



**The Actuarial Profession**

making financial sense of the future

# Management of closed schemes: legal Issues

Wednesday 10 November 2004

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# Introduction:

- Employer and Trustee considerations
- Implementing the changes
- Administering the closed scheme
- Role of the Actuary

# The Employer must understand the financials:

- Advance due diligence by the Employer
- Cost savings?
- What time scale?
- Likely impact on scheme investments/funding?
- Costs of implementation?
- Impact on domestic/overseas business?

# Employer should have a timetable for implementation:

- Review of employment contracts
- Are unions involved?
- Advance consultation with the employees?

# Other Employer considerations:

- Proposal to the Trustee (what information will be made available)?
- How will communications be structured?
- Other HR considerations (new hires etc)

# Employer and Trustee to consider existing scheme documentation:

- Are documents up to date?
- Power of amendment
- The triggers for winding-up
- Powers to defer winding-up

# Trustee will consider strength of the Employer's financial covenant:

- Previous history
- Group structure
- Forensic accounting
- Impact on likely Trustee approach

# Conflicts of interest: now and in the future

- Employer representatives
- Trustee representatives
- Importance of the paper trail/independent advice
- Role of the Actuary



# Documenting the changes:

- Duty of good faith/fiduciary duties
- Balance of power: exercise of the power of amendment
- What are you documenting?
- Reservation of powers

# Implementing the changes:

- Review of documents by independent advisers
- Consultation requirements
- Notification requirements
- Other formalities

# Should the Trustee defer winding-up?

- Is this a relevant consideration?
- Has it the unilateral power to do so?
- Section 75 consequences?
- Investment performance
- Annuity market rates
- Priority drift

# Once the scheme has become closed:

- Ongoing funding considerations (S.56 PA95 Schedule of Contributions, Employer contribution rule)
- Scheme expenses

# Once the scheme has become closed:

- Investment strategy and review (SIP)
- Priority drift
- Use of actuarial factors
- Member communication

# Ongoing Trustee responsibilities:

- Investment/funding review
- Revisit previous professional advice
- Deferral of winding-up?

# Section 75 debts:

- S.56 (Schedule of Contributions) ceases to apply
- “Applicable time”
- Solvency/insolvency of employer
- “Bradstock” compromises: new Opra guidance

# New winding-up priorities:

- Relevant regulations
- Proposed new regulations



# Moral Hazard Provisions/PPF:

- Contribution notices
- Financial support directions
- Transfers at an undervalue
- PPF



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