"THE RESPONSIBILITIES OF THE TRUSTEES OF PENSION SCHEMES"

Notes on a talk by W.T. Green and R. Spill

The last meeting of the current series was held at 6 p.m. on Wednesday 21st March, 1979, at the Law Society, Chancery Lane, London, EC4. The subject was "The responsibilities of the Trustees of pension schemes" and the speaker was W.T. ("Tor") Green, a director of Stenhouse Life & Pensions, assisted by Ronald Spill (Legal & General). Gordon Shaw was in the chair and Lord Brimelow and Mr. G.P. Hart (respectively Chairman and Controller of the Occupational Pensions Board) attended as guests.

Mr. Green explained that he proposed to deal with three aspects of current interest: firstly, the case of Evans -v- Co-operative Society, concerning member participation in relation to Union penetration and the seeming lack of knowledge in the field of trusteeship generally. A decade ago, Section 379 schemes were the "order of the day" and the administration was done by the Insurance Companies but the change to managed funds had "thrown up" a need for trustees who knew their job.

Outlining the facts of the "Evans" case, the speaker recalled that the Society itself had been Trustee of the employees' pension fund since 1927 but under Rule 7 of the scheme it was empowered to borrow from the fund "to make a profit". Any surplus emerging from a quinquennial actuarial valuation was to be passed on to the participants - either in the form of reduced contributions or increased benefits. Substantial loans were made by the fund to the Society at 4½% which was later reduced to only 3%. Evans, the claimant - who was a pensioner, argued that at a more realistic rate of interest the surplus emerging would have been greater. Although the Co-operative were not legally responsible to remedy any deficiency a compromise was reached and Mr. Green commented that preferential rates of interest were available to trustees (who normally had a duty not to make a profit for themselves) provided the trust deed gave adequate powers. The case had focused attention on the possibility of trustees becoming liable in negligence and this had produced a market at Lloyd's which, so far as he knew, had not yet been called upon to face a claim. Premium depended on the size and composition of the fund and there were alternative forms of cover - indemnity to trustees as individuals which, for extra premium, could be extended in exchange for a surrender of underwriters' subrogation rights.

Turning to the second aspect of his talk (the problem of the employee obliged to wear two hats), he stressed that all trustees were obliged to control the degree of "self-investment". In general, investment in small companies was undesirable - unless it was done with the knowledge and consent of the members who could equally accept the "risk involved in a bonanza". Following

a comment from the Chairman that the assets of a railway company's employees pension fund (prior to nationalisation) had been involved in rolling stock and track, Mr. Green said this made out a good case for member participation. There was a tendency for many trustees to act "like puppets".

It had been intended to show a film to illustrate a typical trustees' meeting which included a section on the "nomination" of a death benefit but unfortunately the projector broke down so Mr. Green gave a summary of the story. This concerned a member of a scheme whose wife had died and whose children were living with her mother. The member himself was killed in a car accident and his nominee was his mistress: he had "flaunted" the association at a staff dance and this had antagonised some of the trustees (who were equally divided on the issue). It was eventually agreed that the nomination must be upheld - otherwise it could induce a lack of confidence. In reply to questions in the ensuing discussion, the speaker confirmed that "nominations" were normally made to avoid capital transfer tax but that they should be the subject of regular review. On the subject of delegation of management of funds, Mr. Green opined that if this was placed in competent hands the trustees could escape liability. Financial advisers usually issued half-yearly reports to trustees. He agreed that the determination of "past service" - normally in the discretion of the directors of a company - could operate against a member's interest and reinforced the case for true member representation. Lord Brimelow commented that the appointment of trustees tended to be "by position in the company" and Mr. Green said that at the other end of the scale "a trust shall not want for a trustee": the Court could appoint one.

Defending the role of Insurers, Mr. Spill said that the National Association of Pension Funds had deprecated the "parachuting" of Trade Union representatives on to trustees' panels where, in any event, the "lay" members did not like such appointments. He also thought that Insurers and Broker Consultants could usefully provide reports to the trustees.

On behalf of those present, Mr. Shaw thanked both speakers and the guests for their attendance.

A.L. McCrindell