



IN A MASTERLY SPRING PAPER, **DAVID NORGRÖVE**, CHAIR OF THE PENSIONS REGULATOR, GAVE A PROGRESS REPORT ON THE FLEDGLING AUTHORITY.

Holding the ring

Some have queried whether the pensions regulator is too powerful, but in his Spring Paper for the ACT, sponsored by Barclays Capital, David Norgrove said it was too early to tell whether changes would be needed in the regulator's role and powers in due course. The main concerns so far have focused on the clearance procedure – a system which was introduced at a late stage in the legislation creating the regulator.

He said: "The one major change, not originally envisaged, was the creation of the clearance procedure, at a very late stage in the bill's passage, and that is the area which has given rise to most concern about overweening powers. Once the Pension Protection Fund was created, so was moral hazard. Moral hazard creates the need for anti-avoidance powers. Anti-avoidance powers create uncertainty. Hence clearance." (See *The Treasurer* December 2005, page 22.)

In view of the conditions that have to be satisfied before the regulator can exercise its powers, Norgrove said he was not sure that even a power-crazed regulator would be able to do much damage. To date, the regulator has only refused clearance twice, while well over 100 deals have been granted clearance.

Norgrove said the regulator regularly surveyed those it had dealings with and the clearance team was seen as helpful, timely and pragmatic. The number of clearance applications is growing but he said that the figure was likely to drop as the whole area became more straightforward, the legislation better understood, deficits more fully built into shareholder expectations, and indeed as agreed funding targets and recovery plans provided a clearer baseline for discussion when a transaction was contemplated.

However, Norgrove warned: "I don't expect the need for moral hazard powers to wither away. There will always be an ill-intentioned minority, and after all none of us is exempt from occasionally thinking that what is in our own best interests is therefore also in everyone else's interest as well."

Norgrove was asked whether the Pensions Act would allow companies to walk away from their pension obligations in the interests of maintaining employment, and whether the regulator had an obligation to try to maintain employment.

"My answer is a firm 'no' to both questions," he replied. "Employment is mentioned only in relation to one aspect of our powers and even then it does not have to determine our decision."

The more important factor is that unsecured creditors receive only a few pence in the pound in an insolvency, so in the overwhelming majority of cases it will be in the best interests of pension scheme members as well as employees that the sponsoring employer should continue to trade. The regulator will not allow a company to shed its pension liabilities unless all other creditors are taking their full share of pain alongside.

Clearance though, claimed Norgrove, is just the *hors d'oeuvre*. The meat and veg is scheme funding. The new funding regime will have a greater impact on a wider range of companies over a much longer period. The first and greatest responsibility for scheme funding lies with the trustees and the sponsoring employer, and their need now to reach agreement.

But the regulator has been given the power to set funding targets and recovery plans where the trustees and the sponsoring employer cannot agree. Like trustees, it will have to assess the creditworthiness of companies – and then how much of their cashflow they can afford to put into their pension schemes. Getting it wrong could put the company in jeopardy or leave a scheme with insufficient assets to stay out of the Pension Protection Fund if the company becomes insolvent, with consequent losses to members.

A pension deficit is a loan to a company by the scheme's members. The Act puts the regulator in the position of bankers to the company on the members' behalf, deciding how much the company is good for and how quickly the loan needs to be repaid.

This is not a comfortable position. But unless employers were to have sole discretion on funding targets and recovery plans, someone would have to hold the ring. A government body, holding some such power as the Regulator has been given, seems unavoidable in the circumstances.

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