

# TRUSTEES AND PENSION SCHEMES IN IRELAND

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## Abstract

**Purpose** – This article highlights the gap between the legal responsibilities and the practice of pension fund trustees in Ireland.

**Design/methodology/approach** – The paper relies on primary and secondary data analysis of trustee practice and enforcement cases to highlight the gap between law and practice.

**Findings** - The article finds that there is an inconsistency between legal requirement and practice in the calibre of trustee and trustee training across Irish occupational pension schemes. This has adverse consequences for pension governance and performance.

**Practical implications.** - The findings raise the question as to whether there should be mandatory qualifications for trustees or mandatory standardised trustee training in a prescribed format, with which trustees should comply. It also questions whether there should be a governance code for trustees to ensure a minimum standard or target level of competence and good governance on the part of pension scheme trustees.

**Originality/value** – There is a distinct lack of emphasis in the literature on the inconsistency between the extent of the responsibilities which trustees ultimately carry, and the legal exposure this potentially creates for trustees who unduly rely on other trustees or third parties in the trustee decision making process.

**Keywords** – Trusts, pension provision, agency issues governance of pension schemes.

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### Introduction

A trust is a widely used structure in modern commercial activities especially within the Anglo-American legal systems (Langbein, 1998). This is for a variety of reasons, for example trusts facilitate complex ownership/beneficiary structures and may also have favourable tax treatment. Trusts are the common structure for the ownership and management of occupational pension scheme assets.

This article examines empirical and other evidence on the role and responsibilities of trustees in Defined Benefit (DB) pension schemes in Ireland. The paper argues that the operation of trusts and the calibre of trustees and trustee training poses risks to pension schemes members in particular during periods of financial stress and regulatory change. At the same time trustees have been given substantial extra responsibilities (Pensions Board, 2009, p. 5). Scheme trustees may thus fail to meet the challenges required and may be exposed to risk from legal challenge in the way in which responsibilities have been discharged.

### *The Pension System in Ireland*

The pensions system in Ireland (as in other countries) has two main elements, - a State – run Social Welfare system and a private, voluntary, supplementary pension system, benefitting from generous tax allowances, and regulated by the State. The majority of voluntary pension arrangements take the form of occupational pension schemes – privately managed pension schemes offered by employers to most or all employees as part of an overall remuneration package. These schemes are funded by employer and employee contributions, with the intention that accrued contributions and returns provide a targeted level of replacement income on retirement to complement the employee's social security pension. Other private pension arrangements consist of individually funded schemes, for example, Retirement Annuity Contracts (R.A.C's) used by the self employed and Personal Retirement Savings Accounts (P.R.S.A's) designed to suit employees in sectors where occupational pension coverage is low, for example the retail sector (Hughes and Stewart, 2009).

Currently just over 50% of Ireland's working population (employees and self employed) have private sector pension provision (Table 1).

### **Table 1 Here**

For employees, the vast majority of voluntary pension arrangements are either defined benefit (DB) or defined contribution (DC) schemes. In the event of a deficit (the difference between the value of assets and current value of estimated liabilities), in a DB scheme the employer is expected to cover/part cover the deficit, but this guarantee is often implicit rather than explicit, as such it is a valuable asset although one that is never quantified. Even if explicit, a major risk for members of a DB scheme is that the employer is unable to honour this guarantee. Conversely a pension scheme surplus (now rare) may be used for employer contribution holidays. To date there have been few examples of employers in Ireland unilaterally reducing pension commitments (Stewart, 2011, p. 178), but there are examples in the case of changes in ownership and corporate restructuring where employer obligations to defined benefit pension schemes have ended. so that in the case of DB schemes, and in the absence of a pension protection fund, scheme deficits are solely the responsibility of scheme members. A recent example arose in the case of a change in ownership of a large department store (see 'Demise of pension scheme at Clery's', Irish Times 29th September, 2012). Such examples may become more common because of widespread deficits in DB pension schemes. DC schemes do not have an employer guarantee (all investment risk is borne by the employee). In the absence of this guarantee pension payments become a function of returns.

