

Making Progress and Dealing with Uncertainty

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Agenda

- Establishing liabilities
- Recovering assets
- Assessing level of benefits payable during winding-up

Establishing liabilities

- Data audit of membership and benefits
- 3 primary sources
- Rules audit : archaeology of the Scheme versus administration practice
- GMP reconciliation
- Ask the members!

Rules audit and archaeology

- Understanding changes in benefits over time
- Check whether changes properly documented
- Reconciling benefits with actual method of administration!
- Changes in membership categories, interpretation of pensionable salary, final pensionable salary, pensionable service, pension increases

The Act of 1995
Making them all aware of the rules

Rules audit and archaeology

- LPI wording "...annual rate of increase in the Index up to a maximum of 5% or such other maximum rate prescribed under section 51 of the Pensions Act as amended from time to time"
- "The rate of increases shall, subject to section 51 of the 1995 Act, be such rate as the Principal Company may fix each year not being less than 3 per cent."
- Take legal advice!

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GMP reconciliation

- Missed opportunity to abolish GMPs...but
- NICO problems solved!
- Consider pragmatic approach : possible disregard of disparities of less than £52 per annum

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Ask the members!

- Basic data schedules
- Ask for verification
- Give definitions of salary, final salary and service – double-check with booklet to anticipate any inconsistencies with the formal rules
- Good communication tool but won't prevent later claims!

The Annual Pensions
Making Them a Sense of the Future

Establishing liabilities : s27 Trustee Act

- Limited degree of protection
- At least 2 months' notice
- London Gazette plus
- Local papers
- Issue early on following initial announcements
- May help to flush out part-timer claims

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Equalisation

- Need to ensure proper implementation of equalisation
- Announcement alone rarely sufficient
- Check your Rules

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Equalisation

- “The Trustees may by resolution with the written consent of the Principal Employer change all or any of the provisions of the Rules...”
- “The Principal Employer may from time to time...authorise the trustees in writing to alter or add to the terms and provisions of the rules...the trustee shall forthwith declare any such alteration or addition to the rules in writing under their hands or...to this deed in writing under their hands and seal...”

The Act of 1986
Making them all aware of the rules

GMP equalisation : Leadenhall

- Judge could not “sensibly decide in this case” whether EU law overrode powers in winding-up rule
- Concluded it would be “proper managerial decision” for trustees to decide not to equalise
 - rules did not allow it
 - could safely equalise only if EU law decided first
 - disproportionately expensive to establish wider power or duty under EU law

The Act of 1986
Making them all aware of the rules

GMP equalisation

- Issue not explored fully
- Pragmatic decision
- Trustees should still
 - consider risks of equalising GMP (and failing to!)
 - assess impact of cost and benefit
- Solvent sponsors may support costs? Deed poll?
- Often inappropriate for schemes in deficit

The Act of 1986
Making them all aware of the rules

History of debt calculation basis

Applicable time before 19 March 2002	Applicable time from 19 March 2002 to 14 March 2004 (or later if wind up commenced before 11 June 2003)	Applicable time from 15 March 2004 where wind up commences on or after 11 June 2003
MFR only	"MFR plus" but MFR only if sponsor in UK liquidation	Buy-out but MFR only if sponsor in UK liquidation

The Account of Proceedings
Making Them of Sense to the Court

Section 75 Debt: whole scheme

- Liquidation anomaly removed from 15 February
- Full buy-out debt
- Where applicable time and commencement of winding-up on or after 15 February 2005
- Liquidations before 15 February 2005 still subject to weak MFR debt measure

The Account of Proceedings
Making Them of Sense to the Court

Section 75 debt

- Second bite at the cherry?
- Consequences of setting the applicable time

The Account of Proceedings
Making Them of Sense to the Court

Compromising Debts

- Limited opportunity to compromise debts for post 5 April 2005 wind-ups
- Unless above PPF level
- In PPF assessment period PPF exercises creditor rights!

The Act of 2005
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Compromising Debts

- TPR guidance
- Importance of conflicts
- Management of conflicts
- Notifiable event
- Independent accounting advice

The Act of 2005
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Priorities

- Post 5 April 2005
 - liabilities do not include liabilities in respect of money purchase benefits under the scheme rules
 - pre 97 contracts
 - corresponding PPF liability
- But where no assessment period then not restricted to corresponding PPF liability : Regulation 4(5) OPS (Winding-up etc) Regulations 2005

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Priorities

- From 31 August 2005, Regulation 4(5) revoked
- Alignment with corresponding PPF priorities whether or not there is an assessment period

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Making Them a Priority of the State

Priorities

- Deferral of wind-up commencement
- Crystallising priorities : Regulation 5 OPS (Winding-up) Regulations 1996
- Treatment of benefits coming into payment whilst in deferred winding up
- Application of relevant priority order

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Transfers

- Reductions
- Pre-wind up quotations : disclosure changes
- Timescales : up to 6 months
- Old Opra guidance
- Suspension of payment
- Two-stage payments

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Interim benefits : deaths and retirements

- Respond to survivor benefits : appropriate percentage
- Consider whether early retirement advisable
- Respond to normal retirements : appropriate percentage
- PPF impact: 3 month expected for adjustments
- Revisit towards end of the wind up

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Partial wind-ups

- Sectionalised scheme
- Narrow definition in line with MFR Regulations
- Multi-employer
- Provisions of the scheme are such that
 - different sections apply to different employers
 - contributions allocated to relevant employer section
 - assets attributable to one section cannot be used for any other section

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Partial wind-ups

- Check the Rule!
- Triggers
- Options
- Interaction with new section 75 for multi-employer schemes
- Allocation of debt recovered

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Partial wind-ups

- Treatment of benefits
- Transfers
- Deaths
- Retirements

The Act of 2004
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Miscellaneous

- Insurance
- Investment
- Impact of appointment of independent trustee and exercise of discretionary powers

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Timing generally

- TPR expectations of timing for completion of the wind up and progress forms
- 3 year period

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Summary

- Check data and formal rules
- Recover assets
- Pay appropriate level of benefits
- Communicate with the members!

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Questions

Any questions?

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