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The 2004 Pensions Convention


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Winding Up – Practical Issues and Concerns for Trustees

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- Walker Morris, Leeds

WALKER
MORRIS


Advisers



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Introduction

- practical issues and concerns of the trustees by reference to theme and time
- case study for ABC Scheme
- background facts of the wind up
- trustees' meetings (beginning, middle and end)
- Pensions Bill – likely impact on wind ups
- conclusions and questions



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Practical issues and concerns of trustees by theme

- gathering in the assets
 - pre/post WU contributions
 - section 75 debt on employer claim/compromise
 - negligence/breach of trust claims
- securing interim benefits
 - post WU normal/early/ill health retirements
 - transfer values (single/split)

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Practical issues and concerns of trustees by theme

- securing final benefits
 - TVs
 - annuities
 - section 32
 - deemed buy-back
 - Pension Protection Fund/Financial Assistance Scheme

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Practical issues and concerns of trustees by theme

- trustee position
 - am I going to get paid?
 - am I going to be sued?

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Am I going to be sued?

- take advice & keep records
- members to confirm scheme information
- tell members exactly what you are going to do
- get any discharge that is available (member/s74)
- exoneration and indemnity
- throw yourself on the mercy of the courts
- throw yourself on the mercy of your insurer
- in reality ...

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ABC Scheme – background facts as at 31 March 2002

- final salary/defined benefit
- 7 pensioners & 82 deferreds
- fund value - £10.8m
- MFR 103% as at 31 March 2001

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Agenda for Trustees' Meeting at ABC Limited – February 2002 (start)

- status of the Principal Employer
- status of the scheme
- status of the trustees
- status of advisers
- investment strategy
- funding
- pensioners

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Agenda for Trustees' Meeting at ABC Limited – February 2002 (start)

- actives/deferreds
- member queries/communication
- compliance/administration issues
- any other business
- date of next meeting

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Status of the Principal Employer

- ongoing/insolvent
- statutory independent trustee appointment
- redundancies
- pre/post IP appointment contributions

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Status of the scheme

- current status (ongoing/closed/in WU?)
- deferral and timing the WU
- rules and forthcoming retirements

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Status of the trustees

- post IP appointment power vacuum
- powers of the SIT
- to stay or to go?

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Status of advisers

- review
- terms and conditions
- compliance

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Investment strategy

- who provides the advice?
- don't forget to consult on the SIP (Pitmans case)
- to gilts match or not to gilts match?
- timing

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Actuarial advice on investment strategy for ABC Scheme

- healthy MFR position and anticipated wind up
- option one
 - match ongoing liabilities
 - equity exposure
- option two
 - gilt matching
 - lock in to surplus two stage transfer facility

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Funding

- where are we (s73 especially)?
- provision for post WU
- normal/early retirements
- TVs

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Pensioners

- are they fully covered?
- carry on as before
- can we afford increases?
- early buy-out

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Actives/deferreds

- pre/post IP contributions
- post WU interim provision
- cancellation of DIS
- status of CETVs quoted/accepted but not paid

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Member communication/queries

- notice of WU
- full and frank disclosure
- open door policy
- member apathy

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Compliance/administration issues

- all the usual

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Agenda for Trustees' Meeting at alternative venue – February 2003 (middle)

- status of the Principal Employer
- investment strategy
- funding
- pensioners
- deferreds
- NICO/NISPI

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Agenda for Trustees' Meeting at alternative venue – February 2003 (middle)

- s75 debt on employer claim
- any other business
- date of next meeting

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Status of the Principal Employer

- what if the Principal Employer disappears?
- loss of SIT powers
- loss of MNT exemption
- charging

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Investment strategy

- review
- rebalancing after disinvestment

Funding

- update

Pensioners

- buy-out

Deferreds

- NICO
- GMP equalisation
- TV policy
 - 2 stage
 - calculation
 - PSO Update 40
 - find an IFA

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Advice on two stage transfer for ABC Scheme

- minimum 100% MFR transfer
- s74 discharge
- PSO Update 40
- member discharge

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Legal advice on transfer payments for ABC Scheme

- must comply with s73
- allowed for in the Rules
- gilts matched transfer basis approved
- adoption of current and anticipated gilts yields and with an average discount rate of 5-6% per annum approved

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Actuarial advice on GMP equalisation for ABC Scheme

- pragmatic approach
- members' benefit calculation for both sexes
- equalisation adjustment derived from the difference in present values of the two benefits

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S75 debt on employer claim

- prospects for unsecureds?
- test drilling for the "applicable time"
- calculation, certification and claim
- Bradstock negotiation
 - OPRA guidance
 - conflict of interest
 - Regulator's new powers

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Agenda for Trustees' Meeting at Rest Home for Aged & Confused SITs – February 2004 (end)

- status of the Principal Employer
- status of the scheme
- investment strategy
- funding
- pensioners
- deferreds

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Agenda for Trustees' Meeting at Rest Home for Aged & Confused SITs – February 2004 (end)

- member queries/communication
- compliance administration
- any other business
- date of next meeting

Status of the Principal Employer

- is it still with us?

Status of the scheme

- still in WU
- planning the final steps to secure benefits

Investment strategy

- maintaining matching strategy
- going into cash for transfers
- going into cash for buy-out
- s73 calculation date/payment date

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Funding

- finalising final figures

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Pensioners

- bought out
- agreeing final numbers
- issue of individual contracts

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Deferreds

- agreeing/communicating options for final transfer or buy-out
- discharge for GMPs
- section 73 priorities
- section 74 discharge
- section 32 buy-out policies
- deferred annuity contracts
- deemed buy-back
- Pension Protection Fund/Financial Assistance Scheme

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Section 73/74 process

- allocation of assets only for securing benefits as well?
- investment matching post-calculation date
- securing GMPs DWP policy
- secure reduced GMP
- NISPI/insurer
- s74 discharge

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Buying Annuities

The Trustees will buy annuity and insurance policies in the names of the beneficiaries from the UK office or branch of an Insurance Company. The contracts and policies will be consistent with the contracting-out Present Preservation and Revaluation Laws and with Revenue Approval and will provide benefits as nearly as practicable the same as each person's entitlement under the Scheme.

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Trustees' Discretion to Transfer-out

Instead of providing benefits under the Scheme in respect of any person, the Trustees may transfer assets to another occupational pension scheme or to a personal pension scheme so that benefits will be provided under the other scheme in respect of the person concerned.

The amount of the transfer payment will not exceed the value of the benefits that would otherwise have been provided under the Scheme in respect of the person concerned, except where the Principal Employer agrees otherwise.

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Trustees' right to make transfer payment

When winding up the Scheme, the Trustees may make transfer payments in accordance with Rule ● in respect of all or any of the Members, instead buying annuities.

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Securing benefits with section 32 policies

S74(3) enables trustees to discharge a liability by "purchasing one or more annuities which satisfy prescribed requirements from one or more insurers, being companies willing to accept the payment in respect of the member from the trustees or managers".

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Securing benefits with section 32 policies

Use of money purchase vehicles to secure liabilities not precluded.

Using section 32 policies without member consents not specifically prevented.

Wind up rules requires insurance policies to provide benefits "as nearly as practicable the same as each person's entitlement under the Scheme".

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Pensions Bill – likely impact on wind ups

this slide is still under construction – please refer all enquiries to the DWP



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Pensions Bill – likely impact on wind ups

- funding
- Pension Protection Fund/Financial Assistance Scheme
- new Regulator – new powers
- fees

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Conclusions & questions

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