Table 2, shows that the number of new DC schemes compared with DB schemes has risen significantly in recent years. Since 1996 the number of DB schemes has fallen by 43%, while the number of DC schemes has increased by 68%. While membership of DB schemes rose by around 40% since 1996, membership of DC schemes increased by more than 300%. There have also been major changes in entitlements and contribution rates to existing schemes, for example the closure of over 80% of DB schemes to new members, and a further 40% intending to change scheme benefits and/or the level of employee contributions and their replacement with DC or partial DC schemes (Stewart, 2011).

## Table 2 Here

Table (2) also shows the number of defined benefit schemes and their members (in brackets) that are not subject to a funding standard. These are defined benefit schemes that are exclusively in the public sector (Statutory Instruments No. 295/2008) and are in most cases not funded. Because they are less risky they are not subject to the same level of oversight and funding standards as those schemes which are exclusively in the private sector.

### *The Nature of Trusts*

Holding assets in the legal form of a trust has numerous advantages:- assets must be segregated; assets are protected in the event of the insolvency of the trustee (employer in the case of pension funds); Trusts often have extensive tax advantages and in the case of pension trusts are tax exempt. Some consider that what is fundamental to the use of trusts is that the trustee is granted extensive powers to manage the trust, coupled with a requirement that the trust should be administered solely in the interest of trust beneficiaries, and managed in a prudent manner (Langbein (1997). Langbein considers that this principle 'forbids' conflict of interest transactions.

While these advantages are well known it is also increasingly recognised that there are disadvantages to the trust model<sup>1</sup>. Despite the comments by Langbein, pension fund trusts are subject to conflicts of interest for example where trustees represent different interest groups. Pension schemes also have other disadvantages in terms of governance for example the ability of trustees to manage entities with large financial assets and liabilities in a complex uncertain environment; A third issue relates to the need to minimise administrative and other costs associated with operating pension scheme trusts and potential conflicts of interest that may arise because of the dual function of firms providing services to pension funds such as investment advice and acting as trustees.

The pension regulator in Ireland recognises these advantages and disadvantages, but concludes that the trust model continues to offer protection to pension schemes that justify its continuance. Disadvantages

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<sup>1</sup> For example, Pensions Board 2006, p. 9.

of the trust model such as lack of trustee expertise, potential conflicts of interest and the need for further trustee support, may be overcome through a renewed focus on measures to improve the regulatory framework and the internal governance of pension schemes (Pensions Board, 2006, p. 9).

The role of trustees is vital in pension fund performance, for example in relation to developing and monitoring investment strategy and ensuring compliance with regulations. While the trustees of a scheme are obliged to employ the services of experts, for example investment advice, ultimate responsibility for achieving scheme objectives remains with the board of trustees. It follows that when pension schemes fail to deliver on pension promises, scheme trustees are responsible to scheme members for their actions. This raises difficult issues for trustees with varying levels of expertise and training who have met as a board infrequently (two to four times) in a financial year.

### **The Role of Trusts and Trustees**

Despite their widespread use there has been relatively little analysis of the use of trusts in the organisation and control of pension schemes. The definition by Underhill and Hayton (1995, p. 3) is a widely recognised definition of a trust. They state:-

“ A trust is an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called beneficiaries...) of whom he may himself be one, and any one of whom may enforce the obligation”.

This definition does not deal explicitly with the duties of trustees. Reporting after the Robert Maxwell pension scandal the Goode Report (1993, par 4.9.7), contains a widely used statement of trustees duties as follows:

“[trustees must] exercise, in relation to all matters affecting the fund, the same degree of care and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide and to use such additional knowledge and skill as the trustee possesses or ought to possess by reason of the trustee’s profession, business or calling.”

An implication that follows is that individual trustees may have different levels of liability by virtue of their profession or education, although decisions have been taken collectively. Non-professional trustees are expected to seek and rely on the advice of professionals such as investment managers, yet such reliance in turn requires a considerable level of expertise by trustees.

#### *The Legal Duties of Trustees*

The obligations and responsibilities of pension trustees are derived from three distinct sources:

The trust deed and a set of rules governing the operation of the trust, general trust law, much of which has been established by case law and pensions legislation. The main legislation in Ireland is the Pensions Act, 1990.

