

Pensions Convention 2003

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WINDING UP PRACTICALITIES

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AGENDA

- Valuation : Gilt or Equity MFR
- Transfer values
- State benefits
- Winding-up priorities
- Debt on employer

Gilt or Equity MFR (1)

■ Interaction of MFR on wind-up:

- (i) Investment policy (SIP)
- (ii) Section 75 debt / GN19
- (iii) Section 73 allocation of assets

Gilt or Equity MFR (2)

(i) Investment policy / MFR

- Ongoing : Equity holdings / Equity MFR
- Wind-up : Gilt / bond holdings
- SIP : Gilt matching policy?
- 'Consult' employer
- GM in SIP => Gilt MFR **option**
- Not GM in SIP => Equity MFR only

Gilt or Equity MFR (3)

(ii) S75 Debt / MFR

- Pre 3/02 : MFR values for GN19
- Post 3/02 : MFR / buyout values for GN19
- Gilt MFR > Equity MFR
- GM policy => Higher S75 debt
- Increased recovery from GM policy?

Gilt or Equity MFR (4)

(iii) S73 allocation / MFR

- | | |
|-----------------------------|-----------|
| ■ Statutory priority order: | Post 3/02 |
| Expenses | Actual |
| (a) AVCs | [Buyout] |
| (b) Current pens (flat) | Buyout |
| (c) C/out pens (flat) | MFR |
| (d) Incs on (b) | Buyout |
| (e) Incs on (c) | MFR |
| (f) All other pens | MFR |
- Gilt MFR => MFR values increase in (c), (e) and (f)
 - Debt **NOT** recovered => Higher priorities gain
 - Surplus exists => Redistribution of surplus

Gilt or Equity MFR (5)

Conclusions

- Advise Trustees on interactions / implications
- Legal and investment advice needed
- Overall effect is scheme specific

Transfer Values (1)

Potential difficulties

- Time limits still apply (quoting / payment)
- OPRA extension to payment (not quote)
- Scaleback "to extent necessary to comply with S73"
- No margin allowed
- Guarantee still applies
- Structured settlements : Full and final?

Transfer Values (2)

Possible Solutions

- 6 month quotation window
- Two-stage transfer payments (PSO Update 40)
- Margin within S73 assessment itself
- Ask members to defer requests
- Transfer assets to insurer

State benefits – Deemed Buyback (1)

- Post 4/97 wind-ups
- Conditions to be met:
 - (i) Insolvent employer
 - (ii) MFR funding < 100%
 - (iii) Insufficient assets to secure c/o rights
 - (iv) Actual TV < MFR TV **and**
 - (v) Actual TV < Technical Amount

State benefits – Deemed Buyback (2)

- Whole of Actual TV paid to State
- Members informed written consent
- (Partially) restores benefits in State Scheme
- Benefit differences exist
- Any actual cases?

DEEMED BUYBACK: LEGAL ISSUES (1)

- Complexity and cost
- Uncertainty and risk
- Problems with informed consent
- Further delays
- Benefit (if any) may affect few members

DEEMED BUYBACK: LEGAL ISSUES (2)

■ Complexity and cost

- (i) meaning of "insolvent employer..."
- (ii) "unable to provide sufficient additional funds"
- (iii) hybrid schemes
- (iv) limited restoration of State rights where $MFRTV < TA$
- (v) differences between Regulations and CA15 Guidance

■ Informed consent

- (i) member may not understand
- (ii) member may consent, but then get reduced pension

■ Delays

- (i) manual calculations
- (ii) carried out at end of winding-up process?

DEEMED BUYBACK: LEGAL ISSUES (3)

- Are Trustees under a duty to investigate DB?
- How far should Trustees go? (when money is short?)
- What if Trustees decide not to follow DB route?
- Will the picture become clearer?

