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making financial sense of the future

Current issues in pensions
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**Legal issues arising
on closure to accrual**

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**Legal issues arising on closure
to accrual**

- Outline of legal issues - pensions
- Other legal considerations
- Practical examples.

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Preliminary

- Jurisdiction
- Occupational defined benefit schemes
- Pensions Regulator.

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Outline of legal issues - pensions

- Sources of governance
- Existing scheme provisions
 - Contribution rule
 - Termination provisions
- Amendment power
- Mechanisms (under scheme).



Sources of governance

- Deed and Rules
 - *British Airways Pension Trustees* [2002] PLR 247
- Booklets
- Member letters
- Legislation
- General law.



Existing scheme provisions (1)

- Employer power to declare a closed scheme
- Other power to cease accrual
- Contribution rule
 - Contributions = accrual (context)
 - Cease for future service?
 - Consequences.



Existing scheme provisions (2)

- Termination rules
 - Trigger points
 - All member ceasing to be in pensionable service
 - Ceasing “contributions”
- Cessation event?
 - Section 75 and 75A, Pensions Act 1995
 - The Occupational Schemes (Employer Debt) Regulations 2005 (SI 2005/678)
 - Multi-employer; cease to employ at least one active member whilst another employer continues to do so



Existing scheme provisions (3)

- Eligibility criteria
 - Employer determination
 - “Pensionable Service”
 - Member opt out.

Amendment power (1)

- Who has power?
- Consents required? (Actuary? Member?)
- Restrictions?



Amendment power (2)

- Restrictions
 - *Re Courage* [1987] All ER 528
 - Restriction: prevented amendment that would “vary or affect any benefits already secured by past contributions in respect of any member without his consent in writing”
 - “In the absence of express definition, I see no reason to exclude any benefit to which the member is prospectively entitled if he continues in the same employment and which has been acquired by past contributions, and no reason to assume that he has retired from such employment on the date of the employer’s secession when he has not.” (Millet J)



Amendment power (3)

- Effect of *Courage*?
 - Prevent amendment to rules to break link to final salary
 - Dependant on terms of amendment power
- Section 67 and 67A-I, Pensions Act 1995



Mechanisms (under scheme)

- Existing provisions (cease pensionable service)
- Amendment of rules
- Termination.



Other legal considerations

- Consultation Regulations
- Employment terms and conditions
- Planning.



Consultation Regulations (1)

- The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349)
 - Consultation required before decision taken
 - 50 or more employees
 - Is it a "listed change"?
 - Minimum 60 days
 - "Affected members" (active and prospective members)



Consultation Regulations (2)

- Election of representatives? Union involvement?
- Information requirements
 - Written information
 - Sufficient to allow affected members to form views
- Penalties/non-compliance
 - Penalties
 - Pensions Regulator.



Employment terms and conditions

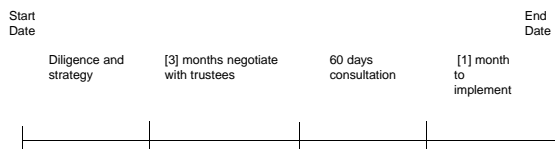
- Contracts
- Letters/special arrangements
- Employee handbooks.

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Planning (for company) (1)

- Diligence
- Propose and negotiate
 - Trustees
 - Unions
 - Members
- Implement.

Planning (for company) (2)



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Practical examples

- Restriction in amendment power
- Use of eligibility conditions
- Use of termination provisions.



Restriction in amendment power

- Prevent amendment to member benefits "secured by him or by the Employer before the date of such alteration...being adversely affected"
- Employer ability to terminate pensionable service?
- Variation of contract of employment
 - South West Trains [1998] PLR 113
 - Informed consent
 - Trustee position
- Consultation.



Use of eligibility conditions

- Employer power to determine
 - Employees eligible for entry
 - Members eligible to remain in scheme
- Notice requirements
- Consultation
- Objections/complaints.



Use of termination provisions

- Deferred wind-up
 - Breaks salary link (Courage)
 - Funding implications
 - Balance of powers
- Formal agreement
 - Limit trustees discretion
 - Agreed triggers to wind-up



Recap...

- Number of pensions specific legal issues
- Employment issues and planning
- Variety of ways of achieving cessation.



Questions?