Written Evidence from the National Federation of Occupational Pensioners (NFOP)

Work and Pensions Select Committee inquiry into the Pension Protection Fund and Pensions Regulator

Summary of pensioners’ key concerns:

- pension schemes have an embedded conflict of interest (boards of trustees are dominated by company employees/officers)
- a conflicted board of trustees cannot adequately represent and protect pensioners
- a conflicted board of trustees may not push a company to prioritise funding pension deficits

The NFOP is a non-party-political membership body organisation representing the interests of members of occupational pension schemes. It represents pension schemes containing over 70,000 members.

1) NFOP is concerned that there is an underlying flaw in the structure of many pension schemes: there is an embedded conflict of interest that may impede trustees from reliably fulfilling their duty to act in the best interests of pensioners.

2) The conflict of interest is that an overwhelming majority of the trustees are employees/officers of the company organising the scheme. The interests of the company are different from the interests of pensioners. For example, a company will typically prioritise maximising shareholder value. Maintaining its pension scheme in deficit will help meet this objective. However, maintaining a pension scheme in deficit is not in the interests of pensioners.

3) As individuals, company employees/officers are aligned with the priorities of the company. They are reliant on the company for income/careers. Some may rely more on salaries/bonuses/share options than their company pension. When trying to represent pensioners, trustees who are company employees/officers thus have an insoluble conflict of interest. The one or two trustees who are independents or pensioners cannot balance the situation.

4) Most pension schemes are now owed large sums by their company. Negotiating the terms of that debt with the company (to ensure there is enough cash to pay pensioners) is a fundamental role of the board of trustees.

5) We worry:

   a) If a conflict of interest pervades the board of trustees, then pensioners cannot assume that each and every action/decision of the board of trustees has been made in the best interests of pensioners.
b) In particular, if trustees are negotiating debts with the company, those trustees need to be tough negotiators. The company will want to distribute/spend cash elsewhere. The trustees need to push the company to prioritise sufficient upfront cash/asset payments to the pension scheme. A board of trustees that is aligned with the company’s other activities, due to an embedded conflict of interest, may leave pensioners with insufficient deferred commitments.

c) If an embedded conflict of interest is preventing many boards of trustees from pushing for sufficient upfront cash/assets from their companies, then widespread shortfalls should be anticipated. Is the Pension Protection Fund adequately funded to cover this risk?

6) This acute and pervasive conflict of interest cannot be dealt with by the usual methods of identifying, monitoring and managing conflicts. It cannot be dealt with by training, education and guidance. This conflict of interest is a systemic defect at the heart of the sector that has, to date, been accepted as the norm and ignored.

7) Although, in theory, a beneficiary of a trust might try and sue a trustee for mishandling a conflict of interest, such a remedy is manifestly inappropriate in this instance. The problem is with the way pension schemes are set up, not the individual trustees.

8) NFOP concludes that the pension sector requires reform to ensure that trustees act in the best interests of pensioners: companies should not be permitted to establish/operate pension schemes with over 50% of trustees being company employees/officers.

Other concerns of NFOP:

i) Approval of The Pensions Regulator (or other appropriate person/body) should be required before any major financial reorganisation/takeover/sale. This would give The Pensions Regulator an opportunity to require that pension scheme deficits are funded before cash is extracted from the company.

ii) Independent experts should be on the board of trustees. Pension schemes manage vast amounts of money (they can be worth more than the company that set them up). Their operation/management needs high level financial expertise.

iii) A company has a duty to provide information to shareholders and listen to shareholders. There should be a comparable mechanism for pension schemes.

iv) At the moment, companies maintain huge deficits in pension schemes and prioritise distributing/spending cash elsewhere to meet other objectives (eg: share price). Companies will continue to do this until they are forced to do otherwise. Boards of Trustees that adequately represent pensioners is a step in the right direction. In addition, the legal/regulatory framework needs to be adjusted so that companies are encouraged/required to prioritise funding pension schemes.
Contact details

NFOP would be delighted to provide the Committee with oral evidence, for further information please contact Malcolm Booth, Chief Executive on Malcolm.booth@nfop.org.uk or 01582 721652

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