

Trusteeship

Exercise of Powers

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Regulation / Case Law

- Many duties regulated - Pensions Act etc
- Trustee Responsibilities go beyond regulation
- Little Irish Case Law

Irish Case Law

- Recent Case:
- Conflict between Deed and Booklet

*Court Ruled that Explanatory Booklet
CAN over-ride Trust Deed.*

H Williams Supermarket

- On wind-up - large deficit
- Pensions enhanced – annuity buy-out
- Was re-distribution of pensions possible?

H Williams Supermarket

- Court Ruled:
 - Annuities remain an asset of Plan
 - Pensions remain a liability

H Williams Supermarket

- Court Ruled:
 - Annuities remain an asset of Plan
 - Pensions remain a liability
- Consequences
 - Failure of Insurer?
 - Exposure in DC Plans?

Minimum Funding Standard

- Many challenges for Trustees
- It is a *minimum* standard - no more
- Not covered:
 - Buy-out costs for actives
 - Buy-out costs for deferreds
 - CPI pension increases

A Funding Policy

- Trustees need to consider what is a reasonable standard above the minimum
- Ensure annuity costs for expected retirements are anticipated
- Legal actions already in pipeline

Investment Strategy

- Pension Board concern?
- Trustee responsibility
- Assets should match liabilities !

Assets should match liabilities

- OF COURSE ! *BUT what if*
- Employer will not pay increased cost?
- Unmatched assets give only real prospect of return to solvency !

What is important

- Trustees **MUST AT LEAST** consider the options
- Act in the “best interests of members”

Some solutions to issues

- Asset rich/cash poor employer willing to transfer property.
- Problems: Stamp Duty, Legal Costs, Concentration Rules

Resolution: Bank Guarantee secured on property

Some solutions to issues

- Employer wish to amalgamate two plans
One with surplus, one with deficit
- How do you view a surplus?
A “*Will-o-the-Wisp*” ?
A member right that must be
protected?

Surpluses

- Relative size matters!
- Surplus - usually a contingent benefit only
- Solution: “*A bird in the hand*

Surpluses

- Employer reluctant to pay special contribution because of member entitlement rule.
- *Solution - If trustees adjudge it to be in the interests of members - agree to rule change!*

Other issues

- Have you considered the advisability of purchasing annuities?
- What if the exercise of a discretion affects solvency?

Other issues

- What is your attitude to early retirements during the period of a funding proposal?
- What answer do you give to actuary who offers several ways of calculating ERP?

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IMPORTANCE OF CONSISTENCY

Death Benefits

- Why not part of Member's estate??
- Reason: It is a promise by the Employer to make provision for dependants if the member does not survive
- Trustees need to understand the intent of the employer - as per Deed.

Family life / Dependency

- Altered significantly in my lifetime.
- Some plans still ignore this!
- Trustees have no discretion beyond what the Deed allows

Death Benefits

- Discretionary powers often difficult
- Potential conflict with relatives of deceased and competing dependants
- Cost of research

Wishes letters

- A help or a hindrance?
- Requirements of Deed often misunderstood
- I have ignored more than I have followed

Wishes letters

- What would you do if:

Member is survived by widow and son whom he was supporting prior to death

Wishes letter nominates son and excludes widow

It transpires that husband & wife didn't speak for years

Wishes letters

- What would you do if:

Deceased was living at home with both parents

Wishes letter nominates one parent only

Do you consider the feelings of the excluded parent?

Wishes letters

- What would you do if:

Member wasn't married but had a now discontinued relationship with woman who is rearing their two children

Wishes letter nominates children

His relatives claim the woman isn't fit to look after the children or to handle money on their behalf

Commutation

- Can be
 - fixed (eg 9:1)
 - fixed - but subject to review
 - at the discretion of Trustees

Tenuous historical link with longevity /
interest rates

Commutation

- Members value the option regardless
- Cash tax free - equivalent pension taxable
- Should tax advantage be factored into exchange rate?

Commutation

- Improving exchange rate an easy option if fund in surplus.
- Can Trustees improve without reference to employer?

Pensions Ombudsman

- Another refuge for tenacious cranks?

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- Some issues:
 - Problem if member accepts determination but others do not

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Problem if member accepts
determination but others do not

The maximum award is member's
adjudged entitlement under rules

Trustee Indemnity

Typical Deed gives lay Trustees an
employer indemnity

Only as good as the employer !

Some Trustees have further indemnity from
Parent

Indemnity insurance

- Trustee exposure lasts years
- Indemnity insurance lasts only for as long as premium paid

Trustee exposure

- The nightmare:

Employer gone

Any insurance lapsed

Trustees still carrying responsibility for
past acts

Trustee exposure

- No guarantee that legal defence costs will be awarded.

Trustee exposure

- Increasing incidence of suppliers capping their exposure

Trustee exposure

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Well paid suppliers limited exposure for consequences of their mistakes

Unpaid Trustees “carry the can”

The Contradiction

- Pensions Act designed to encourage member participation in Trusteeship

while at same time

- Burden of regulation and fines even if trustees rely on professional suppliers

Member Trustees

- Is the current approach tenable?
- Do member Trustees realise the exposure?

Beyond Belief

- Regulators haven't seen fit yet to relieve the burden and exposure of those who try to the best of their abilities to protect the pension rights of their colleagues