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The Actuarial Profession Current Issues in Pensions

Legal Update

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Agenda

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- Legislation update
- Cases

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Legislation update

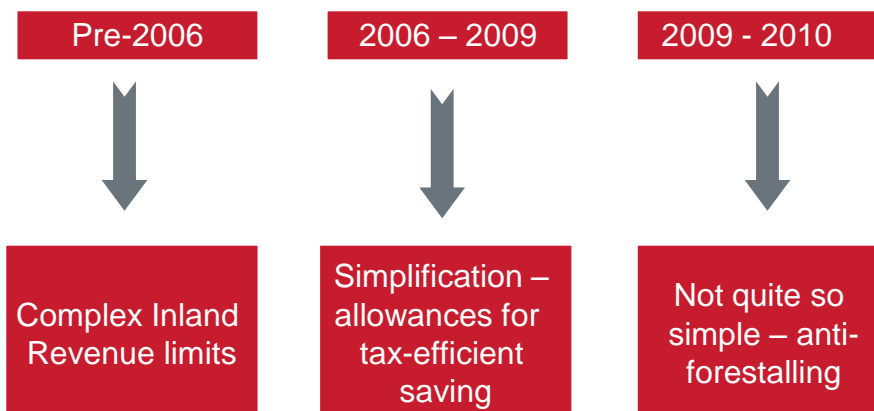
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- Restricting pensions tax relief
- Removal of the default retirement age (DRA)
- Also on the Coalition's pensions agenda...

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Pensions tax relief – a brief history

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The first attack on simplification

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Anti-forestalling from 22.04.09



Annual and Lifetime Allowances are no longer the sole relevant allowances



Savings in excess of "normal, regular, ongoing pension savings" and above £20k are caught

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Finance Act 2010 – Labour's proposals

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"Gross income" \geq £150k
= caught by restrictions

Potentially affect Individuals with incomes of \geq £130k

(depending on value of employer contributions)

Restriction would have applied to *all* pension contributions, including employers'

Restriction would have meant?
Income \geq £180k
= 20% tax relief

Taper relief between £150-£180k

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But that was before this....



...And their emergency Budget

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Why restrict pensions tax relief?