The Irish Law Reform Commission Consultation Paper (2008) stated that in the Irish context, trustee legislation has not kept up to date with the changing economic and social nature of trusts. Irish trust law lags behind UK and other European legislation in this area, and many key aspects of trustee law now covered by legislation in England, such as a trustee’s duty of care and the delegation of trustee functions, remain in the Irish context covered by principles developed in case law and. it is likely that this case law would be followed in Ireland. Delaney (2007, p. 28) illustrates the principal duties and responsibilities of trustees from case law. In summary trustees are required to act in good faith and in a responsible and reasonable manner in performing their functions and they must inform themselves, before making a decision, of matters that are relevant to that decision. Where trustees have discretion in relation to the management of a trust, the court will intervene if improperly exercised (Delaney, 2007, p. 25).

It is generally accepted that in relation to the management and administration of a trust, unpaid trustees are expected to use such diligence and care as an ordinary prudent man would use in the management of his own affairs. An important principle, is that a higher duty of care is expected of a professional trustee which carries on the specialized business of trust management (Delaney, 2007, p. 42).

Trustees are obliged to keep clear and accurate records of trust assets which may be inspected by beneficiaries. Trustees have a duty to maintain equality between beneficiaries in accordance with scheme rules and this includes acting in a fair manner in making investment decisions which may have different consequences for different classes of beneficiary. A trustee is under an obligation to ascertain the identity of beneficiaries and to take the necessary steps to ensure that trust property is distributed in accordance with its terms. Where a reasonable doubt exists about the respective claims of the beneficiaries, a trustee may apply to the court for directions and will be protected from liability in this regard provided he follows these directions.

It is a well established rule that a person who occupies a fiduciary position is not entitled to make a profit from that position unless expressly authorised to do so, and should avoid conflicts of interest. As a general principle, a trustee is not entitled to remuneration for work carried out by him in his capacity as trustee except in the case of professional trustees which would operate under the terms of contract with the pension scheme or employer. Pension fund trustees have “common law fiduciary obligations” (Kay Report , p. 66). One practical implication is that this has been interpreted as meaning that short term financial gains should be maximised (Kay Report, p. 68). In contrast the Kay Report argues that trustees should subject to risk preferences and “prevailing ethical standards” maximise long term investment returns (Kay Report, p. 68).

Even where an agent has been appointed, a trustee must still exercise a reasonable degree of supervision over the agent’s activities. Accordingly while legislation and trust deeds may allow/require trustees to delegate the investment function of a pension scheme to investment/fund managers, a residual responsibility remains with the trustees collectively if only in terms of the selection of investment advisors

and fund managers, the investment mandate pursued by these experts and the ongoing appraisal of their performance.

In Ireland the Pensions Act, 1990 specified trustees' duties such as registering the scheme, ensuring that contributions are received and benefits paid out. But more important following the enactment of the Occupational Pension Schemes (Investment) Regulations 2005 in Ireland<sup>2</sup>, all schemes except small schemes (less than 100 members) must prepare a Statement of Investment Policy Principles (SIPP) which is intended as a description of the investment policies of the trustees with comments on investment objectives, investment risk measurement methods, risk management processes and strategic asset allocation in relation to the nature and duration of pension liabilities. They must also ensure that the funding standard is met. Hence trustees have been explicitly required to formulate and be extensively involved in investment policy during a period when pension fund values collapsed (Stewart, 2011, p. 171).

The Pensions Board (2007) states in relation to a trustees' duty to invest, that where trustees delegate the actual conduct of the scheme's investments to a professional investment manager, the responsibility for monitoring the conduct of the manager and the performance of the assets lies ultimately with the trustees. Where a scheme has not appointed an investment manager, the trustees of the scheme must demonstrate to the Pensions Board that they possess among their membership the appropriate qualifications and experience to assess and advise on investment options and make the investment decisions in relation to the scheme's resources. Alternatively the trustees can employ an advisor with such qualifications and experience subject to the Board's approval.

