Spring 2010

Review

Pensions

Welcome to our Spring Review.

When Albert Einstein said: "the important thing is not to stop questioning" I don't think that he was talking about pension scheme trustees in the UK – but the statement does have some resonance. Trusteeship is difficult and involves juggling a large number of priorities and dealing with a variety of people with interests in the pension scheme: from employers and advisers to scheme members and their dependants. The risks can be considerable and it is not easy to get everything right. Trustees are not expected to be experts (they rely on advisers for this) but they are expected to have enough knowledge to challenge the advice that they receive.

In our Spring Review we consider some key areas for trustees. We start with trustee protection – a sombre subject but an important one to tackle, even if purely from a peace of mind perspective. Our second article looks at data protection – with sanctions increasing from April this year we consider what controls trustees should have in place to make sure that they are not falling foul of this legislation. We also examine how 'closed' schemes need to be carefully managed, and finish with some lessons that can be learned from a recent court case (the IMG case).

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Trustee protection – how does your scheme score?

"Those [trustees] present at the hearing all put it to me that they were not men with ready resources out of which their share of any liability could be paid. However, I have found that they failed in carrying out serious fiduciary responsibilities to others in circumstances in which the law specifically states that they should not be protected from liability." **Tony King**, Pensions Ombudsman[1]

As a trustee, what would go through your mind upon hearing those words? "The dog can go on a diet – that will save a bit of cash… No holiday this year then… I'll trade in the car for something smaller… I'm going to have to sell the house!" The fine imposed by the Ombudsman in this instance was £330,000 plus interest.

Trustees need to understand the protections afforded to them under law and under their pension scheme.

BACKGROUND

The role of a pension scheme trustee has always carried a potentially significant risk of personal liability. But arguably, in recent years, the risk for trustees has increased. Consider, for example, the expectation that trustees will enter into negotiations with the sponsoring employer regarding scheme funding deficits; consider how difficult it must be for an ordinary employee to have to challenge a senior manager in a trustee meeting; consider the pressures associated with making a multi-million pound investment choice. Then consider how easy it is to make a mistake….

If we take professional trustees out of the equation, then virtually all other pension scheme trustees, whether employer or trustee appointed or member nominated, are actually volunteers. Many have no previous experience of trusteeship. Proper trustee protection is in the interests of any pension scheme, particularly because it should help to attract and retain the most suitable individuals to act as trustees.

1 Quote from the Pensions Ombudsman's Determination in the complaint of R Adams and others against the trustees of the ES Group Pension Scheme, 11 March 2009.

Trustees need to understand the protections afforded to them under law and under their pension scheme and keep these under review to ensure they remain adequate in the light of ever changing pensions law and fluctuating economic circumstances.

LET'S CONSIDER THE FACTS

Trustees are subject to onerous obligations under both trust law and pensions legislation and their duties include:

- fiduciary duties (for example, not to make an unauthorised profit from the trust and to take steps to avoid/manage conflicts of interest);
- the duty to administer the pension trust with due care and skill;
- strict compliance with the terms of the trust; and
- various overriding and supplementary duties under the Pension Schemes Act 1993, Pensions Act 1995, the Data Protection Act 1998, the Welfare Reform and Pensions Act 1999, the Pensions Act 2004, the Finance Act 2004 etc...

There are several different forms of protection available for trustees and we look at each of these below.

1. Pre-emptive court approval

Where trustees are facing a particularly difficult decision, especially a high-value decision which will impact on scheme members generally, they can apply to the court for approval of their proposed course of action. Although time-consuming, the process is often not as costly as trustees fear. If the court approves the proposed decision, the trustees are protected against subsequent complaints about that decision.

2. Statutory protection

Section 61 of the Trustee Act 1925 gives the courts discretion to relieve a trustee after the event from personal liability if the trustee has "acted honestly and reasonably, and ought fairly to be excused". However, these are high thresholds to prove, court decisions are difficult to predict, and it is also only possible to rely on this protection having been to court, which can be time consuming and expensive. This limited statutory protection should not therefore be relied upon in isolation, and should be regarded as a fallback position by trustees.