Proportion tax relief
going to high earners

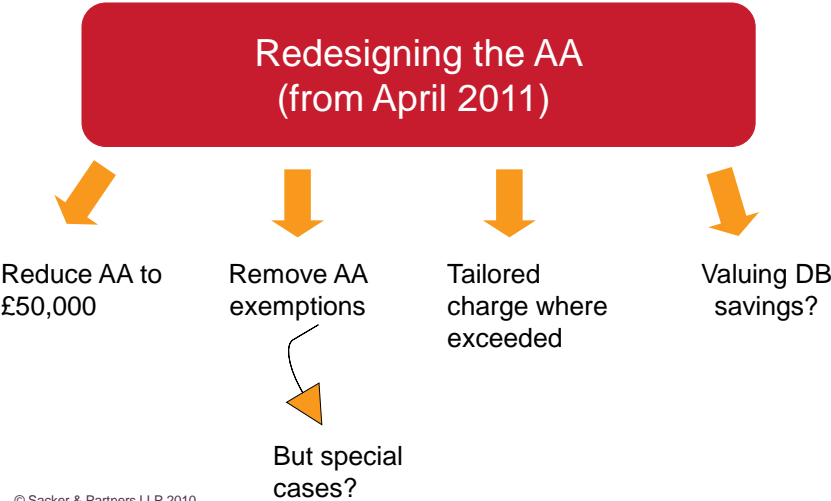
New 50% tax rule



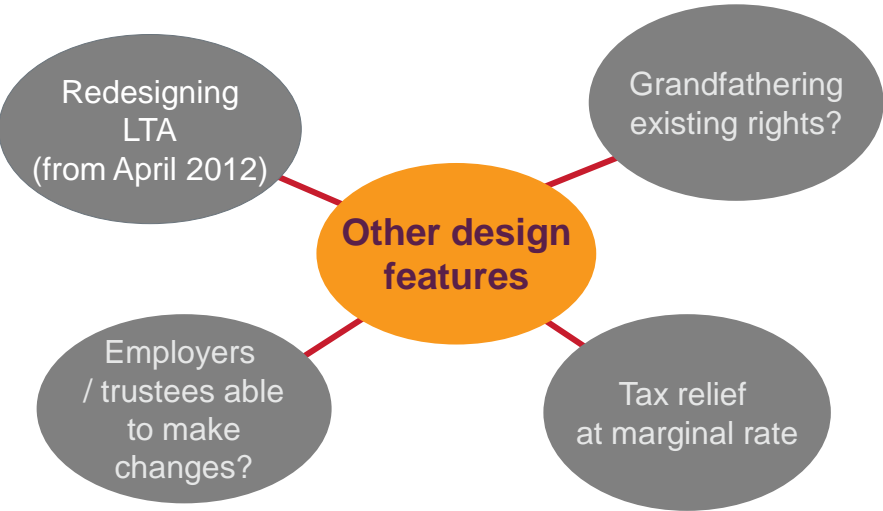
Cost to Treasury

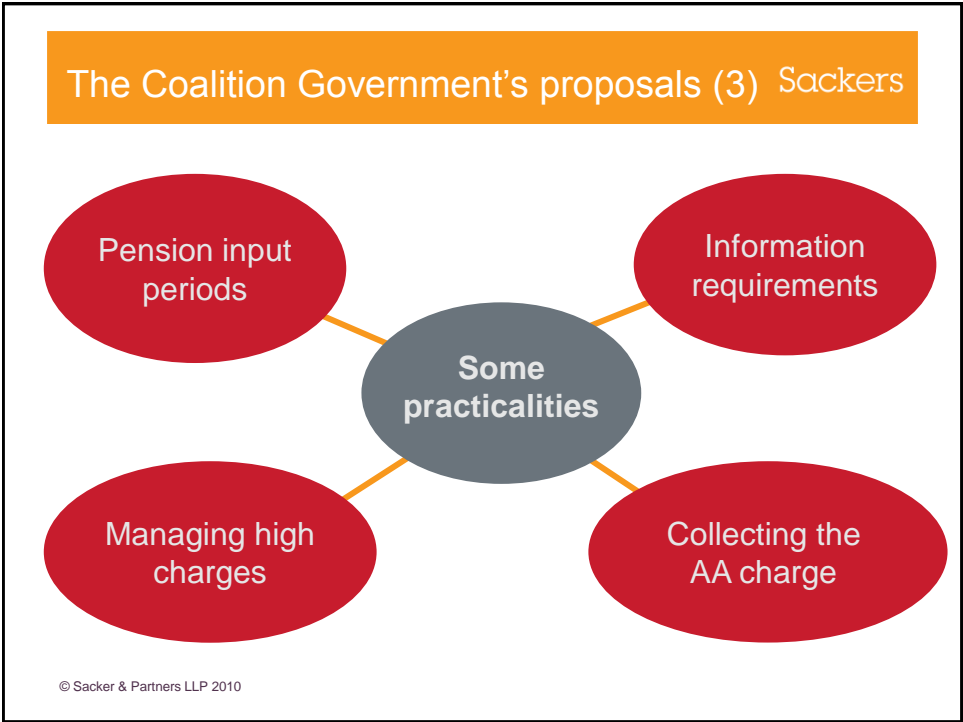
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The Coalition Government's proposals (1) Sackers



The Coalition Government's proposals (2) Sackers





Removal of DRA

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- Phase out from 6 April 2011
- Transitional period until 1 October 2011
- Employer Justified Retirement Ages



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Unintended consequences

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- Insured benefits
- Share schemes
- Pension schemes???

