Book Review

Pension fund investment law

Robin Ellison

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A new work on pension fund investment law is well overdue. The last was written as long ago as 1990, and there have been over a dozen new legislative instruments even since the beginning of the present decade. The surrounding environment has of course changed dramatically during the intervening period of nearly 20 years. 1990 saw pension funds struggling in the face of tragically misguided government policy to contain surpluses by increasing benefits and taking contribution holidays. The last few years have seen pension funds struggling in the face of tragically misguided government policy to make good deficits, and being virtually forced to close down final salary schemes. The one constant, sadly, has been tragically misguided government policy, whether Conservative or Labour in hue.

The first task facing any author of an educational book is to communicate clearly, and to explain complex issues in language that can be easily understood. Robin Ellison succeeds magnificently in this task, and is to be heartily congratulated. Those for whom *Megarry and Wade on Real Property* was a sovereign remedy for insomnia many years ago might not initially approach the task of reviewing a law book with enthusiasm, but will be very pleasantly surprised to find themselves reluctant to put it down. The book reads extremely well and is also well planned, covering all the relevant ground in a clear and balanced format.

The section on pooling vehicles, one area among many where British pension funds have lagged behind their counterparts in countries such

as the Netherlands, is particularly interesting, as is the treatment of the perils of creating a Collective Investment Scheme. The Appendices on the accompanying CD have been thoughtfully compiled and readers will find them most useful, comprising as they do precedents, the text of guidance notes and so on. The Glossary of pension terms will hopefully de-mystify many a consultant presentation.

It is also instructive to read the (wholly accurate) description of the role of the Pensions Regulator, which explodes the widely held myth that this supreme being requires pension funds to hold all their assets in government bonds. Sadly, in the world of UK pensions it is ignorance and misconception that hold sway, rather than knowledge and professionalism, and while it would be appealing to think that this excellent book may change things, that may be asking too much.

Fine work though the book is, it is silent on many key issues, which is the fault not of its author but of the legislators and regulators who should have addressed these points but have not. How is it, for example, that the same pension consultant can act both for the trustees of a final salary scheme in deficit and for its sponsor? Why did the Government largely ignore the recommendations of the Myners Committee? Why are the activities of pension consultants who advise on asset allocation not 'investment business' and thus within the supervisory remit of the FSA? Exactly who has locus standi to sue a board of trustees for breach of duty?

This latter point is surely one of some importance because the last 18 months have seen huge amounts of beneficiaries' money wiped out for the second or third time in recent memory as a result of trustees' widespread breach of their duty to diversify under Section 36 of the 1995 Pensions Act. What good in practice is a legal duty of care that everybody knows will never be enforced? In fact, it sometimes feels as though the whole body of law that surrounds the investment activities of pension funds has a strange Alice in Wonderland quality to it. Why provide, for example, that trustees must have an appropriate level of investment knowledge to be able properly to discharge their duties when this is manifestly not the case, and is probably an unattainable objective in any event (remember the NAPF's own statistic that the average trustee spends just 4 hours a year considering investment matters)?

If any progress is to be made in any of these areas, however, education is a necessary preliminary and this book will hopefully have an

invaluable role to play in that process. It should be made required reading for every pension trustee. There is but one point of hopefully constructive criticism. With an area of the law which has changed so rapidly in recent years, it might perhaps have been worthwhile to publish this work in loose-leaf format so that it might easily be updated; while practising lawyers will jot developments down at the top of the page as they have always done, this is perhaps asking too much of pension trustees, who already have many other demands on their time.

This small suggestion should not detract in any way from deserved admiration for this book, which can be recommended unreservedly to practitioner and trustee alike. Robin Ellison deserves a huge vote of thanks for his efforts from all who are in any way connected with the pension plan process in the United Kingdom.

Guy Fraser-Sampson,
Cass Business School,
UK