

The Actuarial Profession Current Issues in Pensions

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



- Legislation update
- Cases

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

Pensions tax relief – a brief history

Sackers

Pre-2006



Complex Inland
Revenue limits

2006 – 2009



Simplification –
allowances for
tax-efficient
saving

2009 - 2010



Not quite so
simple – anti-
forestalling

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

**“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**

But that was before this....



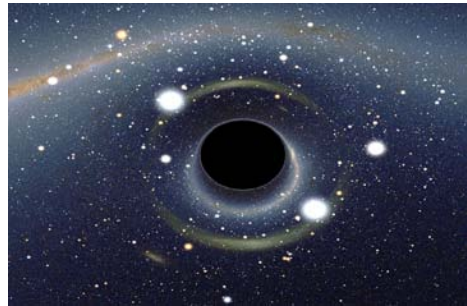
...And their emergency Budget

Why restrict pensions tax relief?

Sackers

Proportion tax relief
going to high earners


New 50% tax rule



Cost to Treasury

The Coalition Government's proposals (1) Sackers


Redesigning the AA (from April 2011)




Reduce AA to
£50,000



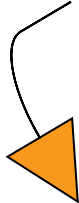
Remove AA
exemptions



Tailored
charge where
exceeded

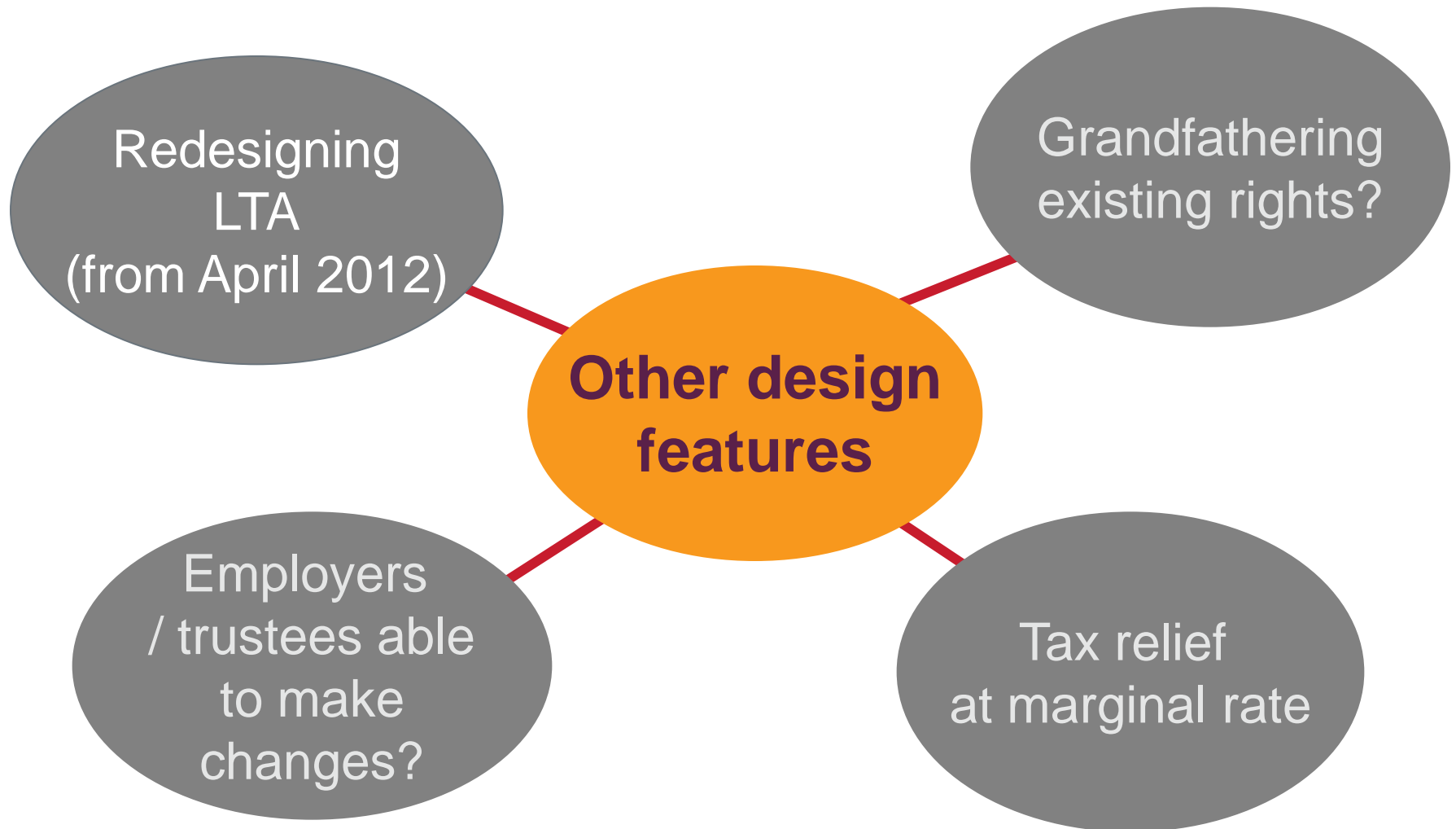


Valuing DB
savings?

