

The Pensions Regulator's (TPR) first Financial Support Direction (FSD)

Please pay £91,278,674; this was the estimated \$75 debt demanded from Sea Containers Limited (Bermuda) in connection with their UK operations via Sea Containers Services Limited. The rationale behind the 15th June Determination Notice followed on 27th June (slightly later than promised) and the 31 pages make interesting reading. See - <http://www.thepensionsregulator.gov.uk/regulatoryActivity/determinations/determinations-10.aspx> The legal debate centred mainly on whether an FSD was “reasonable” and I merely note as a lay person –

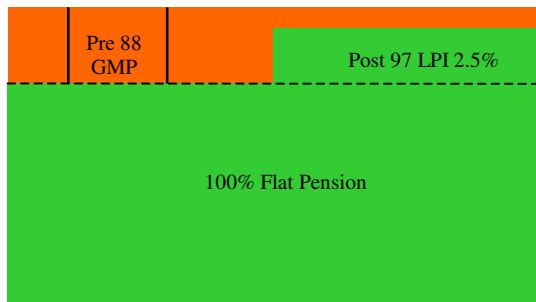
- Representation; 3 QCs, counsel and junior counsel argued their cases over two days on 12th and 13th June.
- Framework; A detailed Services Agreement exists between the London services company and “tax enjoying” Bermudan parent and it makes specific reference to *pensions* and liabilities due *past, present and future*.
- Insolvency; In October 2006 the companies filed for protection under Chapter 11 of the US Bankruptcy Code. The significance of the insolvency was keenly debated, but consciously assessed by TPR, not least because of the structure of future proceedings, where a Contributions Notice (CN) will be used to take matters forward.

The international dimension and the new untested powers suggest this case may run for quite a while.

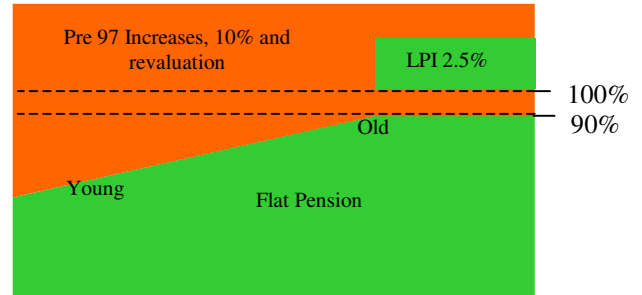
“Help! My employer has gone bust... and I think I might lose my pension”

The above was not a tabloid headline - it just marked the recent publication of a booklet which explains how the Pension Protection Fund (PPF) compensation works. See <http://www.pensionprotectionfund.gov.uk/news-details.htm?id=5913> The PPF is apparently concerned that most employees are unaware of their existence. Few employees would therefore be aware of the significance of the word “compensation” and the fact that the level of PPF benefit is not guaranteed. I however suppose managing expectations has to start somewhere! My contribution to the whole issue is a diagram (from June 2005!).

Pensioners



Deferreds



The **green** is the typical existing benefit saved on entry to the PPF. The **orange** is the benefit potentially lost on entry to the PPF. The pensioners lose all pre 1997 increases even “Guaranteed” Minimum Pension (GMP) increases. Deferreds lose 10%, pre 1997 pension increases and potentially some pre retirement revaluation. Higher earners and highly pensioned early retirees lose out most because of the monetary ceiling (£ 29,928.56 for 2007/08, a nice round number!).

I however wonder how many trustees or employers will want to publicise the exact level of PPF compensation? It would also seem a very brave trustee decision to take into account only a small loss of member benefit on employer insolvency when deciding on a prudent funding target and investment risk!

TPR very properly continues to highlight the dangers of trustee conflicts of interest. I therefore look forward to transparency in TPR's approach to its own conflict of interest in protecting member benefits and protecting the PPF for distressed companies where the funding level is close to \$179 PPF benefit levels. The provision of the non PPF benefits may require higher investment risks to be taken - that also brings a potential downside!

And finally; Paragraph 7 of TPR's Determinations Panel Reasons in the Sea Containers case, notes that “the purported termination of and liability to contribute...” signalled a *sea change* in their attitude. What is the comparable name or business pun in respect of your company or industry?

As always, for further comment, assistance, advisory or trustee services, please contact me on **07714 064964** or via allan@acmca.co.uk Feedback on Pension Snippets is always welcome. For further details, the full CV, occasional lecture notes and published articles and previous Snippets - visit the web site at www.acmca.co.uk