In relation to the requirement to ensure that the schemes' funding requirements are met, the Pensions Board states in its guide that it is important that the trustees have a good understanding of the provisions relating to the preparation of the AFC (Actuarial Funding Certificate) and a funding proposal (where the scheme does not satisfy the funding standard) and that this is an area which should be discussed in detail

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<sup>2</sup> These regulations gave effect to a European Council Directive 2003/41/EC of 3 June 2003



with the actuary and or the scheme advisors. The Guide cautions that a trustee, who is negligent, or does not act in good faith or does something, which is contrary to the rules of the trust, can be sued by the beneficiaries.

Despite a collapse in the value of Irish pension funds and strict legal obligations to safeguard the value of assets, there has been no reported case in which a trustee has been found liable for a breach of trust arising from pension scheme investment performance. Rather a majority of complaints by scheme members to the Irish Pensions Ombudsman relate to administration rather than strategic management of the scheme (Table 3). One reason for this is that as Doyle (1991) argues the burden of proof facing potentially litigious beneficiaries is prohibitively high.

**Table (3) Near here**

Scheme members or potential beneficiaries who have suffered financial loss due in part to the actions or inactions of trustees may seek redress through the courts or they may appeal to the Pensions Ombudsman. The Pensions Ombudsman investigates and decides on complaints and disputes in relation to occupational pensions and personal pension schemes and rulings by the Ombudsman are enforceable through the Courts. A review of detailed investigations dealt with by the Ombudsman in the four years to December 2010 (Table 3) shows however that most investigations have concerned the administration of scheme rules and the processing of scheme contributions rather than complaints against trustees for mismanagement or for not fulfilling their duties.

The pensions regulator (Pensions Board) may also bring and prosecute court proceedings for non-compliance and there has been an increased number of cases in recent years.. Annual reports of the Pensions Board, for example, for 2009 cite numerous complaints principally related to alleged failure by employers to forward pension contributions which had been deducted from employees' pay. Outside of these, there were no reported cases of any disciplinary steps been taken against trustees in recent years by the Pensions Board.

## Table (4) Near Here

### Trustees Duties and Responsibilities: Empirical Results

#### *Data Sources and Methodology*

The UK Pensions Commission concluded that present data sources in the UK are significantly deficient as a basis for evidence-based policy making on pension policy (Pensions Commission, p. 289). Irish data sources are significantly more deficient. Irish pension legislation requires pension fund trustees to provide scheme members with annual financial statements showing a “true and fair” view of the schemes’ financial affairs for the accounting year in question. However pension fund financial statements are generally only available to sponsoring employers, trustees and scheme members and are not available to the general public. Because pension schemes are legally constituted as trusts rather than as incorporated entities, a company law requirement to file annual financial statements with the Companies Registration Office does not apply. Hence it is difficult to collect data relating to individual schemes.

There were approximately 350 employer schemes registered with the Irish Association of Pension Funds (the representative body of pension funds in Ireland) in 2008. Not all pension schemes are members of the Irish Association of Pension Funds (IAPF). Using this list financial and other data was obtained from 58 Irish pension schemes for the period 2003-2008, although varying amounts of data were disclosed for each scheme. Pension scheme reports are available to members with a time lag of up to two years after the year end date. A profile of the respondents across scheme type, number of members and total scheme assets is shown in Table 5.

#### Table 5 Here

The potential total population as reported by the Pensions Board is shown in Table 2. All of the schemes included in this study had in excess of 100 members. The schemes in the study accounted for 375,000 members in total (for 2007), some of which are described as active and some of which are described as deferred (Table 4). The schemes included in the study (58) represented approximately 10 per cent of all pension schemes in excess of 100 members, but accounted for 47% of members and 24% of assets.

A data base of trustee information was compiled from the annual reports of pension schemes, for example the number and qualification of trustees, the presence or otherwise of a “professional” trustee on the board of trustees, the number of trustee meetings annually and any information provided as to the role of the trustees in the decision making processes particularly the investment decision making process. There were variable amounts of data disclosed for each scheme, and by each scheme through time. There are minimum requirements set down by regulation/legislation (International accounting Standards Board 2007, Pensions Act 1990) and while some schemes only provide details sufficient to satisfy the minimum requirement (while stating that more detailed information is available upon request from the trustees), others provide more than the minimum and some provide comprehensive information.

