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The Actuarial Profession
Current Issues in Pensions

- Legal Update
- Pauline Sibbit, David Saunders, Robin Simmons & Claire Carey



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Agenda

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- Legislation update
- Cases

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Legislation update

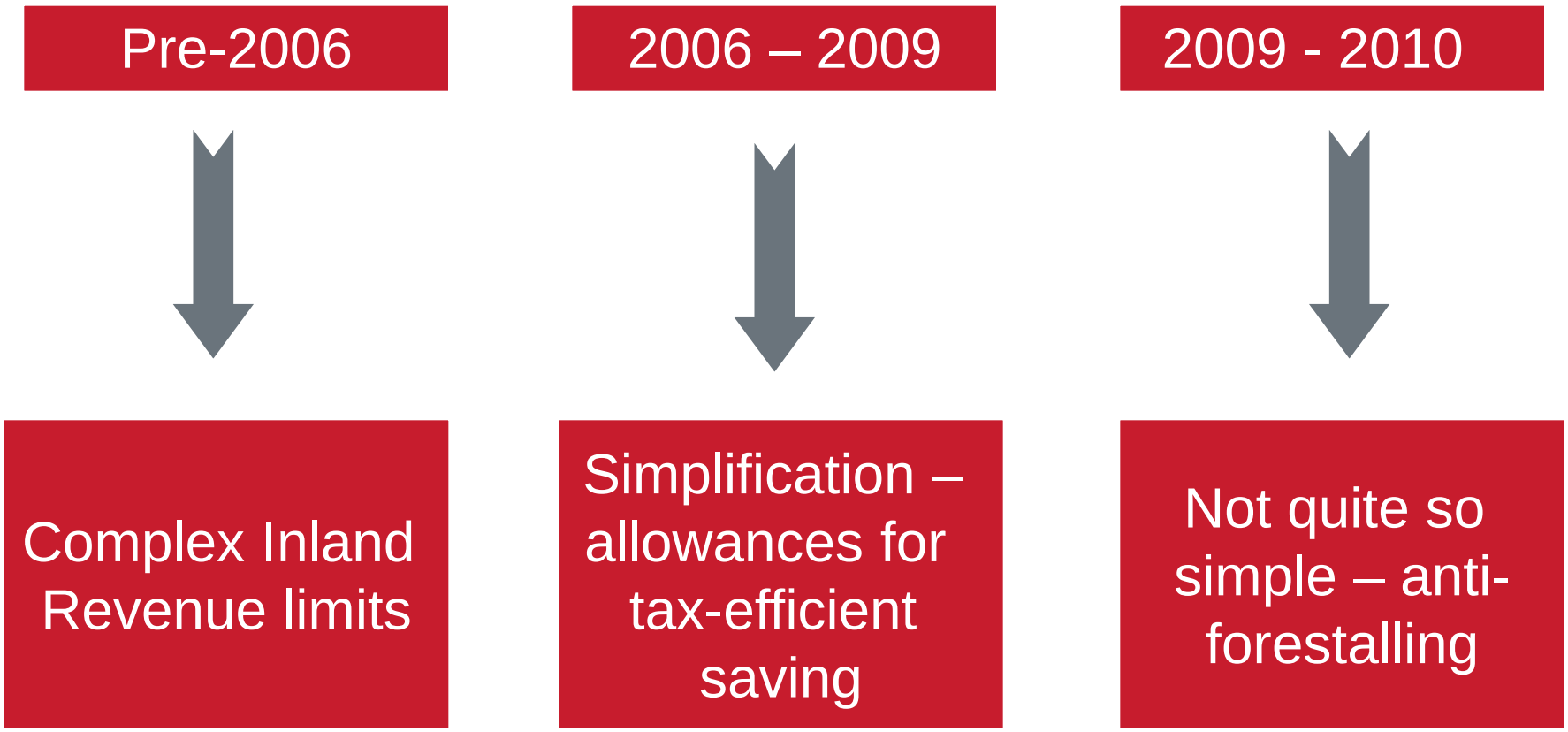
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- Restricting pensions tax relief
- Equality Act 2010
- Removal of the default retirement age (DRA)
- Also on the Coalition's pensions agenda…

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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" ≥ £150k
= caught by restrictions

Potentially affect Individuals with incomes of ≥ £130k

(depending on value of employer contributions)

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

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

Taper relief between £150-£180k

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But that was before this….



…And their emergency Budget

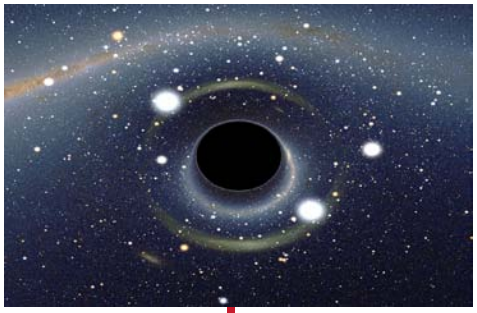
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Why restrict pensions tax relief?

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Proportion tax relief going to high earners

New 50% tax rule



Cost to Treasury

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The Coalition Government's proposals (1)

