



A paradigm shift
IN CONSUMER PROTECTION



Member protection: the UK experience

Paul Williams, Jonathan Mort Inc.

PENSION LAWYERS ASSOCIATION
SOUTH AFRICA

The pensions environment in the UK



- Defined benefit
- Defined contribution
- Occupational (trust-based)
- Work-based personal pensions (contract-based)

A history of UK pensions in 3 photos



The UK pensions market – some numbers

- Trend 1 – DB still dominant

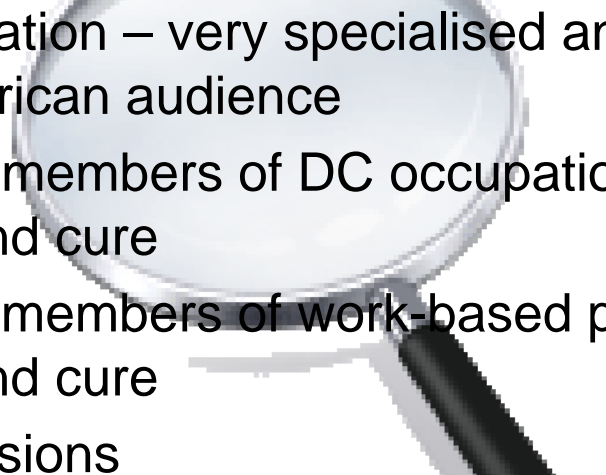
Type of scheme	Total memberships (2009)
Occupational defined benefit	12.9m
Occupational defined contribution	2.1m
Work-based personal pensions	3m

- Trend 2 – The decline of DB

	2000	2004	2009
Active membership of private sector defined benefit schemes		3.6m	2.4m
Active membership of <u>open</u> private sector defined benefit schemes	4.1m	1.4m	1.0m

- Trend 3 – The impact of auto-enrolment – an additional 5-8m members of work-based personal pension schemes

Focus of the presentation

- 
- Not DB regulation – very specialised and of limited relevance to a South African audience
 - Protection of members of DC occupational schemes – prevention and cure
 - Protection of members of work-based personal pensions – prevention and cure
 - Some conclusions

The UK consumer needs protecting too!

- A game that uses a black ball
 - *Darts*
- A domestic animal
 - *Leopard*
- Something you beat
 - *Apple*
- Something a blind man might use
 - *Sword*
- A method of securing your home
 - *Put the kettle on*

Protection of members of occupational DC schemes – legal and regulatory background

- Trust law
 - *Rules - clearly defined obligations on part of trustees and employer*
 - *Trustees' fiduciary duties to members – duty to act in "best interests" of members*
- Pensions Acts 1995 and 2004
- Pensions Regulator

Protection of members of occupational DC schemes – Prevention – Pensions Acts (1)

- Regulation of investments
 - *Have regard for need for diversification and suitability of investment type*
 - *Invest in the best interests of members*
 - *Delegation of investment function only to a FSA authorised person*
 - *Trustees not liable for acts of fund manager only if they do their due diligence*
 - *Statement of investment principles*
 - *Exemptions: schemes with less than 100 members*

Protection of members of occupational DC schemes – Prevention – Pensions Acts (2)

- Member-nominated trustees – 1/3rd
- Disclosure Regulations
- Trustee knowledge and understanding

Protection of members of occupational DC schemes – Prevention - Regulator's role (1)

- Statutory objectives include
 - *Protection of benefits under occupational and work-based contract schemes*
 - *Promotion of the good administration of work-based pension schemes*
- Code of Practice on internal controls
 - *Administration and management of scheme and safe custody of scheme assets*
 - *Assessment of risk*
 - *Steps to avoid/mitigate risk – documented framework*
- Trustee toolkit – online training programme

Protection of members of occupational DC schemes – Prevention - Regulator's role (2)

Focus on DC-specific issues

- 2007 strategy

- *Risks and mitigation - generic*
- *Primary focus – good practice*

- Informed member choices

- *Making pension fund choices*
- *Making your retirement choices*

- Employer engagement

- *Talking to your employees about pensions*

Protection of members of occupational DC schemes – cure

- Regulator powers
- Mandatory internal disputes resolution process
- Whistleblowing by trustees and advisers
- TPAS (the Pensions Advisory Service)
- Pensions Ombudsman

Protection of members of work-based personal pensions – Prevention - FSA (1)

- Statutory objectives include consumer protection
- Treating Customers Fairly (TCF)
- TCF outcomes
 - *Consumer confidence*
 - *Services meet consumer need*
 - *Clear information*
 - *Suitable advice*
 - *Products perform as advertised*
 - *No unreasonable post sale barriers*

Protection of members of work-based personal pensions – Prevention - FSA (2)

- Regulatory approach to TCF
 - *Communicate and engage with industry*
 - *Industry training*
 - *Supervision*
 - *Address failures with firm and give opportunity to redress*
 - *Enforcement action*
- Measuring progress
 - *Normal course*
 - *Consumer research*
 - *Mystery shopping*
- Levels of compliance

Protection of members of work-based personal pensions – Prevention - other

- Unfair Terms in Consumer Contract Regulations
 - *Seller/supplier and consumer*
 - *Not individually negotiated*
 - *Unfair*
 - *Consequences*
- Disclosure requirements
- Pensions Regulator initiatives
 - *Finally realising the importance of work-based personal pensions*

Protection of members of work-based personal pensions - cure

- FSA fines
- Unfair contract term struck out
- Pensions Ombudsman
- TPAS
- Financial Services Compensation Scheme

Conclusions on the current position

- Focus historically has been on DB schemes
 - *need change of focus*
- DC occupational
 - *A good legal basis for protection (trust law and pensions legislation)*
 - *Not consumer-protection focused*
 - *Not tailored to small schemes*
 - *Regulator initiatives aim to rectify shortcomings*
- Contract-based
 - *Statutory regulation of providers by FSA*
 - *TCF addressing cultural issues, but still a long way to go*
 - *Lack of employer responsibility not addressed*

The next phase – Pensions Regulator’s “Enabling good member outcomes in work-based pension provision”

- Background – sophisticated study of DC pensions environment
- DC has (finally) become a priority
- TPR developing strategy
- Good member outcomes, challenges, but no solutions
- Discussion paper on all aspects of DC provision
- Not willing to grasp the nettle on employer responsibility

What South Africa can learn from the UK about consumer protection

Lesson 1: The importance of having a complaints procedure...

Commenting on a complaint from a Mr. Arthur Purdey about a large gas bill, a spokesman for North West Gas said, "We agree it was rather high for the time of year. It's possible Mr. Purdey has been charged for the gas used up during the explosion that destroyed his house."

Lesson 2: Resourcefulness is a key part of customer service...

At the height of the gale, the harbourmaster radioed a coast guard and asked him to estimate the wind speed. He replied he was sorry, but he didn't have a gauge. However, if it was any help, the wind had just blown his Land Rover off the cliff.



A paradigm shift
IN CONSUMER PROTECTION



**Any questions and
comments?**

PENSION LAWYERS ASSOCIATION
SOUTH AFRICA

Copyright of this presentation rests with the Pension Lawyers Association