Trustees are also offered some other protections in the form of statutory discharges. For example, under sections 19 and 99 of the Pension Schemes Act 1993 and section 74 of the Pensions Act 1995, trustees are given a statutory discharge of liability in the following circumstances:

- where GMPs are secured by insurance policies or insurance contracts;
- where there has been a payment of a cash equivalent transfer value in accordance with the Pension Schemes Act 1993; and
- where trustees take certain steps to secure scheme benefits on a winding-up (provided they comply with the terms of the legislation and secure the correct level of benefits. If they do not, former scheme members will still have a claim against the pension scheme for the correct benefits, and if there are no assets remaining, beneficiaries may be able to bring a claim for breach of trust).

3. Exoneration and indemnity provisions

Trustees should be familiar with the exoneration and indemnity provisions under their scheme's governing documents and may seek to amend these if they do not provide sufficient cover. In essence, an exoneration clause says that the trustees will not be liable for their actions whereas an indemnity says that, if the trustees are found liable, they can look to someone else to pick up the financial effects of that liability. Most, but not all, schemes have both types of provision in their rules. However, even with adequate protective provisions in place, trustees cannot be complacent,

Trustees should be familiar with the exoneration and indemnity provisions under their scheme's governing documents.

particularly with regard to investment matters, as trustees cannot exclude liability for these[2] . In addition, a trustee's wilful neglect or default, dishonesty or fraudulent conduct will generally not be covered.

Recent rulings have highlighted further areas of exposure. For example, in the Deputy Pensions Ombudsman's decision in relation to a complaint by Lawrence Graham Trust Corporation[3] it was held that the individual scheme trustees had not only acted illegally but also imprudently by making a loan from an underfunded scheme to the sponsoring employer. The individual trustees could not rely upon the scheme's exoneration or indemnity clauses and were directed to pay £130,000 plus interest to the scheme.

An indemnity is only as good as the person giving it.

An indemnity is, of course, only as good as the person giving it. Under many pension scheme rules the sponsoring employer indemnifies the trustees. In others, the indemnity comes from scheme assets. Typically, it's a mixture of the two. Trustees will also often seek an indemnity on an event specific basis, for example, in relation to a scheme merger or an enhanced transfer value exercise. If an indemnity is from the sponsoring employer and the employer is in financial difficulties (for instance, it is asking for a temporary cessation of contributions or for a significantly extended recovery plan) this should signal a warning to trustees that the indemnity may not be as reliable as they once thought it was. There may be circumstances where the trustees would want the indemnity to be backed by a parent company guarantee or another form of security.

4. Trustee indemnity insurance

Trustees should conduct a review of any indemnity insurance put in place for their protection. Is it adequate? What exclusions are there? Is the insurance cover subject to any requirements that the trustees notify the insurers before (or upon) taking certain courses of action? Does the cover continue if the scheme goes into an assessment period for PPF purposes? How long are the trustees protected under the policy after they cease to be trustees?

Trustees wanting to put insurance in place for the first time should check the scheme's governing documents to verify that they have the necessary power to do so. In the absence of any express power in the documents then recent case law suggests that trustee liability insurance may only be put in place and funded out of the scheme's assets where this is of benefit to members. This is a potentially grey area, and in order to avoid future disputes regarding the validity of an insurance policy, trustees should seek to ensure that the premium is funded by the sponsoring employer.

5. Operating through a corporate trustee

There are advantages to trustees acting through a corporate trustee. Directors of a corporate trustee fulfil the same role as individual trustees, but through the medium of a company.

Individual trustees are personally liable to the scheme's beneficiaries for their acts and omissions, but where the scheme is run by the directors of a corporate trustee, it is the corporate trustee, not its individual directors, that would usually be liable for breach of trust and maladministration claims. Case law has established that a trustee director does not owe a direct fiduciary duty to scheme members, meaning that although the corporate trustee may be liable, a trustee director will not automatically be liable personally for breaches by the trustee company.

This protection is not absolute: trustee directors who are dishonest, fraudulent or take "commercially unacceptable risks" may be found personally liable by a court. Certain provisions of the Pensions Act 2004 "pierce the corporate veil", which may also result in trustee directors being found personally liable. Directors can be made liable as accessories to a breach of trust if they are found to be guilty of dishonesty.

The Companies Act 2006 introduced complications around providing indemnities for directors. The technicalities are beyond the scope of this article but the problems can usually be addressed by amending the scheme rules. Where trustee indemnity provisions have not been reviewed since the relevant provisions of the Companies Act 2006 came into effect on 1 October 2007, then we would strongly recommend that a review is undertaken.