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Effect on Pension schemes

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Won't change automatically

Retain normal retirement date

But... plan benefits for people working later

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Beyond DRA: starting point

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If DB now

→

Continue DB

If DC now

→

Continue DC

Risk benefits

→

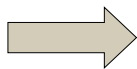
Continue same benefits

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Beyond DRA: what else?

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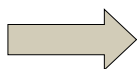
Member
choice?



Could defer pension
(then what risk
benefits?)



Could choose to move to
different type of pension
(e.g. DB to DC)



Cannot be a forced
choice... discrimination!

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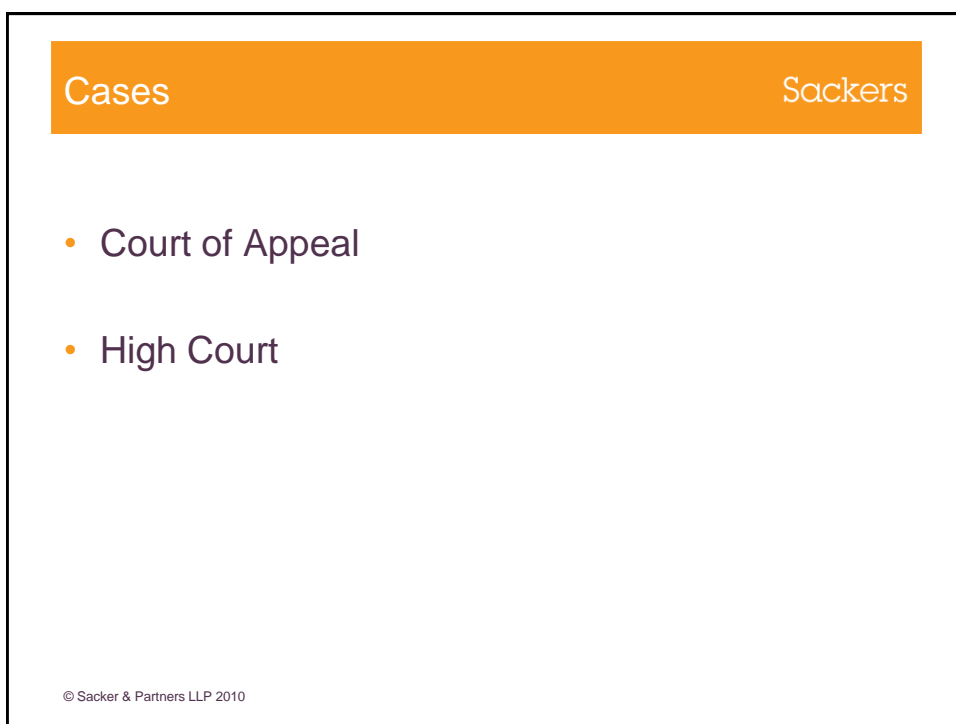
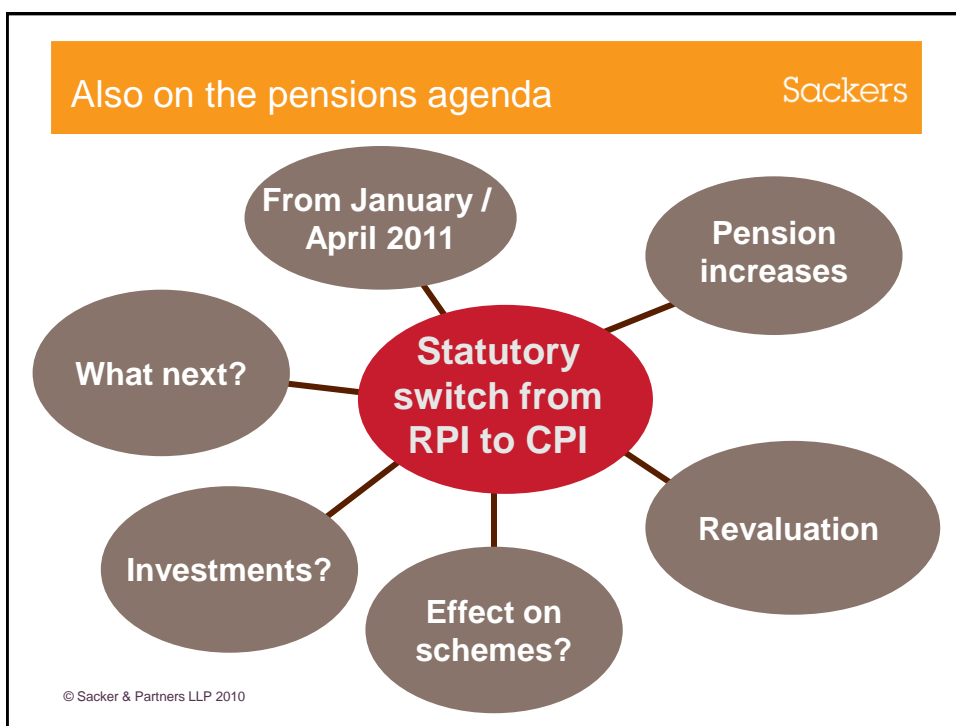
Beyond DRA: cost?

