

The Actuarial Profession
making financial sense of the future

Current issues in pensions
Sarah Phillips



Current legal issues

1 November 2012

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Agenda

- MP benefits
- Test-achats
- GMP Equalisation
- Incentive Exercises
- RPI
- Dates for your diary

Hybrid Schemes

A Nightmare
ON BRIDGE STREET

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Hybrid Schemes

- PA 2011, section 29
- Adds section 181B to PSA 1993 definition of money purchase benefits
- Amended from 1 January 1997
- Assets and liabilities must match, only annuities held by an insurance company are exempt
- Regulations will add detail, see section 30

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Hybrid Schemes



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Hybrid Schemes



If DB underpin bites = DB

If DC underpin bites = DC

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Hybrid Schemes



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Protection
provisions

Benefit
provisions

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Hybrid Schemes



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Test-Achats

- 1 March 2011 (ECJ)
- Exemption for use of actuarial factors to set insurance premiums would not be allowed
- Gender directive

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Test Achats

- Transitional provision?
- ECJ gave Member States until 21 December 2012
- Tied in with exemption expiry
- New contracts only

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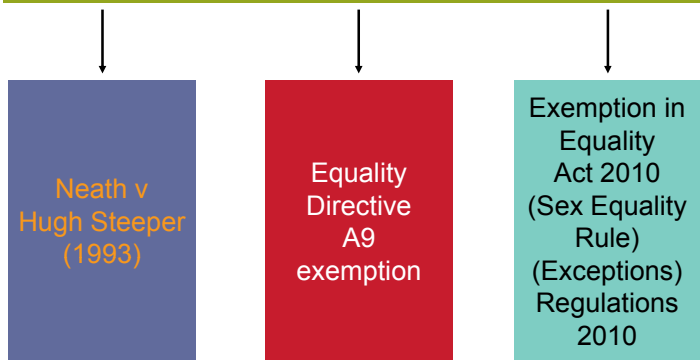
Test-Achats

Gender Directive	Equal Treatment Directive
Services (insurers)	Employment (schemes)
Exemption	Exemption
Declared invalid	Not discussed

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Test-Achats

Actuarial factors in schemes



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Test-Achats

Annuity purchase

- Bulk annuities
 - Trustee not individual (no discrimination)
 - Bulk premium, members' benefits unaffected
 - All about securing a defined benefit, specific income stream
 - Equality of input, not output
- DC In-scheme pensions
 - Consider conversion process
 - Are factors being used?

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Can you use sex based factors?

	In scheme	Provider (indiv)	Bulk
Personal pension	N/A	No	N/A
GPP	N/A	No	N/A
DC trust	Yes	Yes?	Yes?
DB	Yes	Yes	Yes

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Test-Achats

- What should trustees do?
- Wait and see re. actuarial factors
- But should take Test-Achats into account if looking at factors
- Another test case?

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GMP Equalisation



Just when you thought it was safe to go back
in the water!

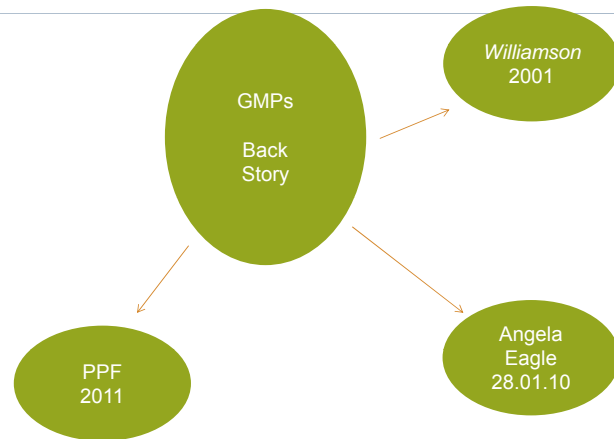
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GMP Equalisation

- Part of scheme pension derived from State Earnings Related Pension
- The method of calculating GMPs is set out in legislation. It is possible for the GMP component of a scheme's benefits to be unequal between the sexes because:
 - GMPs accrue at different rates for men and woman;
 - GMPs are payable from different ages (65 for men, 60 for women); and
 - a member's GMP increases at a different rate from their scheme pension.

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GMP Equalisation



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GMP Equalisation

- Consultation on draft regulations.
- Possible method for equalising pensions for the effect of the GMP.
- Consultation closed 12 April 2012.
- No response available yet.