2 Section 33, Pensions Act 1995.

3 Complaint by Lawrence Graham Trust Corporation against the trustees of the Greenup and Thompson Limited Pension Scheme, 9 July 2008.

IS LACK OF EXPERIENCE A DEFENCE?

The Pensions Act 2004 requires new trustees to have the requisite knowledge of the law relating to pensions and trusts, the principles of funding and investments, and familiarity with the provisions of their own pension scheme. The Pensions Regulator expects new trustees to attain this knowledge within six months of taking office. So, does this mean that trustees can use lack of knowledge as a defence for any problems arising, at least during their first six months of office? Not according to the Pensions Ombudsman. When this argument was put to him in a recent dispute[4] he responded that: "I do not accept therefore that…the new trustees should be excused liability for the first six months of their trusteeship, on grounds of inexperience or lack of familiarisation with the Scheme administration. I do not think that the Regulator envisaged new trustees sitting doing nothing for six months while they studied all the pension scheme documents and other material. As the guidance goes on to say "even a new trustee must be equipped to make the decisions with which he or she may be faced.""

NEXT STEPS

We find that the area of trustee protection is generally not very well understood and often only surfaces as an issue when problems arise. If trustee protection has not been on your agenda for a while, then it would be a good idea to revisit this – even if only for the comfort of confirming that all is in order.

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4 Quote from the Pensions Ombudsman's Determination in the complaint of R Adams and others against the trustees of the ES Group Pension Scheme, 11 March 2009.

Data protection – ignore at your peril

With the flurry of data security breaches recently reported in the press, pension scheme trustees cannot afford to neglect the duties imposed on them by the Data Protection Act 1998 (the "Act"). Under the Act, trustees will (in most circumstances) be considered as the "data controller" and will as a result bear all obligations and liabilities associated with the processing of scheme members' and beneficiaries' personal information. Provided below is an outline of the data protection aspects trustees should bear in mind whilst carrying out their duties...

Third parties often handle pension scheme member data - this is a key risk for trustees.

MANAGING SERVICE AGREEMENTS

One of the main areas of risk for pension scheme trustees resides with the fact that trustees' activities are largely outsourced to external service providers, be it to pension administrators, actuaries, auditors, insurers, employers, etc. As data controllers however, the trustees will largely retain liability for compliance with the requirements of the Act despite having little or no involvement in the physical processing of personal data. The trustees will need to ensure compliance with the eight principles laid out in the Act and in addition will be required to:

- carry out pre-contractual and on-going due diligence on service providers to ensure that they have appropriate measures in place to safeguard against any loss, theft or damage of any personal data they process for and on behalf of the trustees; and
- have in place a written agreement with service providers which will need, at the very least, to deal with the following aspects in relation to the processing of personal data:
  - Compliance by the service provider with the trustees' instructions.
  - Compliance by the service provider with the seventh principle of the Act, which requires appropriate technical and organisational measures to be taken against unauthorised or unlawful processing of data and against accidental loss or destruction of, or damage to, data.

- A sound vetting process and audit rights granted in favour of the trustees before any personal data is transferred by the service provider to any third party (including subcontractors).
- A prohibition on transfers of personal data outside of the European Economic Area ("EEA") unless and until the trustees have satisfied themselves that all prerequisite conditions for such transfers are met (including informing the scheme members that a transfer will be taking place – if this has not already been done – and explaining the dangers associated with transfers of personal data outside of the EEA).
- A process should be set up to determine who will be responding to data subject access requests (ie a request from an individual to have access to their personal data) and which format this response will take.
- A procedure to determine how the personal data will be dealt with upon termination of the service provider's engagement.

The trustees will also often seek an indemnity from the service provider in respect of any loss that the trustees may suffer as a result of any mishandled or lost data (including any loss suffered by the trustees as a result of investigations by the Information Commissioner's Office ("ICO") or any claims from data subjects).

BUT COMPLIANCE DOES NOT STOP HERE…

Notification with the Information Commissioner's Office

As data controllers, trustees should have an up to date data protection notification in place with the ICO.

Failure to have such notification in place is a criminal offence. The notification should be reviewed periodically to ensure it reflects the trustees' data processing activities (eg will the trustees authorise transfers outside of the EEA? If so, is this adequately reflected in the notification?).