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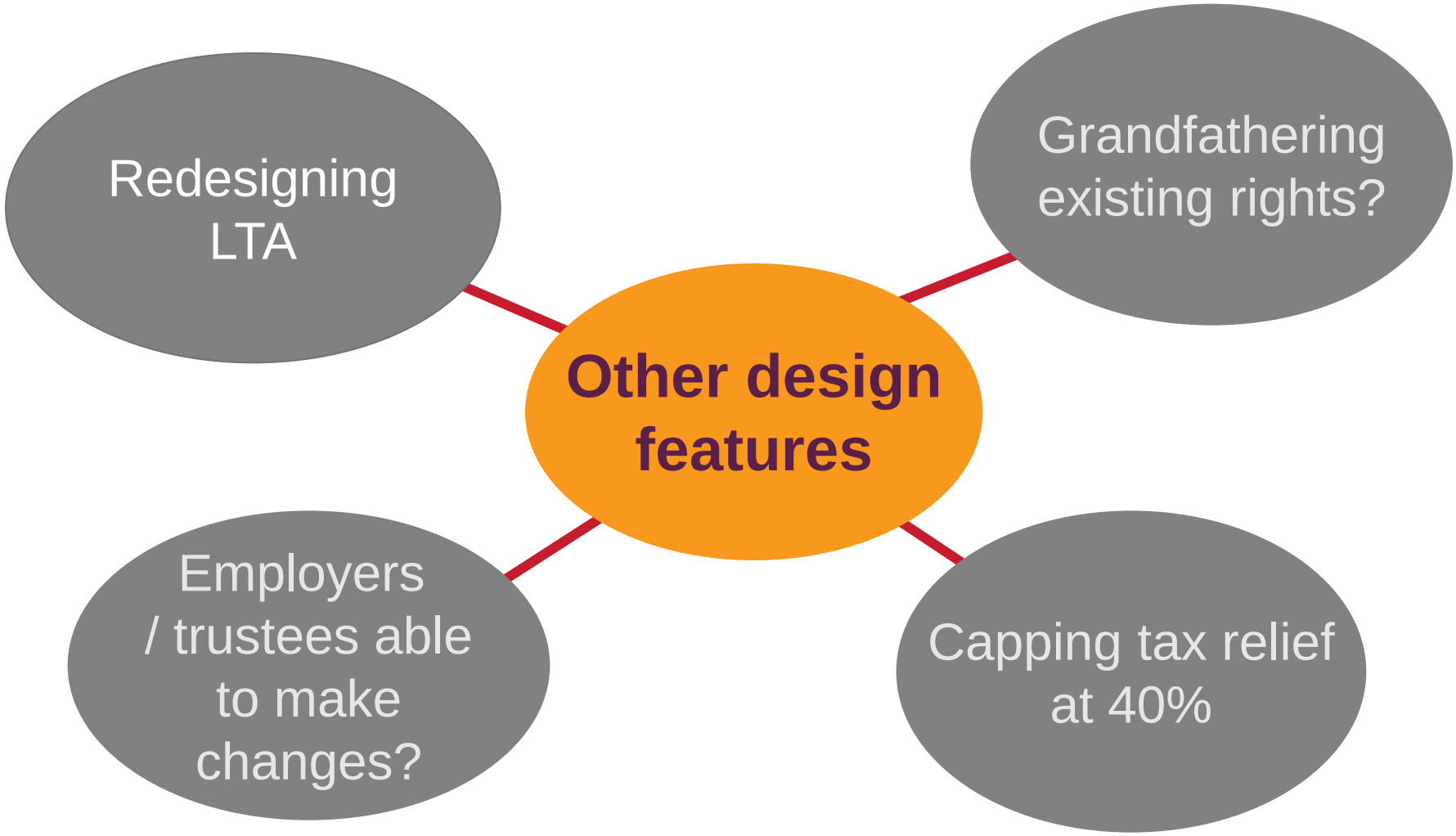
Redesigning the AA

- Reduce AA to £30,000 - 45,000
- Remove AA exemptions
  - But special cases?
- Tailored charge where exceeded
- Valuing DB savings?

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The Coalition Government's proposals (2)

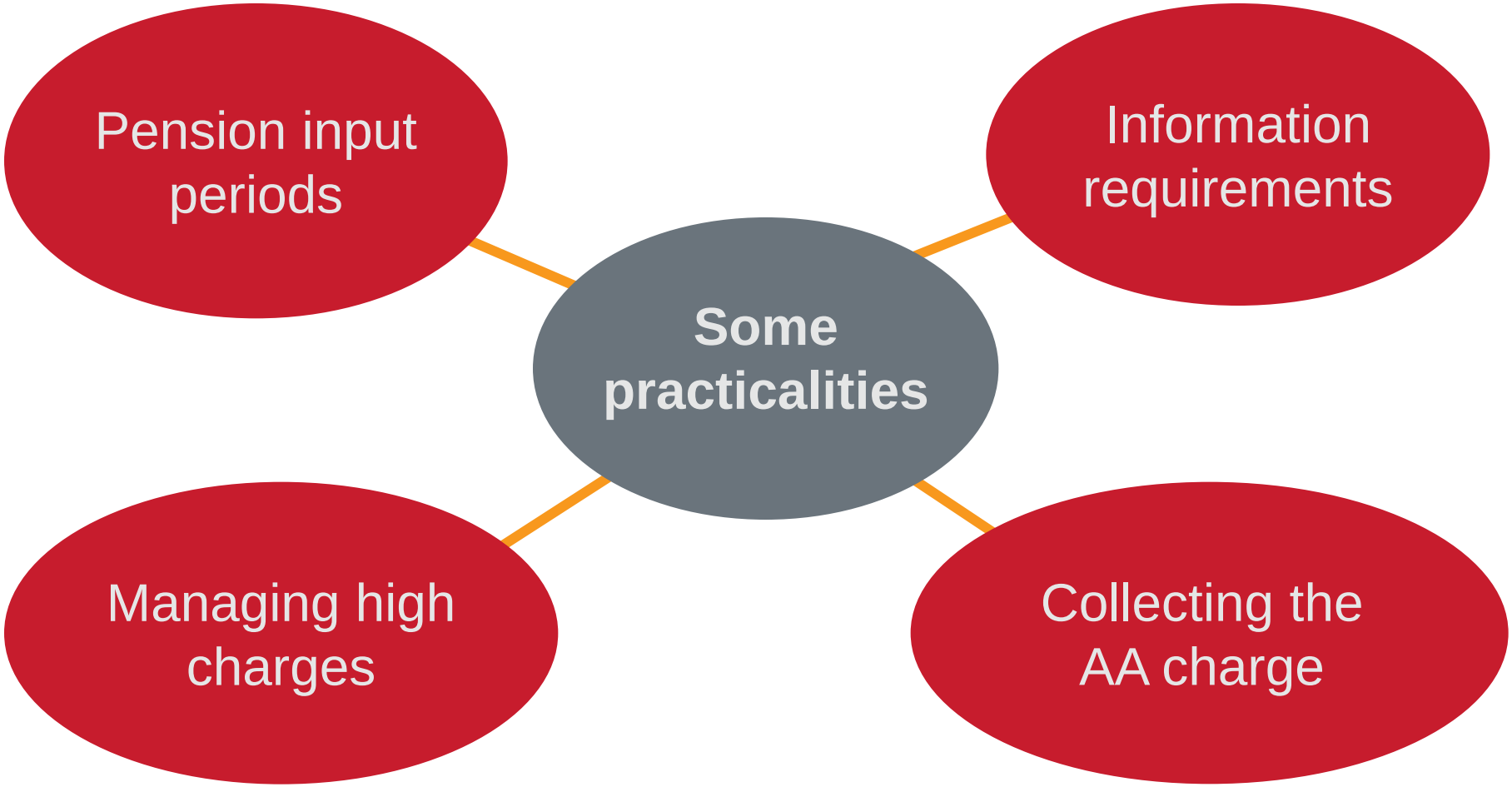
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The Coalition Government's proposals (3)

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Is there enough time to sort this out?