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GMP Equalisation

- The DWP has concluded that schemes are obliged to equalise overall scheme benefits "for the effect" of GMPs which accrued between 17 May 1990 and 5 April 1997.
- In the Government's opinion, under EU law, there is no need for an opposite sex comparator when considering any inequality in GMPs.
- If the DWPs method of equalisation is adopted, there will be no obligation on schemes to use it.

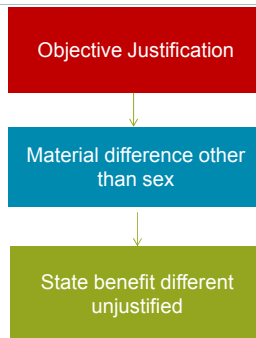
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GMP Equalisation



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GMP Equalisation



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GMP Equalisation

- The DWP's possible method relies on a comparison between a member's GMP (under the scheme rules and the relevant legislation) and their GMP had they been of the opposite sex.
- Each year, the scheme would then pay the member the higher of:
 - The amount they would receive under the scheme rules; and
 - The amount they would have received under the rules were they of the opposite sex.
- If entitled to their pension earlier had they been a member of the opposite sex then the pension "should be put into payment at that earlier age"

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Incentive Exercises

INCENTIVE EXERCISES FOR PENSIONS

A CODE OF GOOD PRACTICE

JUNE 2012

www.incentiveexercises.org.uk

Disclaimer

The Code is for guidance only and does not purport to constitute legal advice. The Code is not exhaustive and nothing in the Code can be relied upon as evidence of compliance with any other legal or regulatory requirement. The Code relates to circumstances prevailing at the date of its original publication and may not have been updated to reflect subsequent developments.

Following the Code does not release a party of its legal or regulatory obligations and following the Code may not prevent a claim being brought against a party.

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Incentive Exercises

- Non-statutory code of “good practice” was published on 8 June 2012.
- Described as a voluntary code of good (as opposed to “best”) practice but looks compulsory.
- For example, the Code states that the authors “anticipate that all future [IEs] will follow the spirit and principles of the “Code” and that they “do not expect employers, trustees or their advisers to look for creative ways to work around the Code”.
- TPR will review its current guidance with a view to supporting the Code.

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IE

The Code defines an IE as “an invitation or inducement...provided to a member to change the form of their accrued [DB] rights”:

- with the objective of reducing risk or cost for the pension scheme or sponsor(s); and
- Where the invitation or inducement is not ordinarily available to members of the pension scheme.

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IE

- “Transfer Exercises” – for example, involving a transfer out of a DB scheme on an enhanced basis or in return for some other inducement (as distinct from a normal individual transfer request).
- “Modification Exercises” – for example, a pension increase exchange exercise (involving an enhancement to pension income in return for surrendering all or part of future pension increases where this is not a standard option at retirement).

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IE



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IE: Trustee Advice

Issues for trustees:

- Data protection;
- Conflicts of interest;
- Legal basis for incentive exercise; and
- The extent to which they should satisfy themselves that the offer's design, communication and processes for giving advice are appropriate for members.

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IE

- The idea is that an (as yet unidentified) independent industry body will own, maintain and monitor the Code.
- Legislation in the wings according to Steve Webb
- Scheme Return might require details

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RPI 2.0



CPI/RPI

RPI 2.0

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RPI 2.0

CPI – geometric averages – no housing costs

RPI – arithmetic averages – includes housing

GAP = 1.3% - 1.5% (OBR)

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RPI 2.0



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RPI 2.0

Benefits:

- Check the trust deed and rules
- Many benefits would change automatically if specify RPI (same lottery as with CPI)
- What about those which give trustees option to move if index changed/discretion to use different index?
- Other scheme specific terms

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RPI 2.0

Timeline

8 October – consultation
30 November – consultation closes
January 2013 – response
March 2013 – implementation

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Dates for your diary

- White paper (State Pension & DA) – mid November?
- Finance Bill – 11 December 2012
- Gender neutral pricing in force – 21 December 2012
- GMP equalisation – by end of the year ?
- MP Benefits – new year
- RPI – new year

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Upcoming cases

Supreme Court

- Bloom v TPR – 14 May 2013
- Pitt v Holt/Futter v Futter – permission to appeal granted

Court of Appeal

- Raithatha v Williamson – Autumn 2012
- ITS v Hope – permission to appeal applied for

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Upcoming cases

High Court

- IBM v Metcalfe – February 2013
- BT Trustees v BT – permission to appeal granted

ECJ

- Wheels/NAPF – awaiting judgment (hearing date 12 September)

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