Fair Processing/Privacy Notices

The Act requires the trustees to process members' data fairly and lawfully. This means that pension scheme trustees should be informing scheme members of the manner in which they or their processors/service providers will be dealing with the members' data. We would expect this obligation to be discharged at the outset through application forms or scheme booklets and in Expression of Wish ("EOW") forms. Trustees should, however, be aware that, in some circumstances, simply informing the member of the data processing activities may not be sufficient and the member's consent may in fact be required (eg where processing personal data such as health information to support an ill health early retirement application).

Expression of Wish forms

The "sealed envelope" approach might have been a solution to tricky data protection issues for trustees in the past, but once data is converted from a manual EOW form to an electronic version, a variety of obligations are imposed on the trustees in relation to the member and the beneficiaries named on the EOW form.

Unless the EOW form contains sensitive personal data (eg, information relating to a member's or beneficiary's health or sexual orientation), the trustees do not generally need to obtain consent in order to process the information of the member or any individual named on the form. The rationale for this is that the processing is necessary so that the trustees, as data controllers, can comply with their legal obligations, including those to administer the scheme.

The position is more complicated if there is a chance that the EOW form contains sensitive personal data. In these circumstances, the trustees should, at a minimum, get the member's consent to the processing of that information. If it transpires that the EOW form may also contain sensitive personal data of a beneficiary then the trustees should seek legal advice as to the most compliant approach they should take when processing such data.

Handling Expression of Wish forms might not be as straightforward as it first appears.

Further issues arise if a beneficiary named on an EOW form makes a data subject access request. On receipt of such a request from a beneficiary, the trustees or their scheme administrators should consider whether they need to respond or, for example, refuse disclosure on the basis that responding would disclose another individual's personal data, including the data of the member himself. To help get around these difficulties, the trustees could ask the member either at the time of completion of the EOW form, or at the time a request is made, if he consents to the disclosure of his information to the named beneficiary. This is, however, a complex area and we generally recommend that trustees take legal advice when faced with such requests.

What are the sanctions for non-compliance?

The sanctions that may be imposed on trustees for non-compliance with the Act's data protection obligations vary from an enforcement notice to what will soon be extensive financial penalties. From 6 April this year, the ICO will be able to impose fines of up to £500,000 for serious or reckless breaches by a data controller of any of the data protection principles laid out in the Act.

WORDS OF WARNING

Data protection, particularly in the context of pension scheme administration, is a complex area. Trustees should check that their service providers' current practices do not put them in breach of the Act (many trustees have discovered that they do, particularly with regard to transferring data outside the EEA) and put in place routine compliance monitoring going forward.

The recent data security breaches, involving both the public and private sector (including, in a number of instances, breaches by pension scheme service providers) and the ICO's increased powers to fine should serve as a timely reminder to pension scheme trustees of the need to be fully acquainted and compliant with their obligations and liabilities under the Act.

Hammonds' team of data protection experts can assist pension scheme trustees in navigating through the complex data protection obligations imposed by the Act and have considerable experience of dealing with all aspects of data protection compliance, from the drafting of privacy notices and administration agreements, to dealing with major data security breaches.

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The need for closure – managing the legacy

We are all now used to reading headlines telling us that yet another employer is closing its defined benefit pension scheme to the future accrual of benefits as the credit crunch and economic slowdown take their toll. But although closing the scheme may suit the employer's longer-term objective of controlling risk, its pension costs may not reduce overnight and a closed scheme continues to present risks which need to be carefully considered and managed. Closing a scheme means concentrating the minds of the employer and trustees on what the endgame is and they should put a rough timescale on when the scheme is to be wound up. The clock has now started to tick…

A closed scheme continues to present risks that must be carefully managed.

SO WHAT CONSIDERATIONS ARE RELEVANT TO MANAGING A CLOSED SCHEME?[5]

We consider below some of the key issues for employers and trustees.

Legislation

There is no legislation which relates solely to the operation of a closed scheme. This means that the scheme will continue to be subject to pretty much the full range of legislative and regulatory requirements, including the scheme specific funding regime, trustee knowledge

5 Reference to a closed scheme in this article means a defined benefit pension scheme that has been closed to new employees and future benefit accrual.

and understanding requirements, internal controls, investment strategy, debt on the employer legislation under section 75 of the Pensions Act 1995, tax legislation and so on.

Governance

The Pensions Regulator's Codes of Practice will continue to apply to the scheme. Members will expect the same high standards of governance as before.

Expenses

Given that a closed scheme will still need to be administered properly, there is not much opportunity for managing expenses down. For example, administration costs, professional advisers' fees and the PPF levy will still need to be paid.