#### *The Role of Trustees in the Schemes Examined*

Only 5% of schemes included in this study reported expenditure on trustee training during the years under review and a further 2% of schemes indicated that trustee training was incurred by the employer company but no details of actual amounts expended were disclosed. This evidence shows that while there is a legal and regulatory framework for trustees in relation to their duties and responsibilities, backed by a system of penalties, it has not been effective in ensuring a consistent level of expertise and training for all trustees. For example, a survey of trustees of 340 Irish pension schemes found that 63% either had no or limited information on scheme costs (Department of Social Welfare, 2012, p. 192). Identifying specific costs may also be difficult where pension providers provide a range of services (Department of Social Welfare, 2012, p. 122). It is also unlikely that non-professional trustees can develop the appropriate skills to fully discharge their duties. Reliance is effectively being placed on professional investment advisors and pension scheme administrators to discharge the day to day administrative and the strategic running of pension schemes.

For the most recent year for which annual reports were available (2008) the number of trustees per scheme included in the study group ranged from one to eleven. Based on the information disclosed, the

trustee boards included mainly scheme members, trade union representatives, professional trustees, representatives from the employer company, and for some of the larger schemes investment, actuarial and legal experts. The results demonstrate a relatively low usage of an 'independent' professional trustee. In most cases 'professional' trustees come from firms who also provide investment advice, fund management and actuarial services. For the same year (2008), 34% of schemes in the study reported using the services of a professional trustee 26% of schemes reported only a professional trustee with no other scheme trustees. When examined in terms of fund size, all schemes with only a professional trustee were relatively small schemes with funds under management of less than €30 million. In these cases the influence of the employer company on strategic management issues may be greater than in cases with a more heterogeneous group of trustees. In cases where there was both a professional trustee and "non professional trustees" (8% of schemes) professional trustees may extensively influence decisions on legal, technical and policy issues although this would not necessarily mean that non professional trustees had discharged their responsibilities satisfactorily.

There were no details of the composition of trustees for 22% of the schemes examined. Survey results found that only 16% included a statement required by the Pensions Board that the trustees had access to appropriate training and guidance, although this was a legal requirement since 2005. Only 7% of the study group gave any details of the number of full board meetings of trustees and for schemes who did give this information, the number of meetings ranged from 2 to 4 a year with only one trustee board meeting more than 4 times a year. A survey of UK defined benefit schemes also found similar levels of time allocated to investment decision making (Russel Research , 2012, p. 11).

These findings are also consistent with findings contained in the Myrers Report (p. 19), who reports that the majority of trustees had no professional qualification in finance/investment; training was minimal; and interaction with investment managers infrequent.

### **What is Appropriate Education and Training for Trustees?**

Clarke et al, (2006) argue from a study of trustees and funds, that given the range of task- specific skills, trustees should be assessed for their fit with different types of roles and responsibilities. The authors argue that the average trustee does not have the education and professional qualifications to play the role of informed consumer of financial advice and decision making and that training and experience may not make up the difference if trustees assume investment responsibilities without sufficient qualifications. Given the limits of trustee competence, the authors suggest greater use by pension funds of independent experts capable of contributing to challenges which require sophisticated statistical knowledge and experience.

The Myners Report (2001, p. 6) proposed introducing a legal requirement that where trustees are taking a decision, they should be able to take it with the skill and prudence of someone familiar with the issues concerned, as in the US. If trustees do not possess such a level of skill and care, then they should either take steps to acquire it, or delegate the decision to a person or organisation who they believe does. Myners considers that legislation and regulation is framed around ensuring that members interests are not damaged by gross incompetence or mismanagement of the scheme, but this does not necessarily produce rational and well-informed decision making on a consistent basis.

The Pensions Board (2006, p. 9) in its report on trusteeship, recommended that legislation be introduced to require employers to arrange trustee training for each individual trustee within six months of their appointment and at least every two years thereafter. The Social Welfare & Pensions Act 2008 introduced, with effect from 1 February 2010, a requirement that sponsoring employers arrange for scheme trustees to receive “appropriate” training, in issues such as legislation governing the operation of pension schemes and the general duties and responsibilities of trustees. There is however no prescribed standard of knowledge which trustees should attain and no prescribed knowledge of actuarial principles. The Pensions Board have “approved” a number of training courses, but employers are not obliged to use one of these approved courses and while obliged to provide training to trustees, the employer may use other means of trustee training so long as it is considered “appropriate”. This gives rise to the issue of consistency in trustee training.