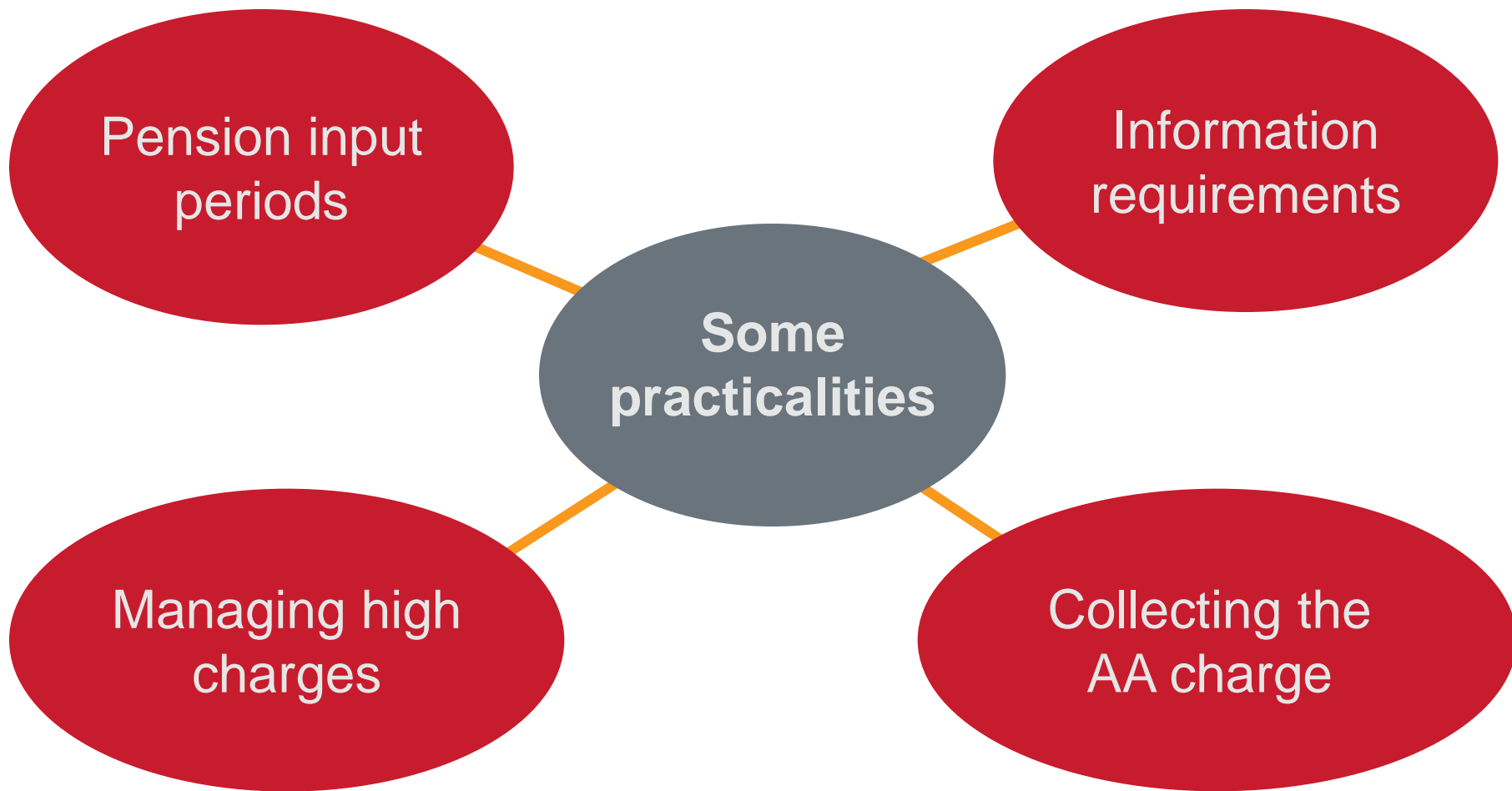


But special
cases?

The Coalition Government's proposals (2) Sackers



The Coalition Government's proposals (3) Sackers



Is there enough time to sort this out?

Sackers



Equality Act 2010 - What we had (1)