Administration and Communication

Although following the closure of a scheme all members will be deferred or pensioner members, the trustees must continue to ensure that they correctly administer members' benefits and communicate with members accordingly.

Investment

As there will be no further accrual of benefits under the defined benefit scheme, the scheme's current investment strategy may no longer be appropriate. Depending on the strength of the employer covenant, trustees of closed schemes may want to adopt a lower risk strategy which could mean increasing the weighting of bonds and reducing equities. The trustees of a closed scheme should take advice from the scheme's investment advisers in this regard. The trustees are responsible for investment strategy but they have to consult with the employer before making any change.

The nature of the closed scheme may (but not always) require trustees to disinvest scheme assets to make pension payments (particularly for mature schemes), so the trustees may need to ensure that they have the necessary cashflow to meet their expenditure needs.

The trustees will continue to be under the same ongoing obligations to keep their investment strategy under review.

Mature schemes may need to disinvest assets to make pension payments - this can create cash flow problems.

Funding

There will be an immediate impact on the funding of a defined benefit scheme that is closed. Future service contributions disappear and there is likely to be a reduction in past service liabilities (assuming the final salary link is removed). However, the existing deficit will still need to be dealt with and the trustees' funding policy must bear in mind the endgame (eg wind up) given that the scheme becomes a legacy scheme. The trustees may need to consider when it would be appropriate to move to a buyout target for funding. In any event, they will be expected to continue monitoring the employer covenant.

Accounting

Employers need to be fully aware of the potential impact of curtailments and settlements on balance sheet and profit and loss disclosures following the closure of a scheme. Issues could also arise under IFRIC14 in respect of the surplus that can be recognised in IAS19 disclosures.

NOT ALWAYS THE CLOSURE YOU MIGHT HAVE EXPECTED

Closed schemes will continue to pose significant issues for employers and will continue to take up management time. Running costs are unlikely to reduce overnight. Trustees still need to be on the ball when it comes to running a closed scheme and their responsibilities will continue. The clock is now ticking …

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The IMG case: a tale of promise and compromise

One of the most significant pensions cases in 2009 was "*the IMG case*"[6], which provoked intense debate as to its impact on pensions practice. The case is to be appealed later this year, however, it does raise some interesting issues that trustees and employers should consider, particularly when amending schemes.

The IMG case concerned the purported conversion of a final salary pension scheme, now called the IMG Pension Plan, to a scheme providing money purchase benefits. The court looked at the validity and effect of the conversion, including whether members had contractually agreed to the change via the signing of application forms and, in some cases, compromise agreements. In deciding these issues, the judge considered a wide range of matters concerning the alteration of pension arrangements.

In this article we examine a selection of the key lessons to be learned from this judgment. We may be in danger of sounding a little too much like one of Aesop's Fables, with a moral to each part of the story. However, if you are sitting comfortably, then we will begin…

1. Check your historic amendment powers

In the IMG case the judge had to decide which one of two different and inconsistent amendment powers governed how the scheme should be amended. The first was a more restrictive amendment power contained in an earlier deed, which incorporated a "fetter" to the exercise of that power. The fetter provided that "no amendments shall have the effect of reducing the value of benefits secured by contributions already made". The second amendment power was introduced by a later deed, in place of the first amendment power, and was more permissive. It did not include the fetter referred to above. The judge held that the trustees were not permitted under the scheme rules to introduce the new, second amendment power and therefore it was invalid. As such, it was the earlier, more restrictive amendment power that had to be considered when determining whether the changes made to the scheme were effective.

Lesson one: when amending a pension scheme, look beyond the amendment power in the current trust deed and rules. Examine previous scheme documents to check whether the scheme's amendment power has been altered over time, verify whether those alterations were effective and establish the scope of the power of amendment that you seek to exercise.

2. Examine the wording of your amendment power carefully

The fetter on the power of amendment considered in the IMG case (see above) proved problematic, as have similar worded restrictions on amendment powers in other pensions cases (notably the case of *Courage*[7]). In these cases the scope of the amendment power was restricted by a fetter which prevented amendments to benefits "secured" by past contributions. The cases in question held that this wording amounted to a powerful restriction on the exercise of an amendment power. In essence, where a restriction to an amendment power prevents alterations to benefits "secured" by past contributions, this may extend to benefits which have already been earned by those contributions, including those benefits to which a member would be prospectively entitled if he continued in the same employment. In consequence, this wording may well (as in this case) require a link to final salary to be maintained, ie benefits already built up by those members who are active members immediately prior to the change will be determined by reference to their salary at the later point in time when they leave service.