The regulator's rather narrow approach to trustee training/responsibilities may indicate that the focus for trustees should be on administrative functions rather than more strategic management issues. However the Pensions Board (Pension Board, 2009), has expressed its concerns that the investment and funding of many DB schemes is based "on aggressive investment return assumptions and do not take enough account of investment risks and down-sides

### *Pension Scheme Deficits and Trustees*

Trustees have ultimate stewardship over pension fund assets. While they may delegate various aspects of this stewardship to practitioners and acknowledged experts, they retain final responsibility. Most defined benefit type pension schemes in Ireland are in actuarial deficit and require considerable restructuring. Our findings suggest that to date most trustees have minimal expertise, and insufficient resources have been allocated to trustee duties. On this basis trustees have failed in their primary duty as trustees.

Many trustees in Ireland have indemnities from the sponsoring employers or under the terms of the pension scheme itself in the event of any law suit filed against them for breach of trustee responsibilities (Thornton, 2010). Another suggested solution is pension trustee liability insurance (Howard, 2010), which would have the effect of transferring monitoring and implementation of regulations to insurance companies. In any case, the main risk, inadequate funding of pension entitlements in a DB is not insurable.

A new era for scheme trustees has arrived however, where trustees are required to oversee in some cases pension scheme closure and in others considerable pension scheme restructuring such as changes in pension entitlements and increased contributions. The current recession is the first time for many schemes to encounter deficits which threaten the viability of many schemes, with consequent implications for the role and liability of trustees. Trustees may face criticism for their role in issues relating to

investment policy and scheme costs although given the level of deficit and closure of DB schemes it is surprising that criticism of trustees is relatively muted.

### **How Can Pension Scheme Governance be Improved?**

An analogy could be made between the role of the non-executive company director and the role of a pension scheme trustee. However the development of corporate governance has resulted in a long established set of rules and principles to guide both the appointment of non-executive directors and their behaviour once appointed. These rules and principles are effectively mandatory for quoted companies. While there are significant flaws in current corporate governance, some of these principles, could ensure a minimum standard or target level of competence and good governance on the part of pension scheme trustees. Trustees should be required to meet regularly, retain full and effective control over the pension scheme and monitor the executive management (scheme actuary, fund managers, investment advisors, and fund administrators). The Cadbury Report (Financial Reporting Council, 1992) and subsequent codes developed rules on the relationship between a company and its auditor which could usefully be applied to the relationship between a pension scheme and the scheme actuary. Just as the provision of non-audit services are required to be transparent, so should the provision of all services provided by firms providing actuarial services. The OECD guidelines for Pension Fund Governance strive to achieve these goals, but guidance on key matters such as the skill set of the board of trustees and the training required to fully understand investment issues is too vague and appears to assume that organisational structures (rather than calibre of trustees) primarily drives good governance.

Requiring minimum standards of competence and commitment by pension fund trustees, raises the issue of whether trustees should be appropriately compensated. Lawler (2006), however found virtually no support among trustees or other industry respondents for trustee remuneration. But a solution to how all trustees, and not just professional trustees may undertake a greater executive and accountable role is urgent.

## **Conclusion**

This article highlights the gap between the legal requirements and the practice of pension fund trustees in Ireland. A study of Irish pension funds showed that only 5% of schemes surveyed indicated expenditure incurred on training during the years surveyed and only 16% of schemes surveyed included a statement in their financial statements to the effect that trustees had access to appropriate training and guidance. This shows an inconsistency between legal requirement and practice in the calibre of trustees and trustee training in Irish occupational pension schemes. This raises the question as to whether there should be mandatory qualifications or approved trustee training in a standardised format with which all trustees should comply. The use of a “professional trustee” appointed by the employer company, acting alone or with other “non – professional” trustees helps ensure that trustee administrative responsibilities are met, and that expertise is available so that regulatory requirements are met. However there is a risk that conflicts of interest may result where the firm providing the professional trustee provides directly or indirectly other services to the pension scheme or employer company. It can also inhibit effective monitoring of professional trustees by non-professional trustees.