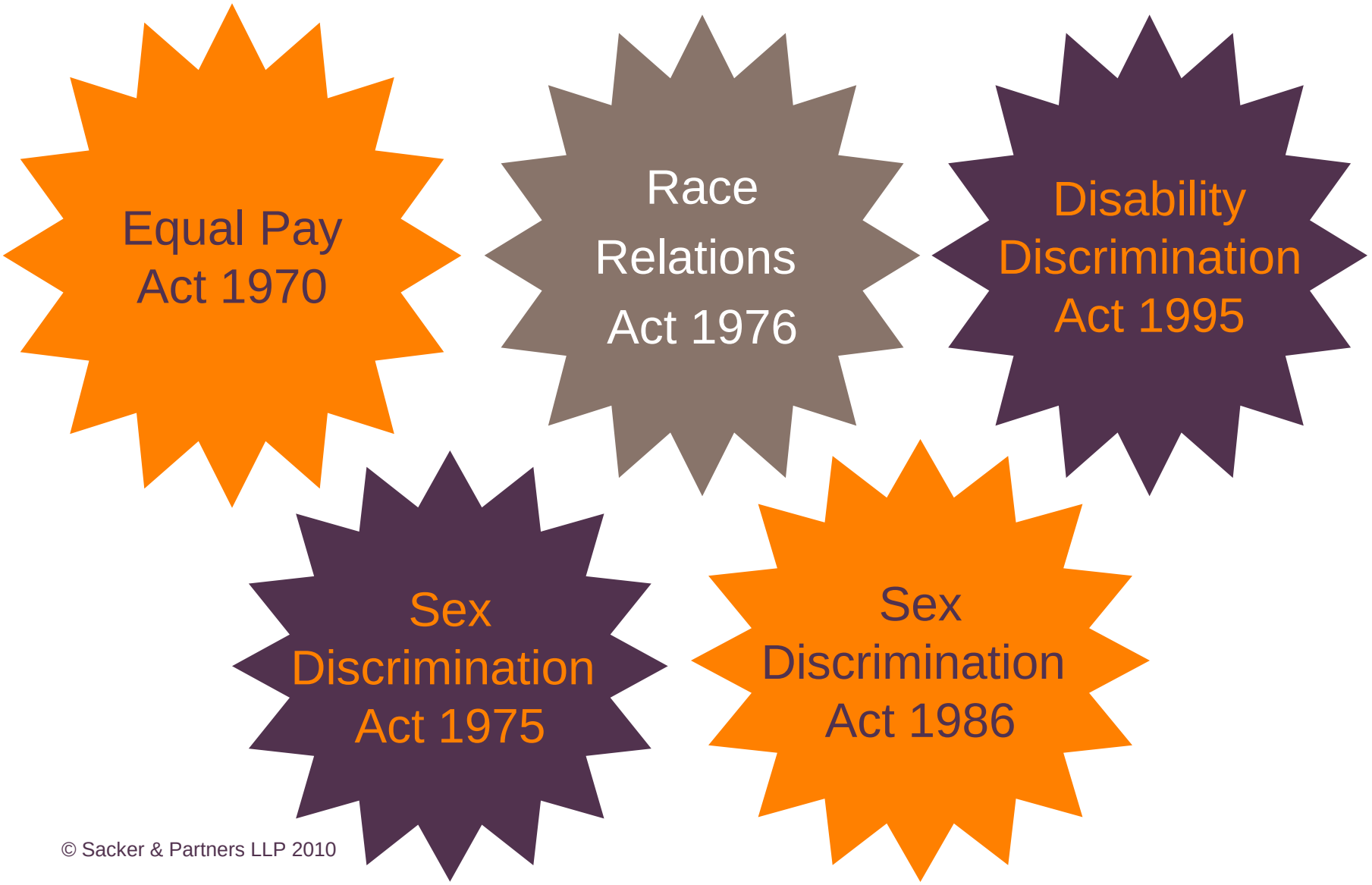
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Equality Act 2010 - What we had (1)

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Equality Act 2010 - What we had (2)

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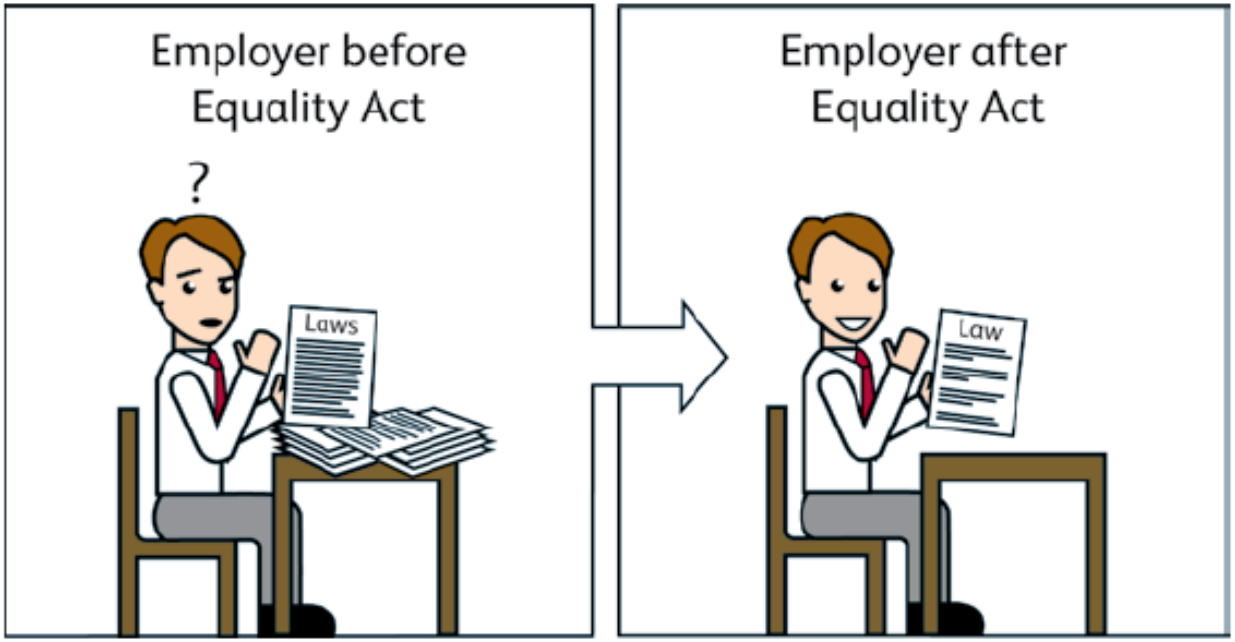
- Pensions Act 1995 (Equal Treatment Rule)
- Occupational Pension Schemes (Equal Treatment) Regulations 1995
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Disability Discrimination Act 1995 (Pensions) Regulations 2003
- Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005
- Employment Equality (Age) Regulations 2006