Trustees and employers should not take amendment powers at face value.

The judge in the IMG case pulled apart the wording of the amendment power, almost word by word, in order to decipher the effect and the validity of the amendments made. The details of this analysis are beyond the scope of this article, but it is clear from this and past court judgments, that when making amendments it is essential that amendment powers are studied carefully. Considerable

6 IMG Pension Plan HR Trustees Limited v German & Anor [2010] PLR 23

7 Re Courage Group's Pension Schemes [1987] 1 WLR 495

case law has built up over the years on the use of particular words in amendment powers and their application to alterations made to pension schemes.

Lesson two: trustees and employers should not take amendment powers at face value and should obtain legal advice on whether proposed amendments are permitted under their scheme rules.

3. Contractual agreements may be used to alter pension promises, but clarity is key

As part of the conversion of the IMG Pension Plan from a final salary scheme to a defined contribution scheme, existing members were asked to sign an application form indicating that they wanted to participate in the new style plan. This followed correspondence issued by the employer and presentations made regarding the changes. The sponsoring employers of the IMG Pension Plan argued that, by signing the application form, the existing scheme members entered into a binding contract with the employer. Under this "contract" the members consented to the changes made to the scheme and implicitly agreed not to claim scheme benefits on a different basis.

This argument is relevant to employers and trustees who have sought to make changes to their existing scheme by contractual agreement with the members affected (an approach based on the decision in the *South West Trains*[8] case).

The employers' argument failed. The judge was not satisfied that the members did validly consent to the changes to their scheme. The changes were presented to the existing members as a fait accompli, there was no reference to the changes being dependent on member consent and limited information was provided about the alterations to the scheme. Furthermore, there was no suggestion in the wording of the actual application form that the members were being asked to consent to the conversion of the IMG Pension Plan from a final salary scheme to a defined contribution scheme, nor that they were being asked to give up final salary rights already built up in the scheme.

The judge did not rule out the possibility of a contractual agreement overriding contrary provisions in a scheme trust deed and rules, and implied that this was possible with the members' consent. However, he did make it clear that if the member is provided with insufficient information regarding the agreement that he is being asked to enter into, then this "member consent" approach will fail.

Lesson three: it may be possible in certain circumstances to alter pension arrangements via a specific agreement with the members concerned. However, it is vital that it is made obvious to members that they have a choice whether or not to consent to the changes and that the terms and consequences of the agreement are clearly explained (the employer must also comply with applicable employment and pensions consultation obligations).

4. Compromise agreements – do they work?

The judge in the IMG case considered the extent to which an individual compromise agreement entered into by a pension scheme member under which his pension rights are compromised and/or waived falls foul of section 91 of the Pensions Act 1995. In brief, section 91 provides that a member cannot usually assign, commute or surrender pension entitlements or rights to future pension. Any agreement to do so is unenforceable (even if put in place by a court!).

The judge held that section 91 did apply where a member has sought to surrender his pension rights under a compromise agreement. Such agreements are, therefore, unenforceable even where, at the time of the agreement, there was a genuine dispute as to the existence of those rights. He considered that enforcing such compromise agreements would run counter to the public policy reasons for section 91, namely "of protecting members against their own improvidence and of protecting the public purse". The judge also referred to the wording used in section 91 – which provides a number of exceptions to the operation of section 91 – but notably not one covering compromise agreements.

Lesson four: this element of the judgment in the IMG case has proved to be particularly controversial. The practical implications of this decision (if it is upheld on appeal) are that employers and trustees seeking to resolve pension disputes should not rely upon compromise agreements under which pension rights are waived, as this judgment indicates that these agreements will not be

There are sound lessons to be learned by trustees and employers regarding good practice and the issues to be considered when making changes to employees' pension arrangements.

8 South West Trains Ltd v Wightman and others [1998] PLR 113

enforceable at a later date. The effect of this would be that many pension disputes would need to be fought out to a bitter and expensive conclusion.

The moral of the story

Although the IMG case is being appealed, there are still sound lessons to be learned by trustees and employers regarding good practice and the issues to be considered when making changes to employees' pension arrangements. It will be some months before the appeal is heard and the outcome known, but here endeth the lessons (for now).

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