Sackers



Equal Pay
Act 1970



Race
Relations
Act 1976



Disability
Discrimination
Act 1995



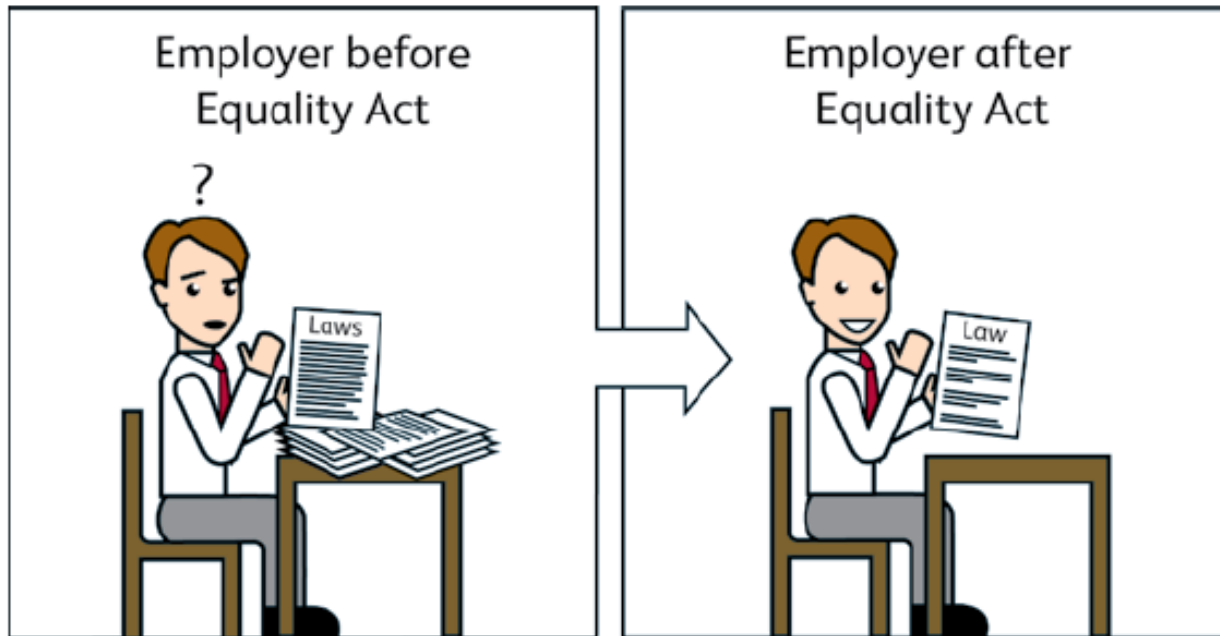
Sex
Discrimination
Act 1975



Sex
Discrimination
Act 1986

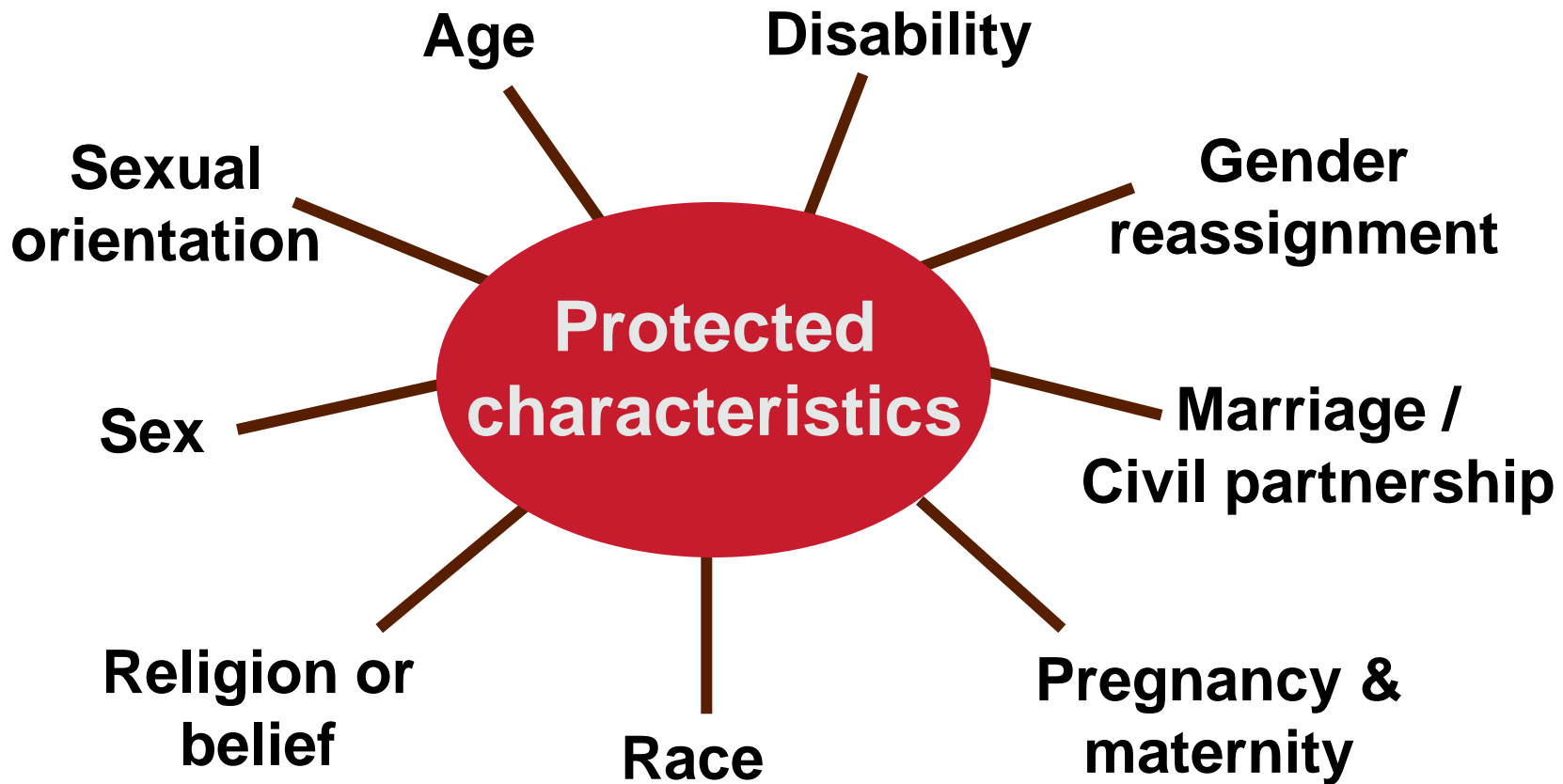
- Pensions Act 1995 (Equal Treatment Rule)
- Occupational Pension Schemes (Equal Treatment) Regulations 1995
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Disability Discrimination Act 1995 (Pensions) Regulations 2003
- Occupational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