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What we have

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- EQUALITY ACT 2010
  - plus some other bits and pieces!



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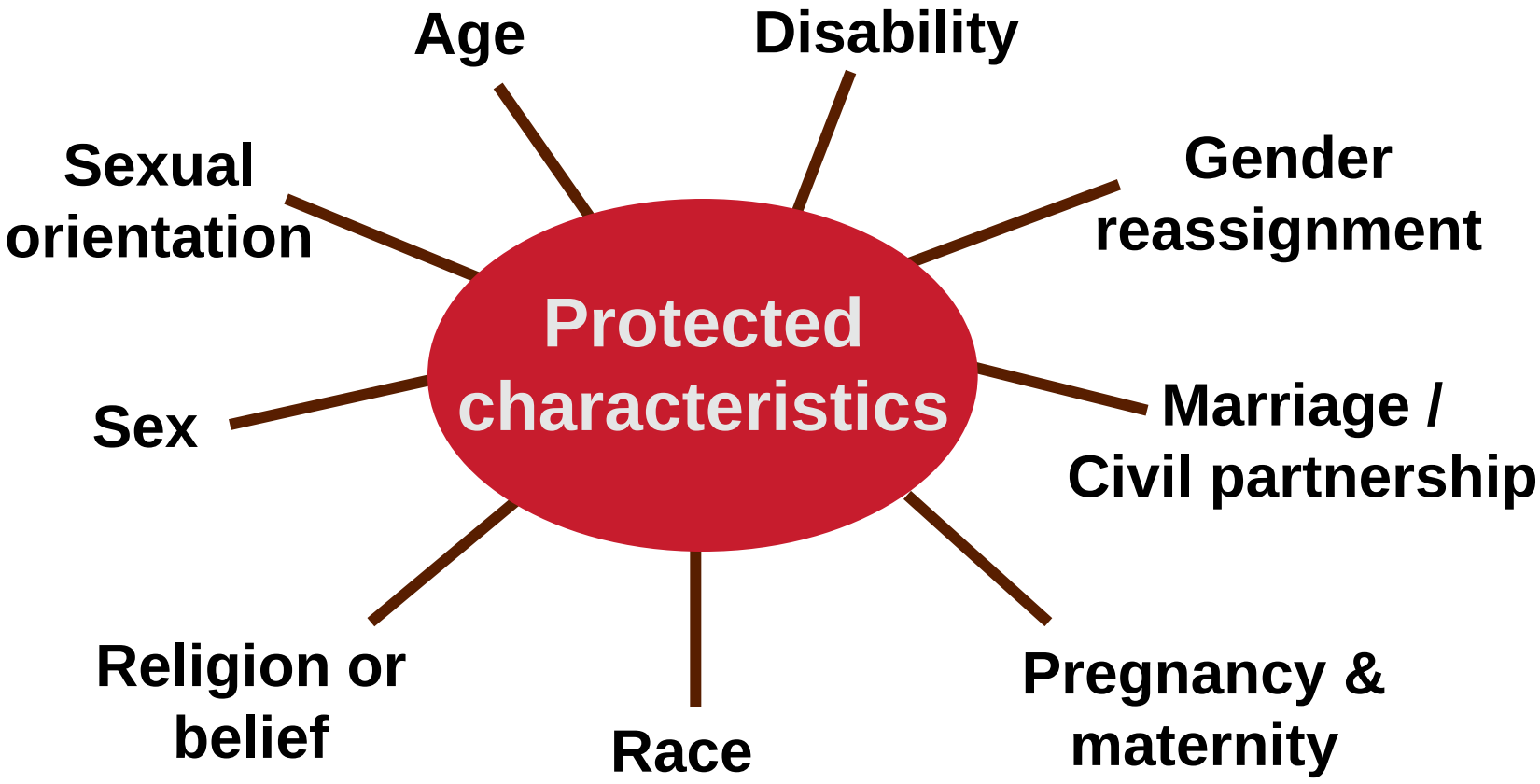
- Harmonise
- Consolidate
- Strengthen



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Equality Act 2010 (1)

