Pension fund crisis management – the response from the regulators

Robin Ellison, Pinsent Masons LLP
Outline

- The EU and the UK
  - Different or similar concerns?
  - Different or similar powers?
  - What are they trying to do?
- Politics and powers
  - Can regulators do anything good?
  - Can they do harm?
Conflict of regulatory objectives

- UK/Ireland/Netherlands v EU on IORP II
- Germany and book reserves
- What is a pension fund?
- What is a pension promise?
- Refighting the last battle?
- The politics of regulation
Superintendent Beckett had decided his team should concentrate on solving the crime not pushing paper, so he had already written most of the one-page summary. He just needed Fenwick to fill in the details and sign the damn thing without getting into a semantic debate about its relevance. . . Sometimes there was no point in wasting energy fighting the inevitable. . .
The dilemma:
- Offer pension members better terms (exit fees etc) (Steve Webb) or
- Cost insurance companies £10B, & ‘cause real problems for financial sector’

(Nick Cazalet: Money Marketing 12 07 2012)
Number of regulators (UK)

- PPF
- tPR
- DWP
- HMRC
- EU
- ECJ
- EIOPA
- FSA
- PR
- FAS
- PO
- APB
- ASB
- BAS
- OECD
- IOPS
- IMA
- PASA
- PMI
- PRAG
- POB
- HMT
- GAD
- IASB
- FASB
- DBIS

Gabriel Bernadino
George Osborne
Steve Webb
Adair Turner
Alan Rubenstein
Tim Jones
Areas of interest
- Investments
- Liabilities
- DC
- Governance
- Disputes
- Scheme design
- Tax
- Consumer protection
The dilemma of proportionality

- Legalism v discretion (eg GMP equalisation)
- Whether unintended consequences (eg inappropriate investments)
- Whether higher costs/ lower benefits

- The regulatory imbalance of risk.

- No prize for getting it right
- High penalties for getting it wrong
Regulatory tests

- Regulatory impact assessments
- Counterfactual testing?
- Checks and balances to regulation
- Alternatives to regulation
The two assumptions:
• that regulation works
• more regulation works better (Dodd-Franks)

Would regulation have fixed:
• The Maxwell episode
• The credit crunch et al
• PPI mis-selling
• PP mis-selling
• Equitable Life/Standard Life
• Swaps mis-selling
Gender pricing:
“Sometimes I like to hide under the desk if there is something I don’t want to deal with”
(Adrian Boulding on Treasury statement)

- Guarantees
- Regulatory cost/benefit analysis
- Regulatory training
Regulatory conflicts of interest

- Regulatory policy conflicts:
  - the best v the good
- Regulatory policy dilemmas:
  - eg PPF protection or member protection
  - eg NEST or the individual

Michael Fallon
Minister for deregulation
The growth of legislation II

Pensions Related Text
1969-2005

New Pages
Cumulative Pages

Graph provided by (Perspective)
The growth of legislation

Pensions Related Text
1990-2005

Graph provided by (Perspective)
The growth of legislation

Pensions Related Texts
1990-2011

Graph provided by (Perspective)
Questions for regulators and regulatees to review:

- What are we safeguarding?
- Have we overdone it on regulation?
- Do we respond to the previous rather than the next problem?
- Is our medicine worse than the disease?
- Is the best the enemy of the good?
- Are our checks and balances effective compared with law?
- What is the cost/benefit of regulation?

Is it true that...

“The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help.'”?
References

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Recent publications


**Pensionspedia**, Pinsent Masons, 2011,(gratis on request, on USB stick)