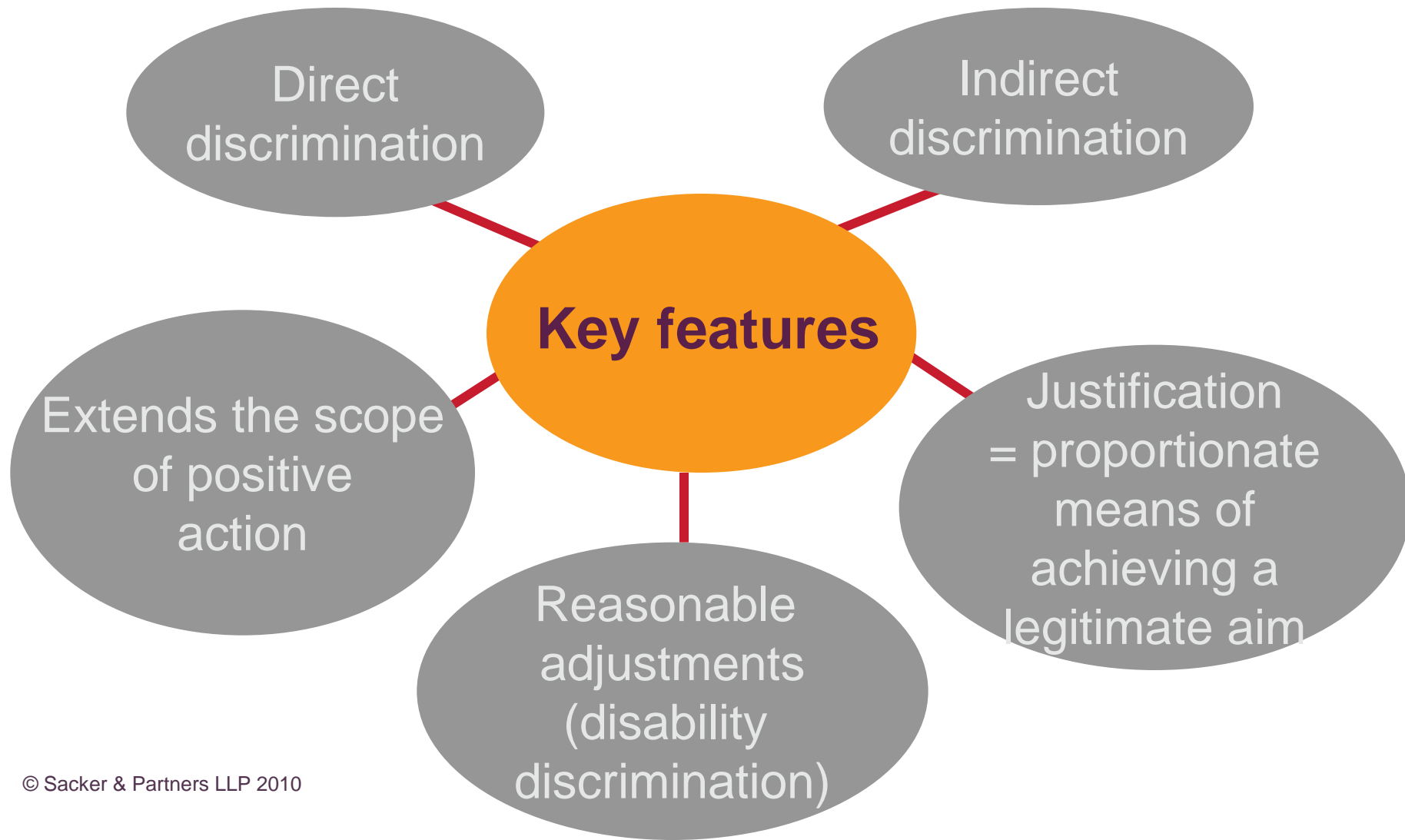
- **EQUALITY ACT 2010**
 - plus some other bits and pieces!

