

# UMBRELLA FUNDS: Editorials: Edition: July / September 2019

## Warts and all

If the law and practice were started afresh, how should the governance of umbrella funds look? Well, in a nutshell, different from what now exists.

**At this year's conference of the Pension** Lawyers Association, that's about all on which the panellists – Rowan Burger of Momentum Investments and lawyer Jonathan Mort – could agree. But their provocative discussion did highlight areas for ongoing debate.

**Burger:** We got to where we are because there'd been a proliferation of retirement funds. They had poor economies of scale and were not always well governed. The intention had to be a reduction in the number of funds, lower costs and better governance. But service providers don't like "commoditisation", so there's been little innovation and tax structures inhibit further progress.

**Mort:** There are numerous problems with the commercial umbrellas. Amongst them, the sponsor is able to benefit at the expense of the member by the sponsor's control of the benefit-provision process and through control of the fund. The sponsor benefits by locking in its service providers at fees not negotiated at arm's length and by determining the investment arrangements. The relationship is between the participating employer and the sponsor, not with the fund, and the

employer's role is passive. It's difficult for trustees to be truly independent of the sponsor.

**Burger:** Be careful not to add layers of governance complexity. They increase costs. Oversight is surely the role of the regulator.

**Mort:** There should be an oversight board, separate from the trustee board, comprising member-appointed directors and a minority of employer representatives. A trustee, whose fiduciary duties are unconstrained, cannot be a member of the oversight board. It would report to trustees on, amongst other things, the engaging of service providers. Powers would include the hire and fire of trustees, appraisal of their performance and approval of the governance budget.

**Burger:** Do away with management committees (comprising employers and employees). They create additional cost and governance problems because of different asset charges, benefit structures and insurance conditions. Clients can vote with their feet. There are sufficient safeguards already in the system.

**Mort:** Before the transfer from a standalone to an umbrella, the employer should confirm in writing to employees that it has performed a due diligence on the systems of the administrator, has reviewed the costs and is happy with their reasonableness. The employer should also report annually to members that he is happy with the fund's governance, costs and investment arrangements.

**Burger:** Many employers will outsource the due diligence. To the employee-benefits consultant, the auditor or the valuator? There's a need to drive standardisation and to make participation in the umbrella less onerous for the employer. There's also a need to ensure portability i.e. seamless movement between funds with no penalties or lock-ins.

**Mort:** The sponsor should have the right to attend trustee

meetings except when issues around the sponsor are being discussed. A sponsor can market a fund at the sponsor's expense.

**Burger:** Many sponsors have significant commercial interests in the umbrella arrangement. When they use life licences there can be governance conflicts.

- *The Association for Savings & Investment SA has announced that, from October next year, people in umbrella funds will be able to assess the total impact of charges on their individual retirement benefits. This is in terms of a standard, recently approved by the ASISA board, by which member companies will have to start developing systems for implementation at the level of individuals.*

Burger and Mort . . . salient arguments