WINDING-UP PRIORITIES: SOME LEGAL ISSUES (1)

- Gilts-matching: legal issues
- The "solvent employer" basis under s73 PA 1995
- Practical problems with the law

WINDING-UP PRIORITIES: SOME LEGAL ISSUES (2)

(i) Gilts-matching

- Wording of SIP critical
- Adopted at the “applicable time” or retrospectively?
- The “improper purpose” argument
- Impact on Transfer Values
- Area of risk for actuaries/investment consultants

WINDING-UP PRIORITIES: SOME LEGAL ISSUES (3)

(i) Gilts-matching (cont'd): Risks for actuaries/investment consultants

- Failure to use the correct wording in SIP
- Failure to raise with the Trustees (in time)
- No explanation of implications
- Speed!
- Impact on coverage estimates, TVs etc

WINDING-UP PRIORITIES: SOME LEGAL ISSUES (4)

(ii) “Solvent” employer basis

- Scope
 - (i) meaning of insolvency event
 - (ii) pre-19.03.02 wind ups
- Effect
- Who are “pensioners”?
 - (i) early retirement?
 - (ii) split NRD?
 - (iii) late retirement?
- What are pension increases?
- A fundamental misconception?

WINDING-UP PRIORITIES: SOME LEGAL ISSUES (5)

(iii) Practical problems with the law

- new interpretations continue to arise
- differences of view:
 - (i) actuary v lawyer
 - (ii) lawyer v lawyer
 - (iii) lawyer/actuary v government
- changes during winding-up:
 - (i) in the law
 - (ii) in the assets
 - (iii) in the liabilities
- risks for trustees and their advisers!

DEBT ON THE EMPLOYER (1)

- Debt under the Scheme Rules
- Debt under the Schedule of Contributions
- Section 75 Debt

DEBT ON THE EMPLOYER (2)

(ii) Debt under the Scheme Rules (pre wind-up commencement)

- Is there an opportunity to improve funding position
- Rules may allow:
 - (i) unilateral action by Trustees/Actuary
 - (ii) single contribution
 - (iii) one or all employers
 - (iv) buy-out cost basis
- Can create immediate debt - creditor status
- Procedure important
 - (i) what is role of actuary?
 - (ii) is actuary a fiduciary?
- Risks for actuaries!

DEBT ON THE EMPLOYER (3)

(i) Debt under Schedule of Contributions

- Pre wind-up period issue
- Creditor status/negotiating position
- Wording of Schedule of Contributions
 - (i) needs careful review
 - (ii) can be critical (e.g. payroll/percentage v fixed amounts)
 - (iii) employers all referred to?
 - (iv) legal status
- Front end loading?
- Risk for actuaries!

DEBT ON THE EMPLOYER (4)

(iii) Section 75 debt

- Impact on other debts/claims
- Application...
 - (i) MP schemes
 - (ii) MP benefits
 - (iii) Hybrids
- "Applicable time"
 - (i) continuing schemes
 - (ii) winding-up
- How many "applicable times"?

DEBT ON THE EMPLOYER (5)

(iii) Section 75 debt (cont'd)

- Continuing scheme: "employers"
 - (i) withdrawing employer
 - (ii) withdrawing eligibility
 - (iii) no-one eligible (temporarily?)
- Section 75 discharges
 - (i) if no valuation
 - (ii) where MFR valuation positive
 - (iii) where MFR valuation negative

DEBT ON THE EMPLOYER (6)

(iii) Section 75 debt (cont'd)

- Apportionment of debt
 - (i) "attributable to employment"
 - (ii) Rule amendments
 - (iii) Regulation 12: Trustees' **discretion** ?
- Provision of actuarial certificate
 - (i) Bradstock case
 - (ii) practical issues
- Compromise of debt
 - (i) Section 15 Trustee Act 1925
 - (ii) Bradstock ruling

WINDING-UP PRACTICALITIES: LEGAL ISSUES

Conclusions

- Many difficult legal/practical issues: significant **risks**
- Actuaries may need to
 - lead the Trustees
 - act (more) swiftly (than usual!)
 - review position of schemes that may wind-up
- A partnership with other professional advisers