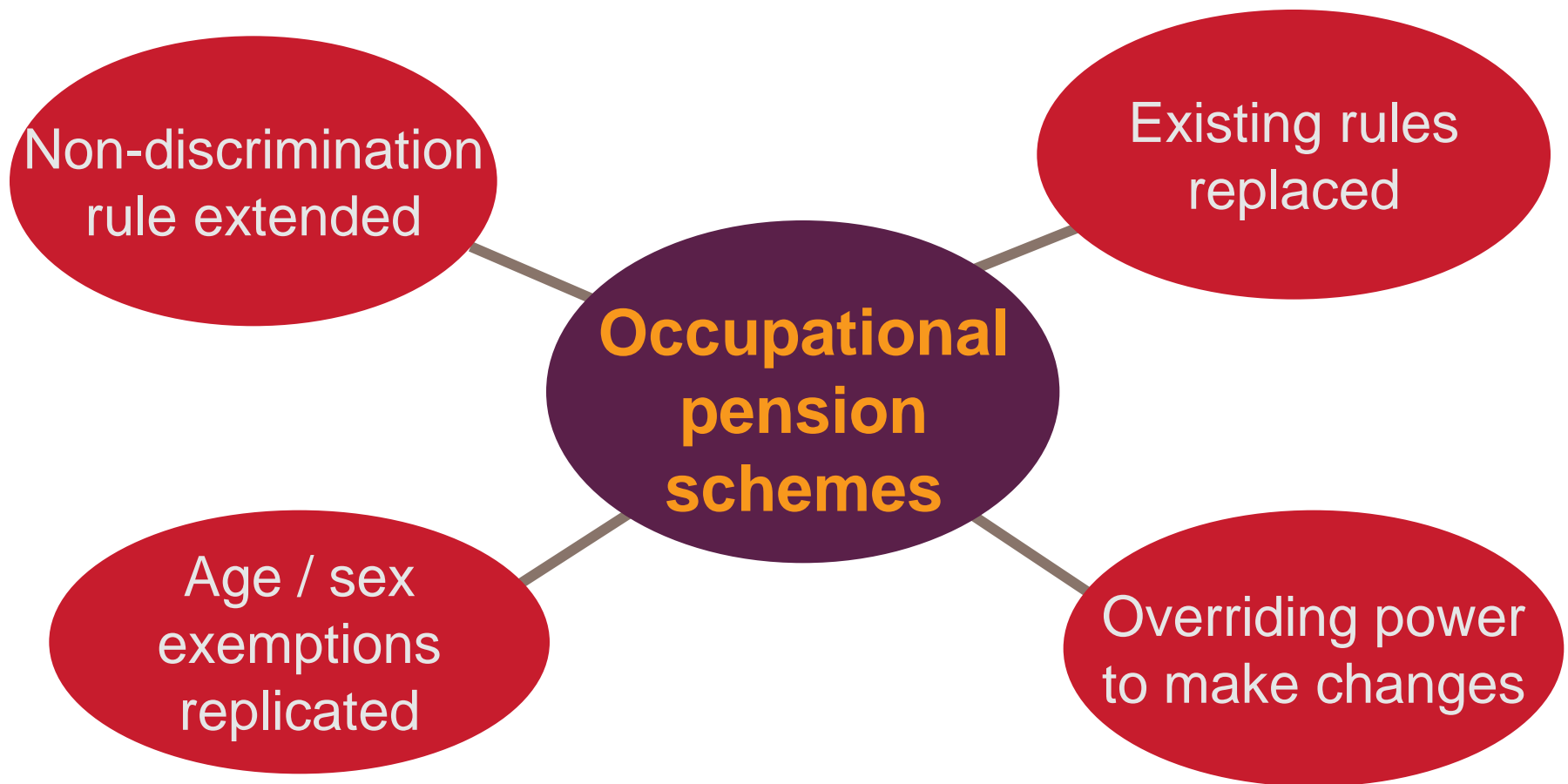


- Harmonise
- Consolidate
- Strengthen









Generally, claim
within 3 months

Breach of equality
clause / rule
= 6 months

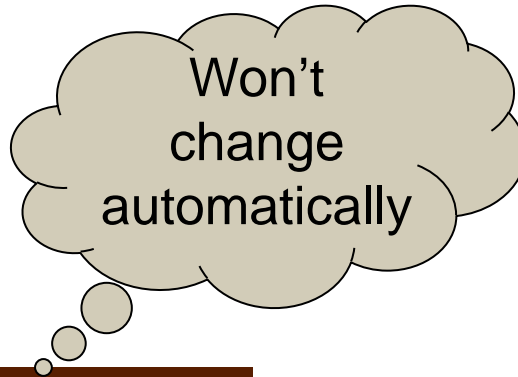
Enforcement

But Pensions Ombudsman
– up to 3 years

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



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



Retain normal
retirement
date

But...
plan benefits
for people
working later

Beyond DRA: starting point

Sackers

If DB now



Continue DB

If DC now



Continue DC

Risk benefits



Continue same benefits

Member
choice?



Could defer pension
(then what risk
benefits?)



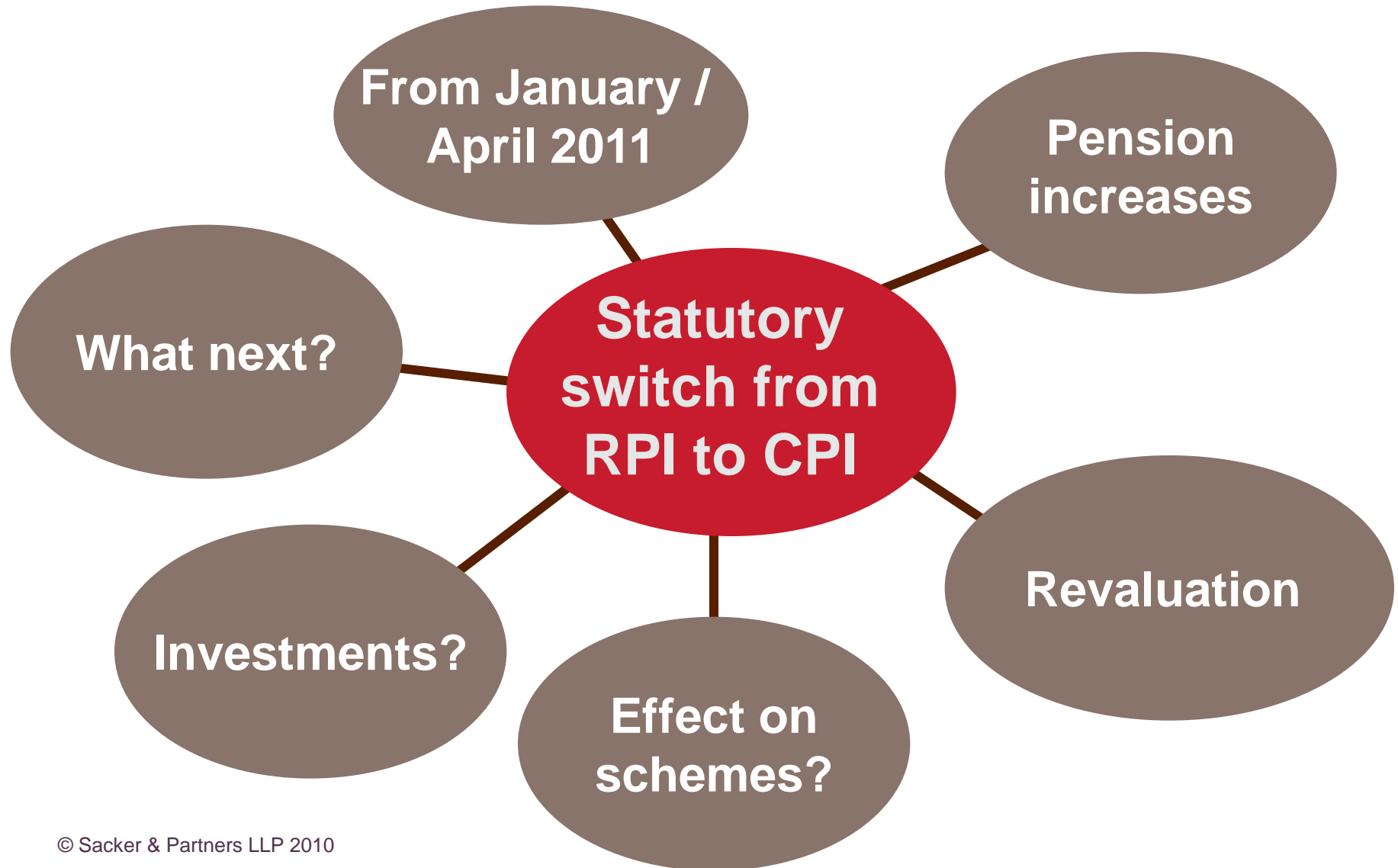
Could choose to move to
different type of pension
(e.g. DB to DC)