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Increased cost alone not
sufficient justification for
stopping a benefit

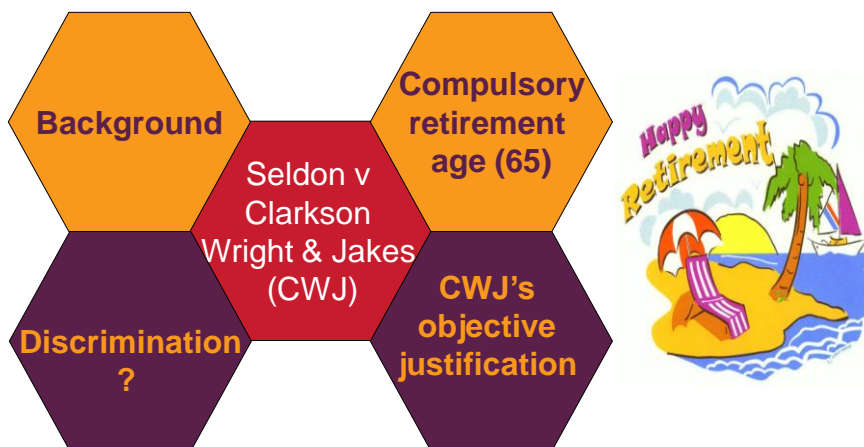
But... may have more scope with
flexible benefit arrangements?

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Seldon - Court of Appeal

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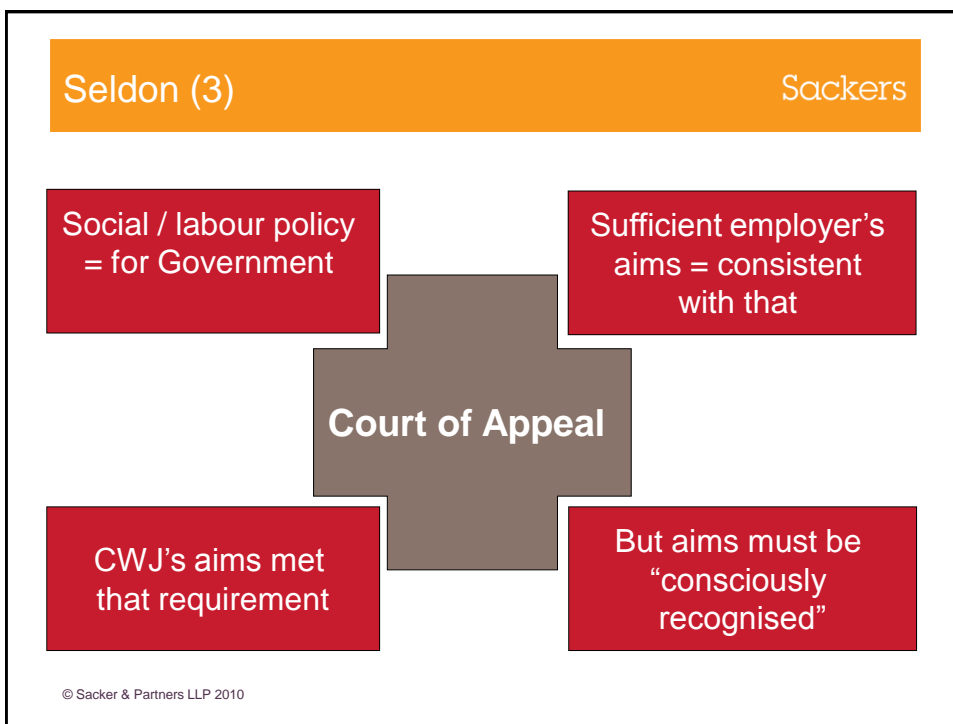
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Seldon (2)

