Modern White Knights

The three newspaper groups studied in the previous chapter now have mature and stable “trustee” governance structures. Each has faced challenges, and made changes to achieve either stability or commercial competitiveness. All have nonetheless remained remarkably true to the vision of the men who saw these three publications as bastions of liberal journalism. By “keeping the faith”, The Guardian, the Irish Times and the Tampa Bay Times continue to enjoy journalistic reputations that set them apart from many of the other newspapers in their respective countries.

However, there has been a significant break from the past, inasmuch as trust chairmen no longer exercise autocratic power because the vague notions of governance expressed in founding documents can no longer be exploited. They have been replaced by much more explicit obligations and limitations. This chapter explains how those changes have been put into effect, and how in some cases it has led to a welcome increase in the level of company transparency – an aspect of governance in which the Scott Trust and the Guardian Media Group provide an exemplary lead.

In particular, it shows how the custodians of these newspapers have faced up to the same considerable challenges as their conventionally owned contemporaries – survival against the twin assaults of recession and fundamental media market change. Their responses to these challenges have tested the effectiveness of their current structures to fulfil their obligation to protect the journalism for which their publications stand. Trustees have demonstrated a determination to ensure that editors have a strong voice in how the organisation is run. This stands in contrast to attitudes in many media groups, but as the chapter reveals, there are both differences and similarities in the operation of trustee and profit-driven listed enterprises.

The Scott Trust

The Scott Trust has been operating as a private company for five and a half years at the time of writing, with no discernable change in either the
way it perceives its role or in its activities. It remains a trust in every sense except the strict legal definition. It continues to adopt a long-term approach to group strategy, and importantly, has not been panicked by poor trading conditions that have beset the Guardian Media Group (GMG) (and its contemporaries) since the recession began.

The primary purpose in converting the trust to a private company was the elimination of potential inheritance tax liability on the trustees when the Trust reached the end of its “life” in 15–20 years. While the present tax regime does not impose inheritance tax on the Trust, trustees and their legal advisors were mindful of the tenuous nature of tax status, and of the ability of a future Chancellor of the Exchequer to promote a law change that could result in tax bills of millions of pounds. The legal advice given to the Trust was that the most stable, most clearly protected and most robust framework was not a trust deed but registration as a limited company. It also meant that the trustees, who were legally directors of the company, could be indemnified against financial liability. However, a by-product of the change has been the clear articulation of duties and responsibilities that were only implied in the Trust deed, and the enshrining of four provisions in the Articles of Association that cannot be altered (even by a unanimous vote). These provisions are:

- **Article 58 (Powers of directors):** requires directors (the trustees) to act in a manner that is consistent with securing and preserving the financial position and editorial independence of *The Guardian* in perpetuity, having regard to how that has been pursued “heretofore”; and to promote the causes of freedom of the press and liberal journalism.
- **Article 90 (Reserved Board matters):** requires the written approval of at least 75 per cent of directors for, among other things, the appointment or removal of the editor-in-chief of *The Guardian*; decisions relating to the disposal of the whole or significant parts of *The Guardian*; altering the memorandum or articles of association; and winding up the company or merging with another firm.
- **Article 97 (Dividends and distributions):** prevents the payment of any dividends or distributions that provide a financial benefit to shareholders (who must be trustees).
- **Article 111 (winding up):** requires any surplus remaining after winding up the company to be passed to another company, trust or charity with similar objectives to the Scott Trust; and prevents any distribution of funds to shareholders.

We have seen how past chairmen of the Scott Trust exercised considerable power because governance was understated or even unstated. The current chair, Dame Liz Forgan, told me the new legal entity will prevent anyone from “picking up the Trust and running away with it”.