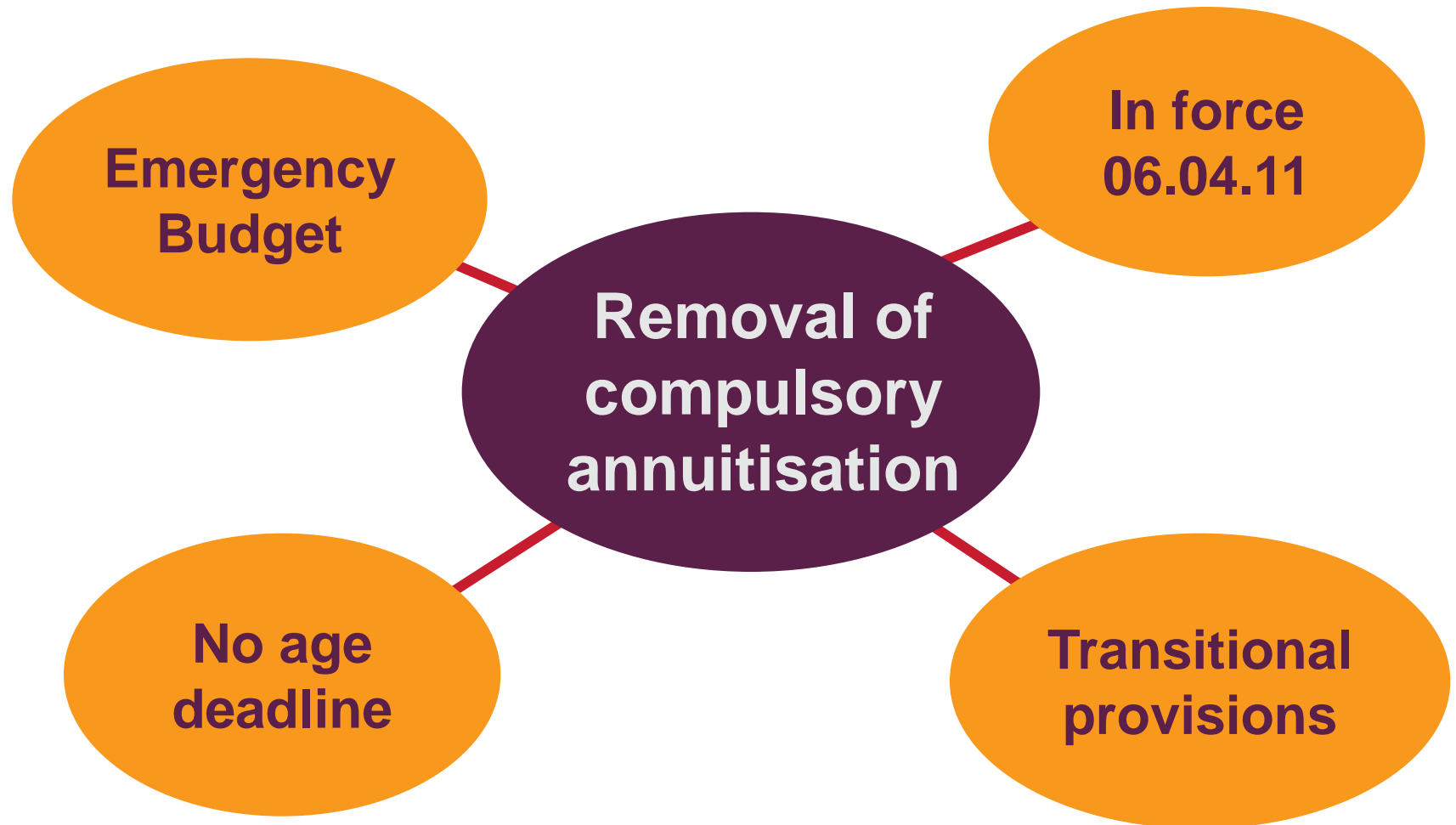


Cannot be a forced
choice... discrimination!

