what could the AMNT do about all this?

- **AMNT could campaign for changes to the regulations**
- To make it **easier and safer** for trustees to manage costs
- AMNT can **campaign** through:

#1: The FCA's
Asset Management
Market Study



#2: The DWP + FCA's work on
costs and charges as required by
Section 44 of the Pensions Act 2014



March 2015

Are AMNT and TTF on the same side?

- If so, should we co-ordinate our campaigns in some way?
- The Transparency Task Force is campaigning very actively
- We are happy to share our research findings with AMNT
- We have important meetings lined up (DWP on 14th June and FCA + DWP + FSCP et al, on 1st July)

➤ **AMNT are very welcome to attend and participate**

- So too are UNISON
- ...and any other organisation that believes there ought to be greater levels of transparency in financial services, **for the benefit of the consumer and to help improve the reputation of the financial services sector, which has had a pre-disposition to self harm for decades**

And finally...

➤ Click below for details about our next Transparency Symposium:

<https://www.eventbrite.co.uk/e/transparency-symposium-tickets-24846236763>

(£150, but you can pay as little as you want to, down to just £1)

➤ Click below for the latest edition of the Transparency Times:

https://issuu.com/andyagathangelou/docs/the_transparency_times_launch_editi?e=24856696/35563270

(It's free, with lots of great pro-transparency articles from academics, politicians, advisers, trustees, Chairs of Investment Committees and market participants **including progressively-minded asset managers**)

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- Thank you!

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