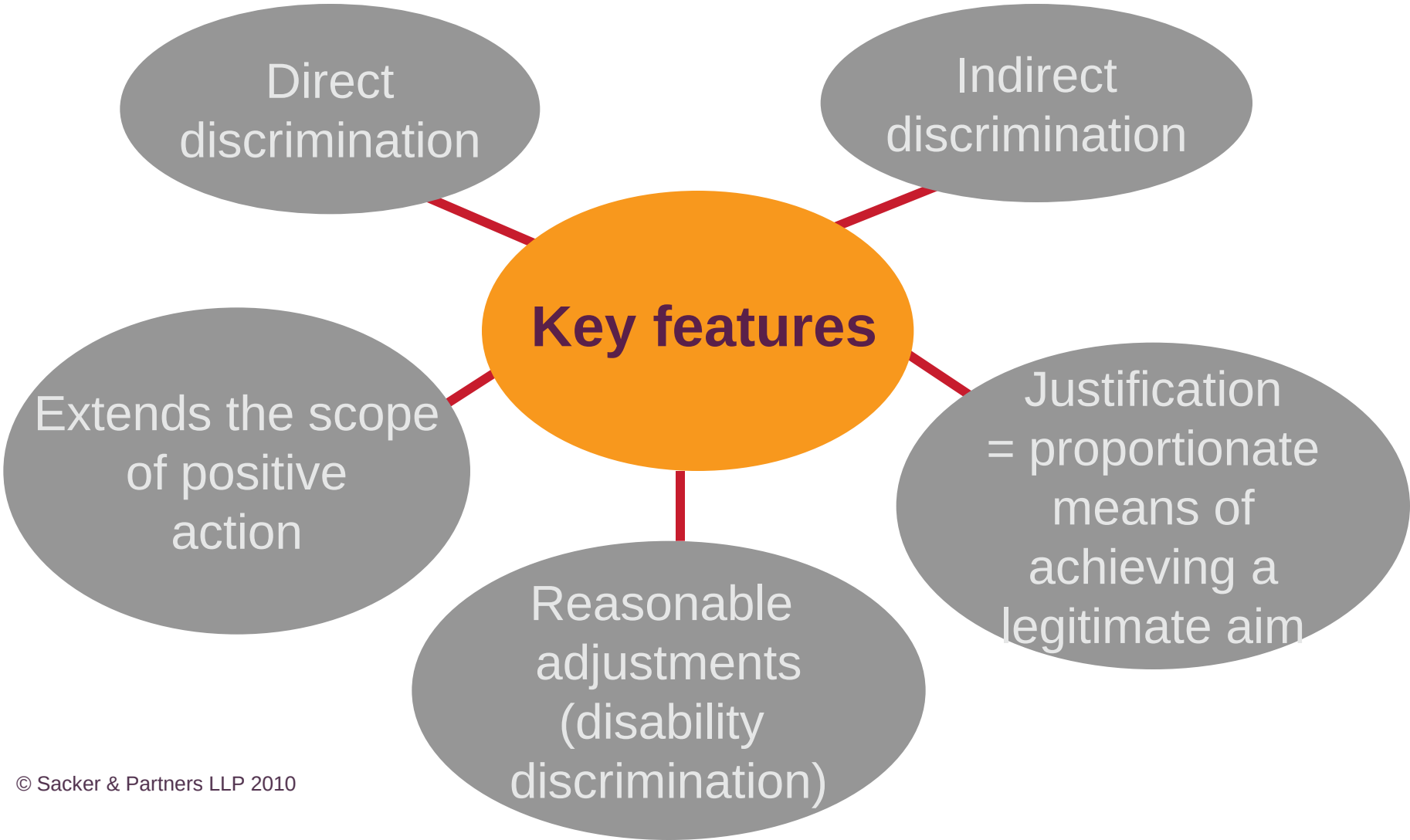
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Equality Act 2010 (2)

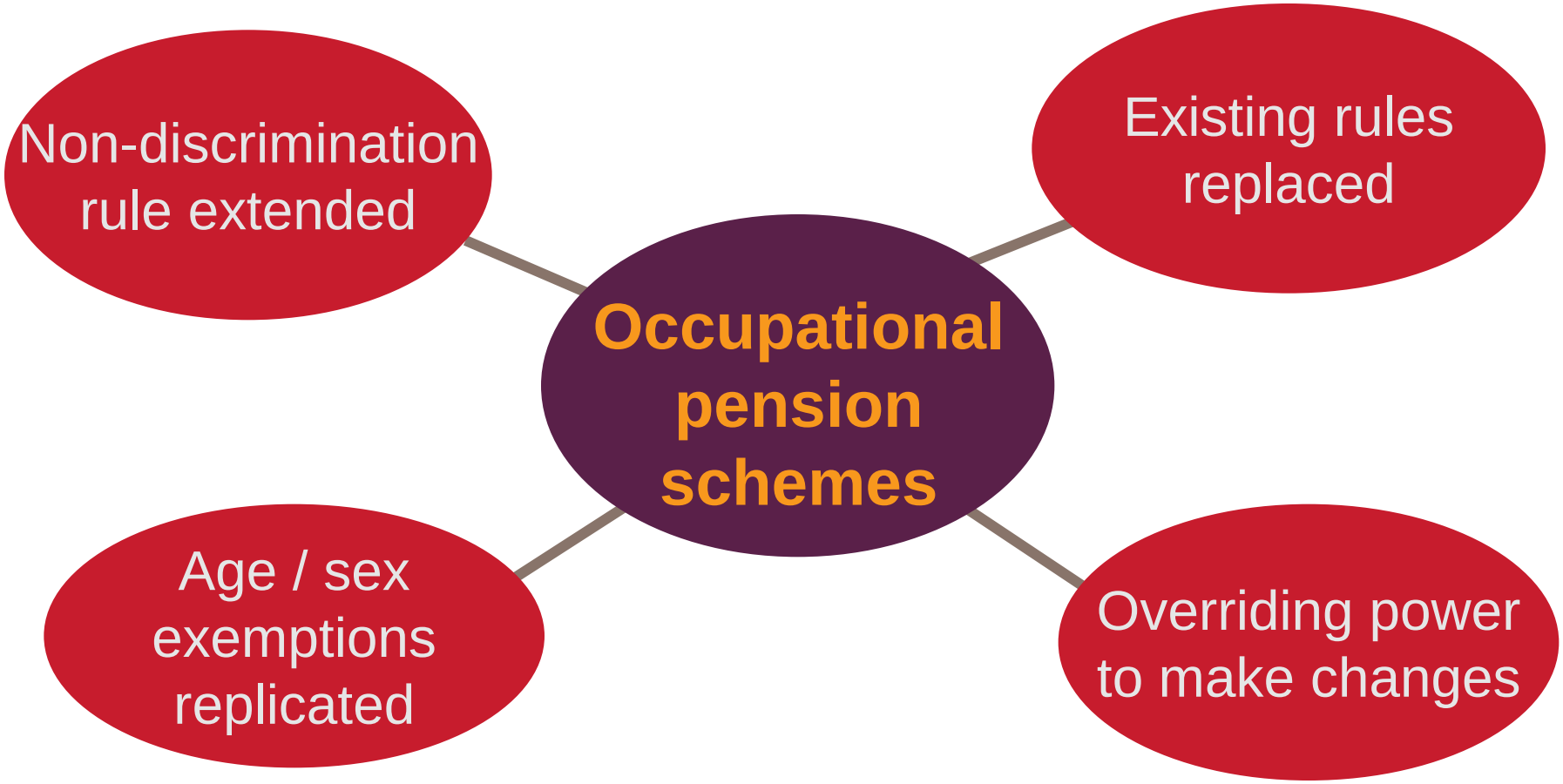
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Equality Act 2010 (3)