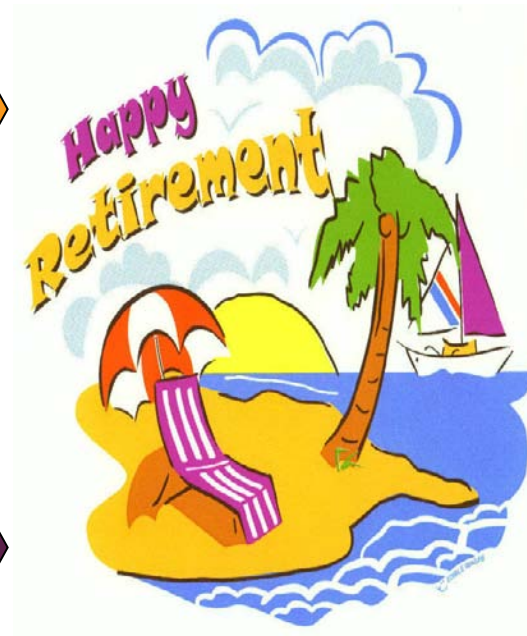
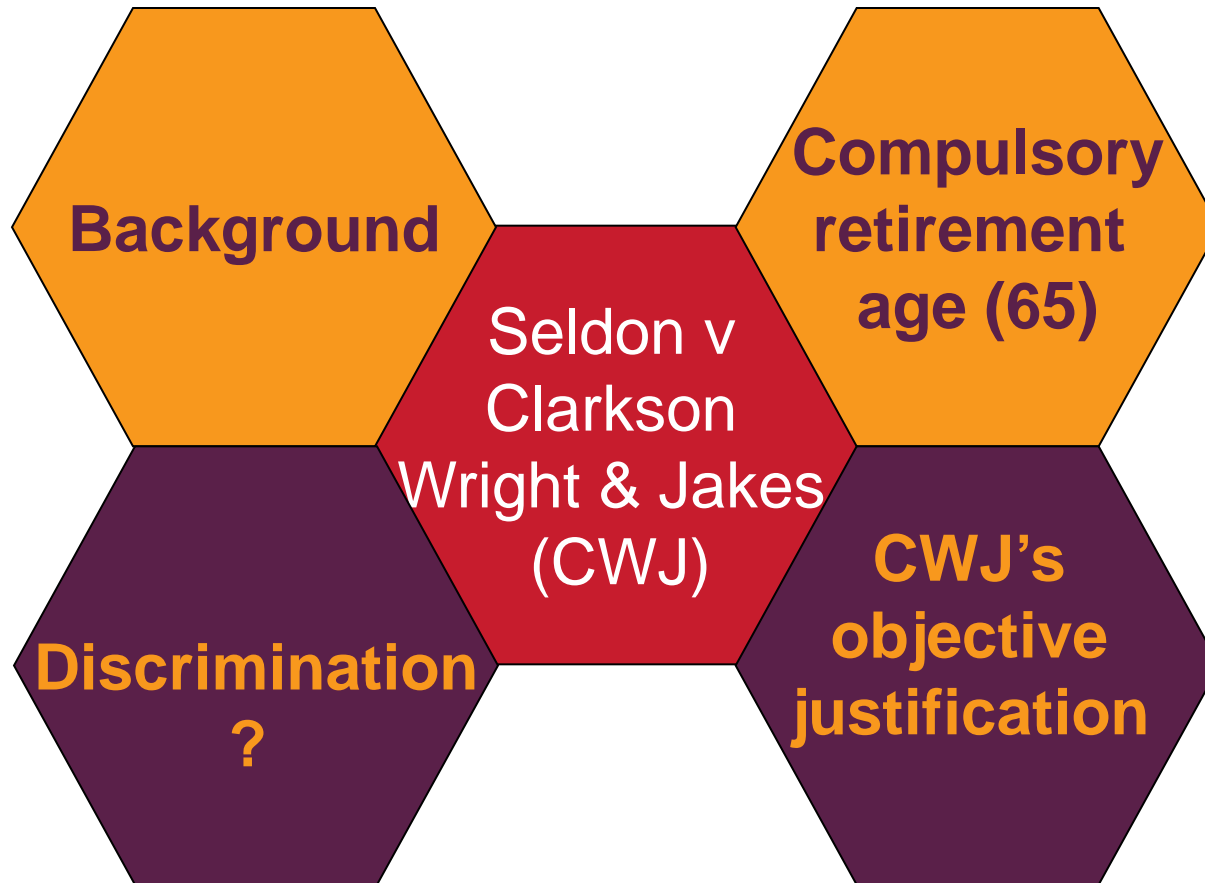
Increased cost alone is not
sufficient justification for
stopping a benefit

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





- Court of Appeal
- High Court



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?**

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”



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



Key questions

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

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	

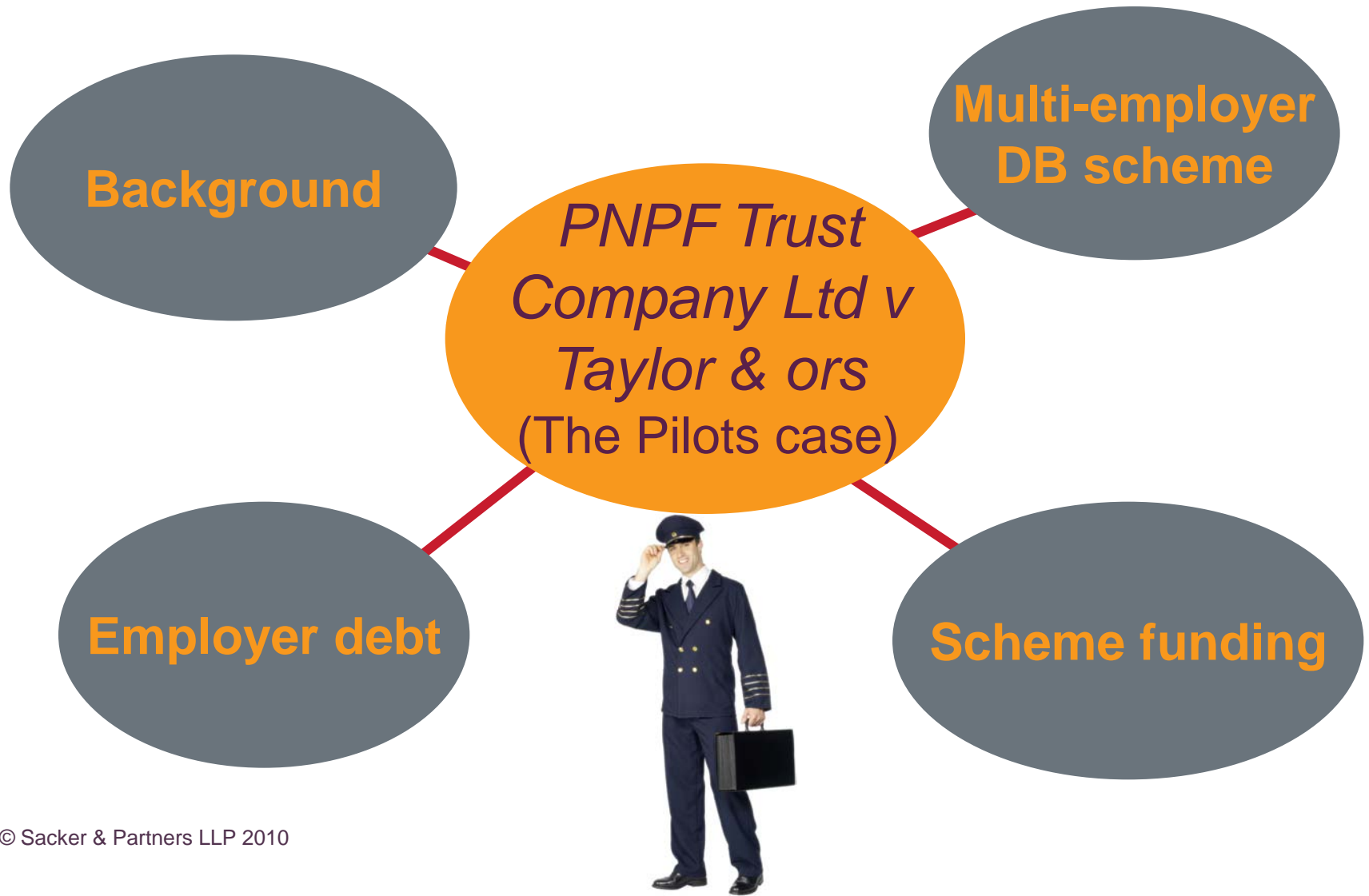
Question	Yes / No	In priority order
Were pre-6 April 1997 DC benefits with GMPs = underpin benefits?	Yes	
Were post-5 April 1997 DC benefits with historical GMPs = underpins?	No	

