Book Review

Buy-outs and buy-ins: The elimination of defined benefit scheme liabilities

Steven Hull (ed.)

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Events – most crucially adverse government regulation – have conspired to make it all but impossible for employers to offer defined benefit pension schemes, and many of those who do have them are doing their best to close them down. A leading factor in recent times has been the accounting requirements which require companies to put a wildly fluctuating figure on their balance sheets, and make it hard to manage the business.

So it is hardly surprising that employers and their schemes have been seeking ways to offload their DB pension liabilities. With that in mind, several insurers established themselves in the last few years to take on what looked like a vultures' feast of carrion, carrion that had been specially stuffed and groomed beforehand. The public policy benefits of all this have been rather mixed. For the Pensions Protection Fund, there are rueful grins; the good news is that schemes that are bought-out (if not bought-in) are no longer a potential liability on the PPF. On the other hand such schemes cease paying levies to subsidise the PPF system, shortening the time before which the Ponzi-like system is forced to restructure.

The technicalities make the choices for trustees and employers hard to manage; the recent decision in *Independent Trustees Services v Hope* [2009] EWHC 2810 (Ch), [2009] 075 PBLR (039) in which the court seemed to find an hitherto undiscovered public policy that said

that trustees had to take the best interests of the PPF into account, have made it even harder. So a volume dedicated to finding a way through the complexities must be welcomed.

This book is nothing if not thorough. It covers buy-outs (where the pension scheme obligations are passed to a third party, or more properly a fourth-party); and it covers buy-ins (where the trustees immunise their liabilities with usually an insurance company, keeping the liability but with an asset that is better assured in theory to meet the liability) and other methods. It looks at overseas solutions in a curious range of countries (the US obviously, and of course the Netherlands, but South Africa, Norway and Spain seem odd bed-fellows). And it carries with it the scars of a rapidly-changing topic – and of an inevitable bias where the separate chapters are authored by providers, whose efforts to sell their proprietary solutions are nonetheless generally well masked. That of course is an advantage as well – it means that the arguments are articulately put, but there is an inevitable lack of independent criticism from lawyers and advisers. The articles by those supreme salesmen Mark Wood (of Paternoster), Edmund Truell (of Pensions Corporation) and Jonathan Bloomer (of Lucida) contain useful war stories of how the insurance industry can help take liabilities off employer balance sheets but they inevitably lack a little balance – and as hindsight begins to develop may be found to be a little adulatory. There is no

mention of a 'third way' (I declare an interest as Chairman of the Occupational Pensions Trusts solution (one of the best value and simplest solutions, though as yet without its first fund, although its promoters intend to take no profit for around 30 years, and then only if the system is successful, not a time frame in the contemplation of most insurers)).

Some of the better chapters are by the professionals, rather than the product providers; Jill Clucas and Penny Pilzer of Lovells set out a useful survey of the issues to be addressed by employers and trustees which could form the basis of a standard paper of advice for those involved. And a pair of chapters attempt to contrast the different views of the two main parties – the employers and the trustees – by David Archer and Rosamund Lee from Pitmans Trustees and Marcus Fink from Ashursts. Inevitably much of the writing is repetitive – and the one thing that is missing is a policy chapter looking for example at the interests of regulators, who are at best ambivalent and at worst very unhelpful in the development of new solutions to employers' problems.

For any practitioner, the book provides a useful summary of the issues, and a wider view from overseas of concerns that obviously afflict employers around the globe. For the next edition if there is one, the editor might take a look at broader policy issues, most importantly market and cost issues, since for many employers especially in current markets the sheer cost of buy-outs (and buy-ins) makes even a consideration of the option impracticable. More seriously the book has been overtaken slightly by events, perhaps inevitably, and there are no dedicated chapters on the idiosyncracies of the

latest techniques for removing liability from balance sheets by immunising certain elements such as mortality risks. Again the jury is out on whether such solutions are cost-effective, and whether they introduce more risks than they remove (a element which is also missing from this book).

This is a good book – useful and well written – but it would be even better if it had devoted more space devoted to the drawbacks (as well as the advantages) of the solutions offered. As ever the publishers have adopted an expensive production style, making the book a physical delight to handle, even if in its first edition a little light on balanced coverage.

This is not a criticism of the editor; but the technique of inviting submissions into a multi-author book carries the inexorable drawback that the overall style and feel of the book lacks coherence. Fortunately there are two intriguing chapters by Martin Hunter (Punter Southall) and Kevin Wesbroom of Hewitts, who do mention the upcoming alternatives, and cast the necessary slightly caustic and cynical view over the market and developments in the system. For the moment, despite the occasional issues of withdrawals from the market by leading players, and despite the costs, the buy-out market seems likely to continue as before, unless an incoming government offers employers a new way of managing their liabilities. Without that perhaps utopian solution, buy-outs and buy-ins are likely to be with us awhile yet – and this book forms a good starter manual for those coming fresh to the problems.

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