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Employment Tribunal	Proportionate means of achieving legitimate aim
Employment Appeal Tribunal	No evidence supporting "performance" as a justification
<ul style="list-style-type: none"> Court of Appeal 	Can employer use own justification or must it have social policy aims?

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Bridge Trustees - Court of Appeal Sackers

- Houldsworth & another v Bridge Trustees Limited & another
 - scheme winding-up
 - hybrid scheme
 - effect of pre-2005 statutory order of priority on certain benefits

A photograph showing two pairs of hands pulling apart a blue cloth, symbolizing a legal dispute or a winding-up process.

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Bridge Trustees (2)

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Key questions

- Were certain employer matching contributions voluntary contributions?
- What benefits were “money purchase”?



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Bridge Trustees (3)

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Question	Yes / No	In priority order?
Employer matching contributions = voluntary contributions?	Yes	
DC with guaranteed investment fund = money purchase?	Yes	
DC pensions secured within the scheme = money purchase?	Yes	

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Bridge Trustees (4)			Sackers
Question	Yes / No	In priority order	
Were pre-6 April 1997 DC benefits with GMPs = underpin benefits?	Yes		
Were post-5 April 1997 DC benefits with historical GMPs = underpins?	No		

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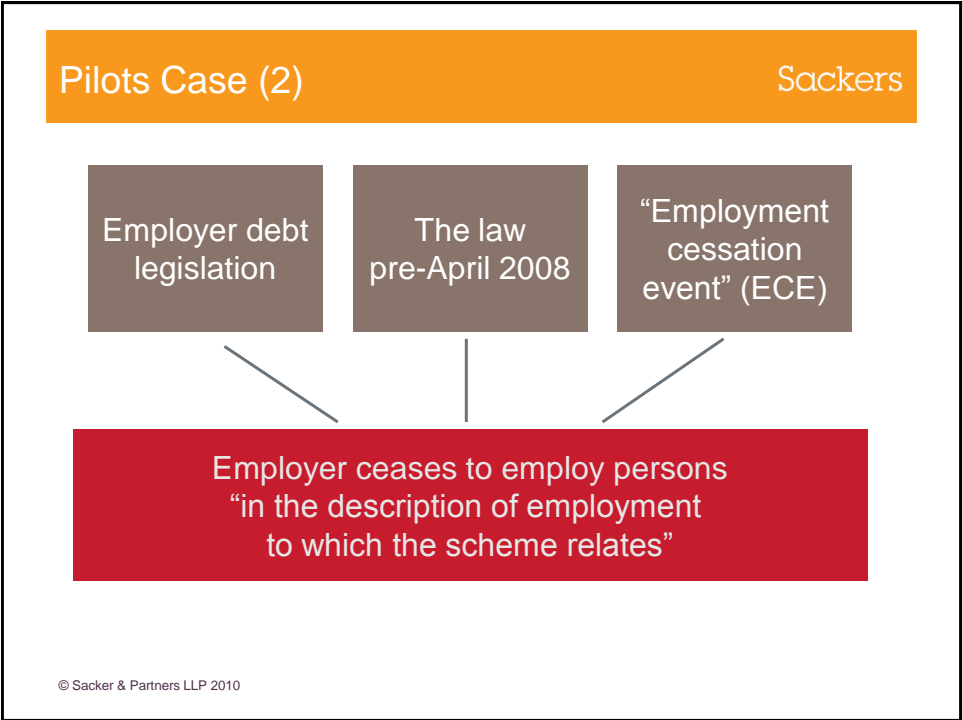