This article has focused on DB schemes. The increased prominence of DC schemes poses additional challenges for trustees (UK Pensions Regulator 2011). The main difference in the role of trustees in DC versus DB schemes, is the absence of an employer guarantee. Risk, for example in relation to investment performance and longevity, is transferred to scheme members. There is an additional risk to the State as the ‘last resort’ provider of basic income to retired persons and the State could also be considered to have exposure via a considerable contribution to DC funds via tax reliefs. Trustees in DC schemes may thus have extra responsibilities in ensuring that an appropriate range of investment options are available to scheme members and in ensuring that they are fully informed in relation to expected benefits and risk. The duty to minimise costs becomes even more important.



The trust form of governance for both DB and DC schemes has many advantages compared with alternative pension arrangements, but trustees need clear guidelines, adequate training and expertise and need to be accountable commensurate with their responsibility.

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**Table 1**

**Pension Coverage in the State for employed persons aged 20 to 69 years**

**2002-2009**

	Q1 2002	Q1 2004	Q1 2005	Q4 2005	Q1 2007	Q1 2008	Q4 2009
Overall %	52	52	52	55	52	54	51
Male %	57	56	55	58	55	56	53
Female %	45	47	48	51	50	50	49

Source: Central Statistics Office (CSO), Quarterly National Housing Survey, various issues.

**Table (2)**

**Occupational Pension Scheme Membership in Ireland 1996-2010**

End of year	No. of Defined Benefit Schemes	Defined Benefit schemes not subject to Funding Standard	Defined Benefit Members	Defined Benefit members in schemes not subject to Funding standard	No. of Defined Contribution Schemes	Defined Contribution Members
1996	2,290		412,641		48,261	88,759
2001	1,956	76	455,627	226,724	95,975	214,871
2005	1,478	85	499,885	257,724	88,841	234,814
2006	1,411	87	522,645	269,746	92,075	255,008
2007	1,319	91	555,244	322,619	98,483	269,465
2008	1,271	93	579,922	307,625	90,424	272,197
2009	1,307	95	586,718	332,163	82,939	266,909
2010	1,013	95	481,804	222,072	75,183	259,732

Source; Department of Social and Family Affairs (2007), Green Paper on Pensions, Government

Pensions Board Annual Report, various issues, available at [www.pensionsboard.ie](http://www.pensionsboard.ie).

**Table 3**

Complaints to and Investigations by the Pensions Ombudsman 2006-2010

	2006	2007	2008	2009	2010
Number of Complaints			1030	1766	1312
Detailed Investigation	432	509	727	616	588
Complaints about fund values	0	0	5 %	13 %	6%
Complaints about mis- selling	0	1 %	2 %	2 %	1%
Complaints about incorrect information giving rise to false expectations/financial loss	2 %	0.4 %	1 %	1 %	2%
Other complaints (administration, remittance of contributions, calculation of entitlements, etc.)	98 %	98.6 %	92 %	84 %	91%

Source;. Annual report of the pensions Ombudsman 2007, 2008, 2009 and 2010.

**Table (4)**

Successful Prosecutions by the Pensions Board 2007-2011.

Year	Number	S.58A *	S.18**
2011	26***	18	18
2010	2	1	1
2009	3	2	1
2008	4	0	4
2007	4	0	4

\*Prosecution under S.58A of the Pensions Act 1990 are made when pension contributions deducted from employee wages are not remitted to the pension scheme trustees within 21 days following the end of each month.

\*\* A S.18 prosecution may be taken against either an employer or scheme trustees for failure to supply the regulator with such information and books of account as the regulator may specify.

\*\*\* In 10 of these cases, prosecutions were successfully taken under both sections of the ACT.

Source: Pension Board Annual Reports.

**Table 5**

**Profile of Schemes included in the Study**

	<b>Defined Benefit</b>	<b>Defined Contribution</b>	<b>Total</b>
<i>No. of schemes</i>	43	15	58
<b>No. of members at end 2007 (active and deferred)</b>	371,653	3,138	374,791
<b>Assets under management at end 2007</b>	€21.09bn.	€0.04bn	€21.13bn

Source: Own survey