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Equality Act 2010 (4)

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Generally, claim within 3 months

Breach of equality clause / rule = 6 months

Enforcement

But Pensions Ombudsman – up to 3 years

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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

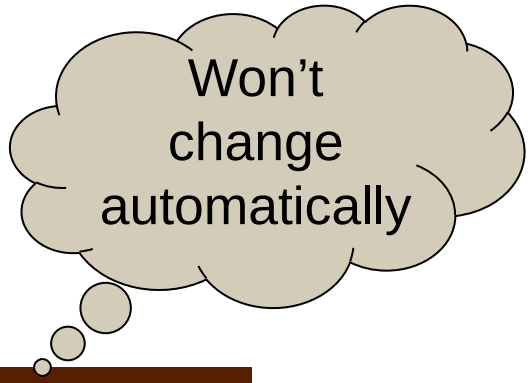
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- Insured benefits
- Share schemes
- Pension schemes???

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Effect on Pension schemes

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Retain normal retirement date

But… plan benefits for people working later

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Beyond DRA: starting point

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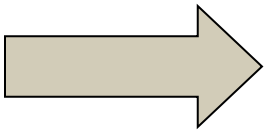


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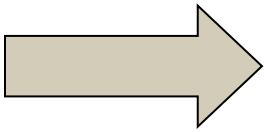
Beyond DRA: what else?

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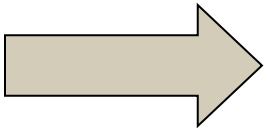
Member choice?



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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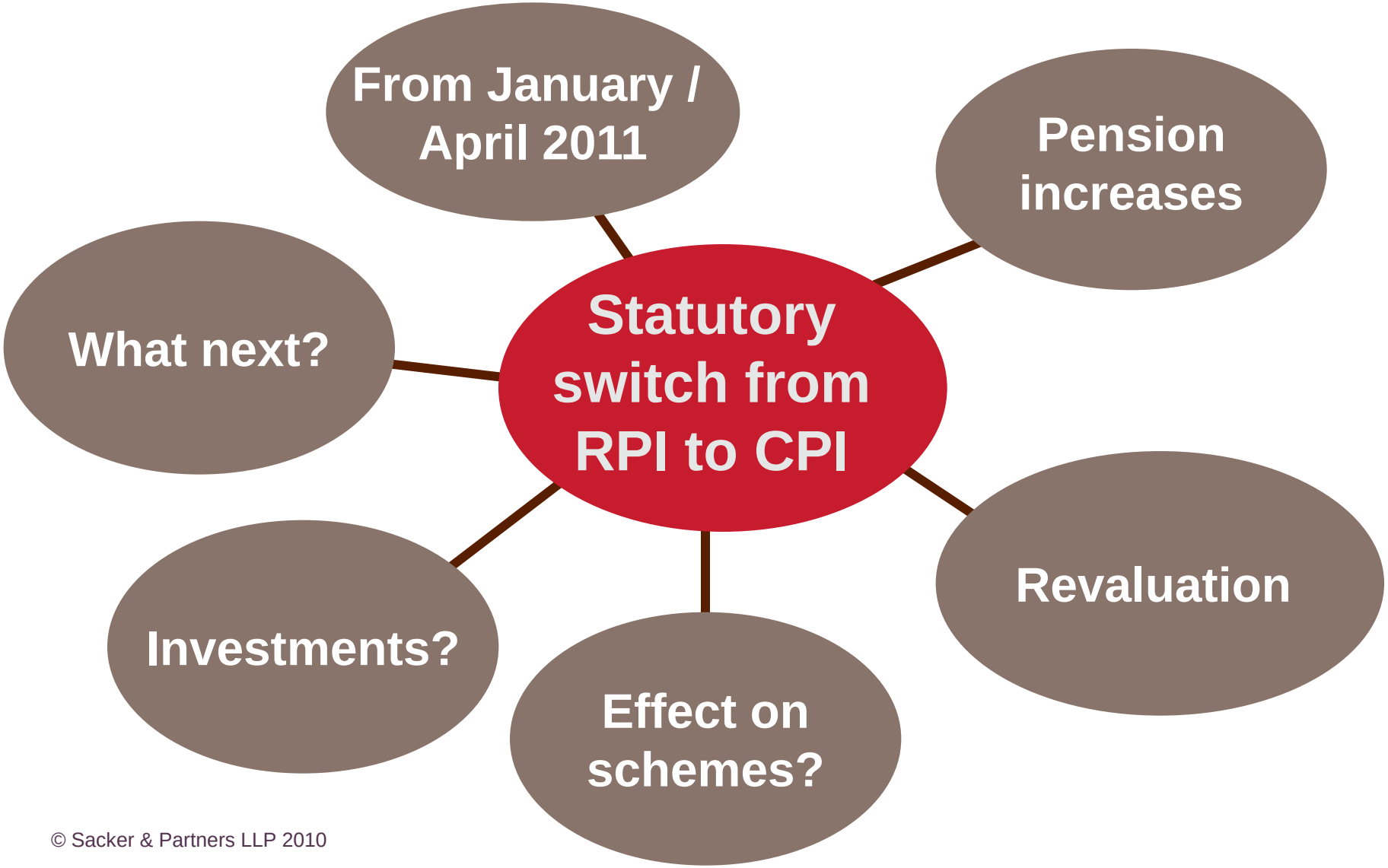
Increased cost alone is not sufficient justification for stopping a benefit

But… may have more scope with flexible benefit arrangements?