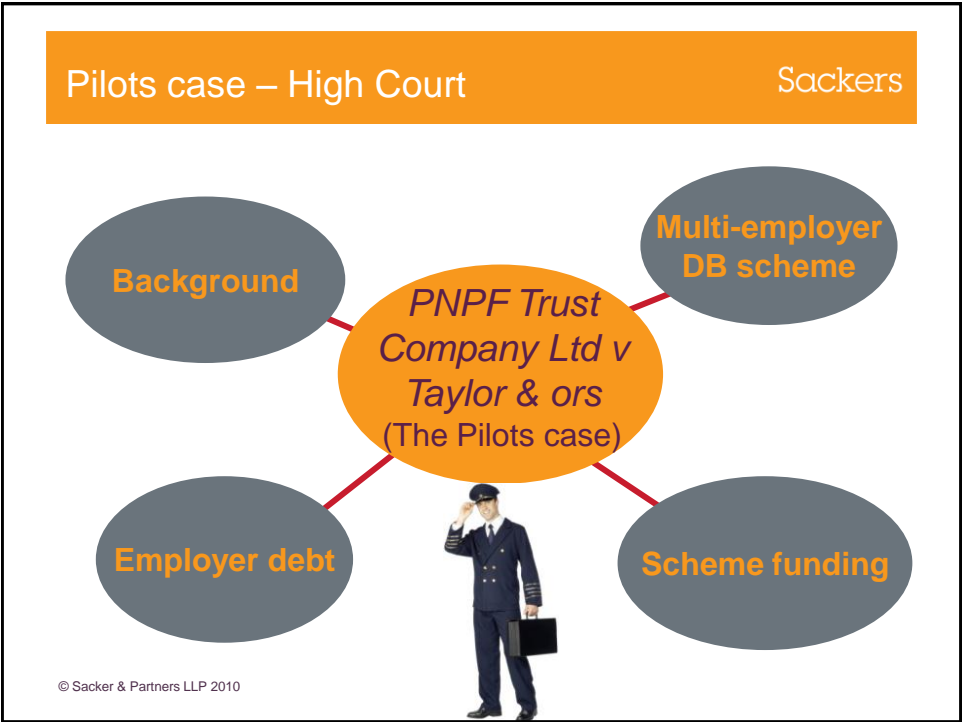
Bridge Trustees (5)

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Implications?

Appeal?

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Pilots Case (3)Sackers

The narrow interpretation

Actives only

The broad interpretation

Actives & other employees who could join the scheme

Also key questions about statutory funding regime

Who is liable to fund the scheme?

Legislation *versus* scheme rules?

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Pilots Case (4)Sackers

Broad interpretation of ECE

Judge held

Employer debt law changed April 2008 (Actives only)

Employers required to fund scheme = those required pay employer debt

Open to trustees demand greater contributions under scheme rules

British Vita case

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IMG – High Court

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HR Trustees Limited v German and International Management Group (UK) Ltd (IMG case)

**Benefits converted from DB to DC 01.01.92
(but deed not executed until March 1992)**

**Announcement
/ presentations
/ application form
/ booklet**

**Restrictive
power of
amendment
- final salary link**

**Was there a
valid contract /
compromise
agreement?**

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IMG (2)

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Restriction not prevent
conversion from
DB to DC

But final salary link
on benefits to date
of change preserved

Judge held

No valid contract
to make change

Compromise
agreements
unenforceable

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