The Pensions Regulator’s 21st Century Trusteeship campaign

- Aim to “stimulate a dialogue about how government, regulatory bodies and the pensions industry can raise standards of trustee competence and improve the governance and administration of pension schemes”.
- Areas of focus and guidance: • Good governance • Clear roles and responsibilities • Clear purpose and strategy • Skills and experience • Advisers and service providers • Managing risk • Managing conflicts of interest

Trustees’ investment duties— the old and new..

Trustees’ investment duties:
- Pension trustees must take such care as an ordinary prudent person would take if he invested “for the benefit of other people for whom he felt morally bound to provide”: Re Whitely (1886)
- Legal duties from Scheme Rules; Pensions Act 1995; Occupational Pension Schemes (Investment) Regulations 2005; FMSA 2000; Regulator guidance
- Duty to invest in a member’s best financial interests – Cowan v Sargill (1984) - Trustees may not therefore put their own (or members’) ethical or social concerns above their duty to obtain the best financial return for the members, or can they…?

Consultation on clarifying and strengthening trustees’ investment duties (June 2018): Government consulting on changes to regulations governing investment and disclosure of information by trustees to reflect environmental, social and governance (ESG) and stewardship concerns.

Key investment actions for a 21st Century Trustee

Investment governance:

Trustees to:
- establish investment sub-committees (both DB and DC) with clear and up to date terms of reference;
- monitor investment activity regularly and keep trustee training up to date;
- work collaboratively with investment advisers and scrutinise advice;
- establish and maintain systems to identify investment risks (including ESG risks); and
- monitor investment advisers and managers and consider conflicts of interest (e.g. fiduciary management).

Investment decisions and records:
- respond promptly to investment advice;
- prepare a clear record of investment decision-making; and
- update SIP regularly – NB: From 2019: Likely that SIPs will have to state policy on “financially material considerations” (including climate change) and state extent to which trustees have taken members’ views about financial and non-financial matters into account.

Other recent developments:

CMA review (July 2018): report on investment consultancy / fiduciary management services: Concerns in the fiduciary management sector- recommendations: mandatory tendering for first supply of fiduciary management services; development of cross-selling warnings and greater FCA / TPR oversight.