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Also on the pensions agenda (1)

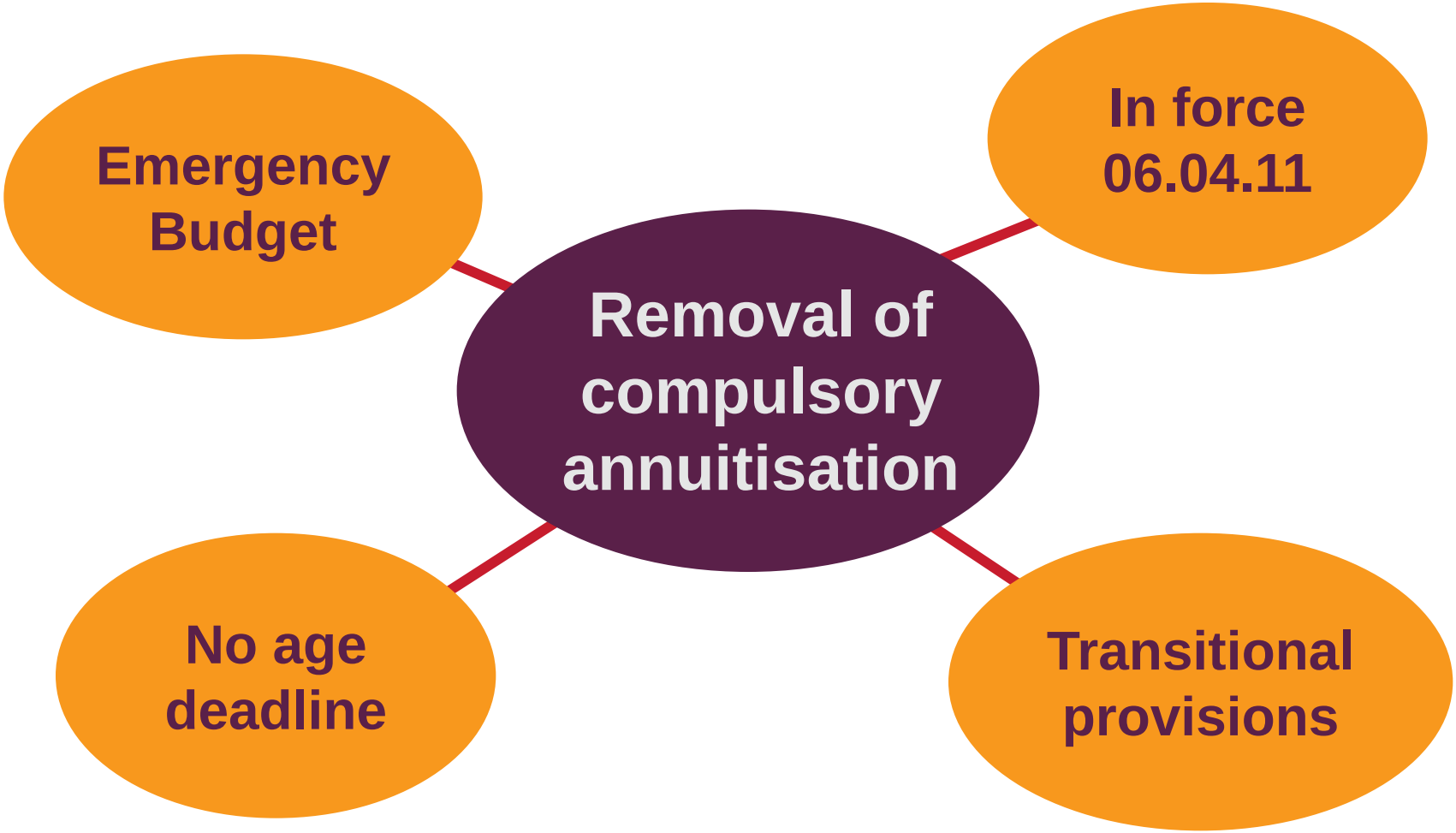
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Also on the pensions agenda (2)

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Cases

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- Court of Appeal
- High Court

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Seldon - Court of Appeal

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Background

Compulsory retirement age (65)

Seldon v Clarkson Wright & Jakes (CWJ)

Discrimination ?

CWJ's objective justification



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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**
• **Court of Appeal**	**Can employer use own justification or must it have social policy aims?**

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Seldon (3)

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Social / labour policy = for Government

Sufficient employer's aims = consistent with that

Court of Appeal

CWJ's aims met that requirement

But aims must be "consciously recognised"

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Bridge Trustees - Court of Appeal

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



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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)

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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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Pilots case – High Court

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Background

Multi-employer DB scheme

PNPF Trust Company Ltd v Taylor & ors
(The Pilots case)

