

Pension Protection Fund (PPF) Finances

Whilst the PPF levy is normally focus of attention, there is another important dimension to the provision of the PPF compensation, namely the recovery of funds from the employer insolvency. One very important recovery is currently underway in the US and Canada. The Nortel insolvency involves our Pensions Regulator appealing the treatment of a £2.1bn Financial Support Direction (FSD) claim. This [claim](#) dwarfs the £720m 2010/11 levy and reflects the significance of this insolvency from a PPF perspective. Legislation, lawyers and court delays are frequently quoted as a burden on the UK pensions industry; in this situation we should perhaps modify our perspective.

Deferred Annuity Contract

The Court of Session recently considered the [case](#) of Robert Blower and others, Trustees of the WLT International Limited Retirement Benefits Scheme v Eric Edwards (Scheme Actuary) and Scottish Widows plc.

Lord Hodge found for the actuary and his employer, namely that the actuary had not been professionally negligent in giving advice in respect of the trustees' switching from a deferred annuity contract with Scottish Widows to their managed fund. The involvement of an independent financial adviser (IFA) was a factor and it will be interesting to see if another challenge is made in respect of these common late 1990's switches where no IFA was involved.

The vital professional advice test was as outlined in the 1955 case of "Hunter v Hanley" namely that there must be usual and normal adviser practice; the adviser has not adopted that practice; and the course adopted was one which no professional actuary of ordinary skill in that field would have taken if acting with ordinary care.

This does not however preclude differences of professional opinion. The experts of both sides of this case disagreed but that was not enough to prove negligence. "It is not the function of the court to prefer one school of (actuarial or other) thought held by responsible professionals to another". The burden of proof is on the pursuer.

With the dreadful performance of many managed funds over the first decade of the 21st century and the increasing costs of improving longevity, this case is unlikely to be the last test of professional advice on investment or funding (allegedly, prompted by hindsight, or otherwise).

The Pensions Regulator; Determinations Panel

An Oral Hearing of the Pensions Regulator (TPR) Determinations Panel took place on 25th September 2009. (Determinations are not common and Oral Hearings are rare). The emerging [Determination](#) has now been added to the new TPR web site and is hence in the public domain. My company, ACMCA Limited, was appointed with powers and duties to the exclusion of all other trustees under Section 8(4)(b) of the Pensions Act 1995.

The background to the situation stretches over many years, involves other trustees, courts and quite a few pension law firms and is not yet finished. Protecting member benefits is the independent trustee's main focus and employees will unsurprisingly be concerned about their jobs. My reflections on the Determinations Panel are simply –

1. Addressing conflicts of interest is incredibly important.
2. Independent employer covenant assessment is vital in tackling scheme funding.
3. Warning Notices being issued by a "risk based" Regulator before a Determination involves potentially disproportionate time and cost. All evidence has to be made available up front.
4. All correspondence and trustee minutes are made available to TPR and could potentially be published thereby doubling the need for appropriate professional advice.

The company went into administration on 25th March 2010. The PPF deficit is however likely to be less than £1m.

And finally; As [one](#) Scottish Member of Parliament (MP) steps down before the General Election on the grounds of ill health, we wish her good health and a long and happy retirement. We should perhaps also reflect on the [value](#) of the ill health pension (£30,000 per annum); which prompts the suggestion that MP also stands for Million (£) Pension.

Feedback on Pension Snippets is also always welcome. For any comment, further assistance, advisory or trustee services, contact me on 07714 064964 or via allan@acmca.co.uk For further ACM/ACMCA detail, the full CV, occasional lecture notes and published articles and previous Snippets - visit the web site at www.acmca.co.uk