A red starburst shape with many points, containing the text "Implications?".

Implications?

A gray starburst shape with many points, containing the text "Appeal?".

Appeal?



Employer debt
legislation

The law
pre-April 2008

“Employment
cessation
event” (ECE)

```
graph TD; A[Employer debt legislation] --> D[Employer ceases to employ persons  
“in the description of employment  
to which the scheme relates”]; B[The law pre-April 2008] --> D; C[“Employment cessation event” (ECE)] --> D;
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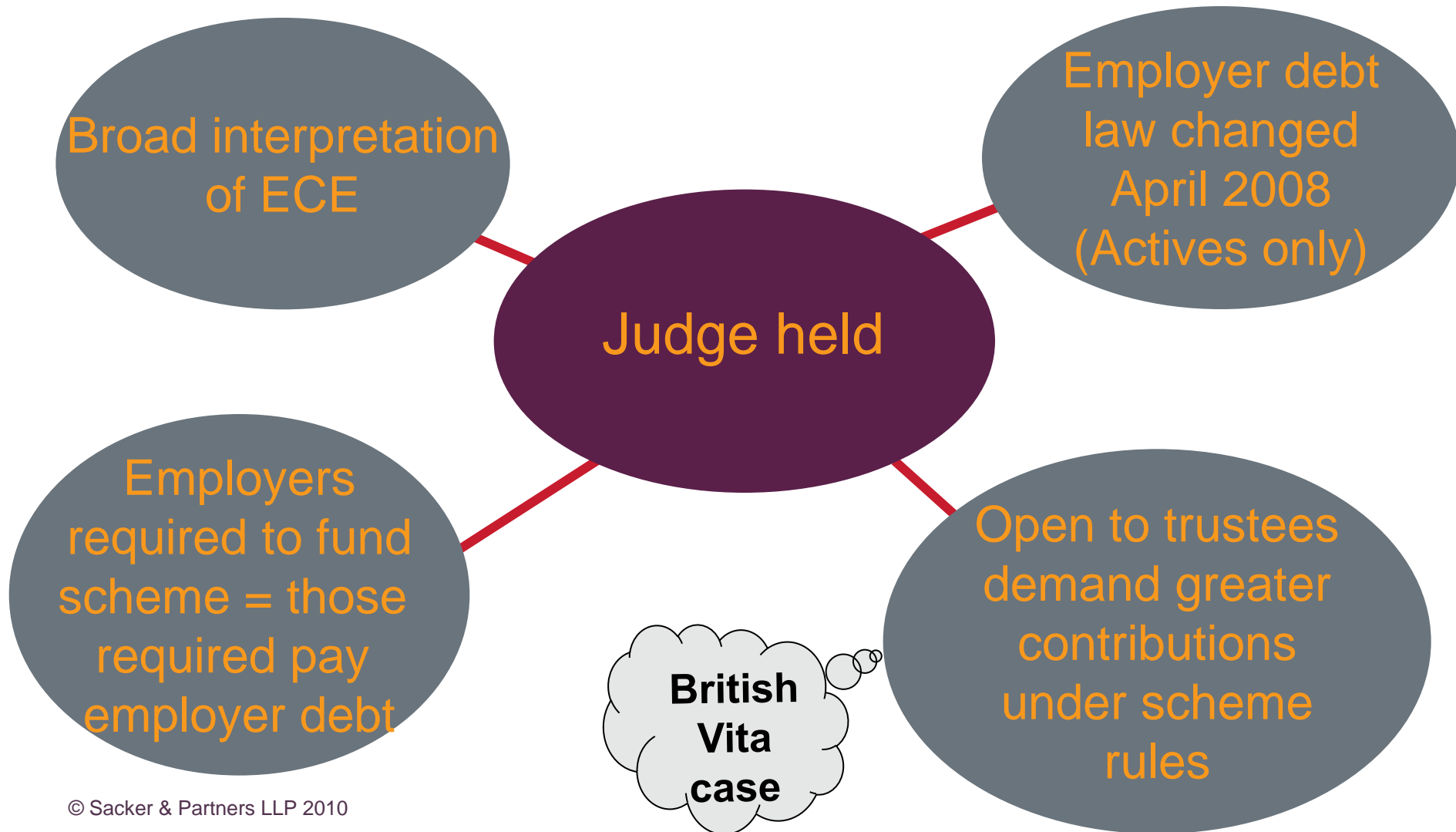
Employer ceases to employ persons
“in the description of employment
to which the scheme relates”

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?



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?**

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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