Employer debt

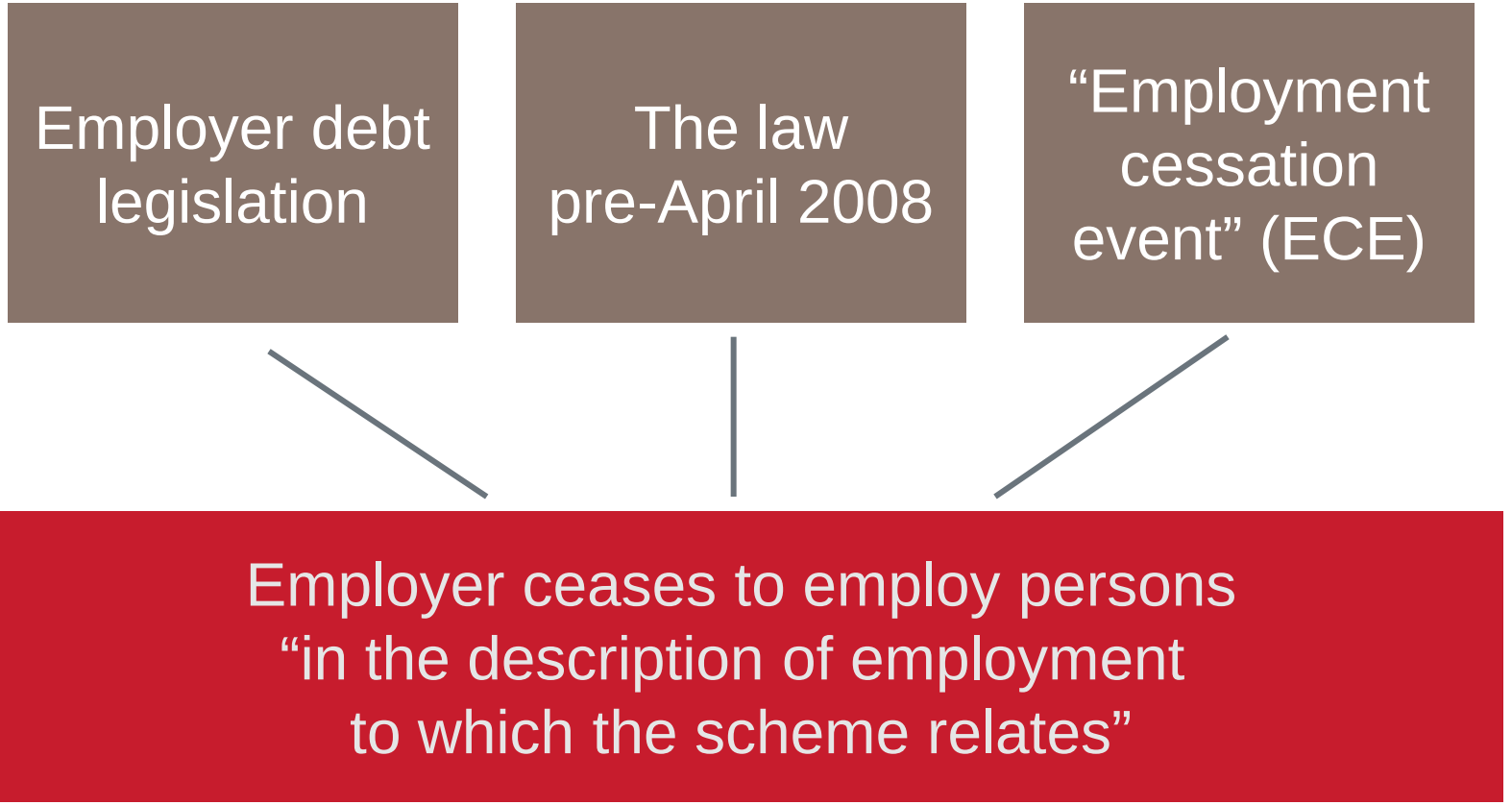
Scheme funding



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Pilots Case (2)

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Pilots Case (3)

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The narrow interpretation — Actives only — The broad interpretation — Actives & other employees who could join the scheme

Also key questions about statutory funding regime

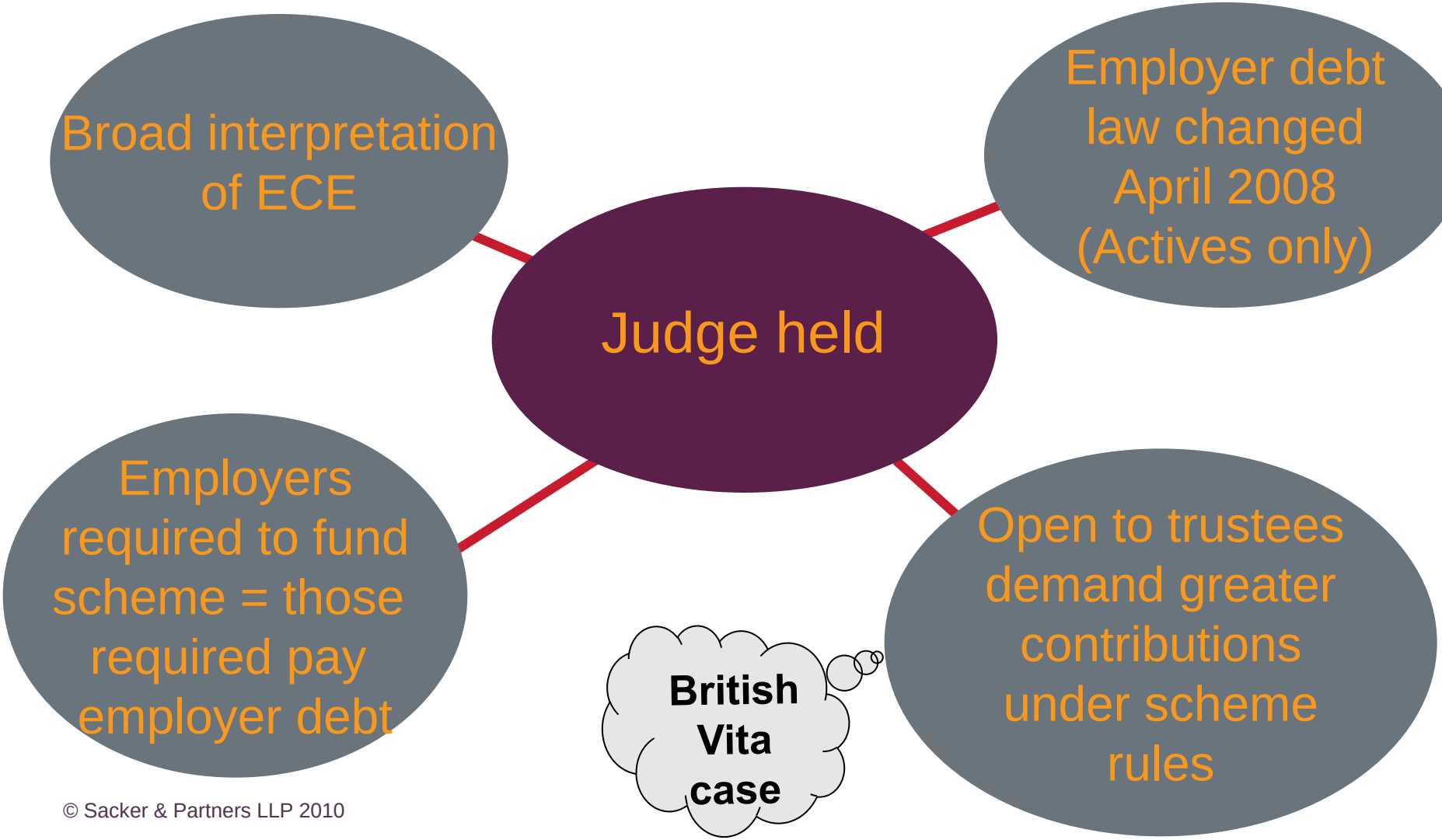
Who is liable to fund the scheme?

Legislation *versus* scheme rules?

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Pilots Case (4)

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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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The Actuarial Profession
Current Issues in Pensions

- Legal Update
- Pauline Sibbit, David Saunders, Robin Simmons & Claire Carey



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