

**The Actuarial Profession**  
making financial sense of the future

Momentum conference 2010  
Clive Pugh and Justin Briggs



## All change – a legal perspective

10 December 2010

© 2010 The Actuarial Profession • www.actuaries.org.uk

- 
- New Government: new pensions?
  - Some Recent Interesting Cases
    - (and their impact on trustees)
  - Where do we go from here? GMP Equalisation

© 2010 The Actuarial Profession • www.actuaries.org.uk

1



Pi

© 2010 The Actuarial Profession • www.actuaries.org.uk

2

## Recent developments in law

- CPI / RPI
- Section 251 (surplus)
- High Earners
- Equality Act 2010
- Bribery Act 2010
- Auto enrolment and NEST

---

## Regulatory Developments

---

- Regulator's use of powers
- Trustees
- Data

---

## CPI/RPI

---

- What?
  - Intense lobbying on both sides
  - Consultation is expected – what form of statutory override?
  - Will there be a CPI underpin where RPI is used?
- Timing

---

## Section 251 (surplus)

---

- Recap:
  - Old limits on ongoing surplus abolished
  - Section 251: Trustees' ability to retain powers – 6 April 2011
  - Badly drafted
- Development from DWP
  - Open letter advising intention to legislate
  - Not intended to apply to schemes winding up or administrative payments
  - Schemes likely to have 5 more years to act
- Until legislation changed, current deadline continues to apply
- Should schemes act now?

---

## High Earners

---

- Government aim to save £4bn in pensions tax relief
- Measures announced 14 October 2010, replacing previous Government's plans, with same total saving
- 100,000 pension savers to be affected
- Annual allowance restricted to £50,000 April 2011
- Lifetime allowance restricted to £1.5m April 2012
- Separately, income tax rises and national insurance rises

---

## Equality Act 2010

---

- Non-discrimination rule implied into all Schemes:
  - Gender reassignment
  - Marriage and civil partnership
  - Race and sex
- Power for Trustees to make “non-discrimination alterations” to the rules of their scheme by resolution
- Otherwise, equality law now is essentially the same for pension schemes as non-discrimination laws were before

---

## Bribery Act 2010

---

- Penalties are steep (unlimited fines and 10 years in prison) but Trustees are generally low risk
- Main potential problem: hospitality and promotional activity:
  - Bribing – includes giving or offering a person an advantage either with the intention that they (or someone else) should perform their duties improperly, or as a reward for doing so. The advantage need not be financial
  - Being bribed – asking for, or receiving, an advantage for performing your duties improperly
- Guidance to be published early 2011. Act in force April 2011
- Steps to take: risk assessment

## NEST and new employer obligations

- New Government set up a review of the plans
- Reported on 27 October and DWP indicated will accept
- Reforms to proceed from 2012
  - Obligation to auto-enrol into NEST or a qualifying scheme
  - Obligation to contribute
- Effect on future trends in pension provision?

## Some Interesting Cases

- Nortel FSD
- Bonas CN
- Lehman Brothers FSD
- Pilots
- Bridge v Yates
- ITS v Knell
- ITS v Hope
- Catchpole v Alitalia
- Kenny
- IMG



## Nortel challenge tPR FSD

- FSD:
  - ‘service company’ (Sea Containers – 2007)
  - ‘insufficiently resourced’
  - Test for FSD here:
    - Occupational scheme within Act?
    - Targets connected/associated?
    - Insufficiently resourced?
    - Reasonable?

## tPR makes ‘no BONAS’ about CN

- Employers considering walking away from DB liabilities should think again
- Belgian Co. sold UK subsidiary under a prepack insolvency in 2006 (dumped scheme in PPF)
- Now ordered to pay £5m, despite having never been a participating employer
- Liability:
  - Act/failure to act
  - Main purpose?
  - Prevention of recovery
  - Reasonable?

---

## **Lehman challenge tPR FSD**

---

- FSD issued to 6 companies in Lehman Group
- Reasonable as benefit received from LBL (employees, services)
- No fair hearing application:
  - Lack of time
  - Lack of disclosure of relevant documents
  - Content of FSD

---

## **Pilots**

---

- So what did it really decide?



---

## **Bridge v Yates**

---

- The definitive word on the meaning of Money Purchase benefits?

---

## **ITS v Knell**

---

- Some good news on errors

---

### **ITS v Hope**

---

- No gaming the PPF

---

### **Catchpole v Alitalia**

---

- Estoppel is alive and well

---

## Kenny

---

- Making sense of overpayments

---

## IMG

---

- The pitfalls of changing benefit structures
- Clarification of s91 PA 1995

---

**Any questions?**

---

