The Times Business Comment

February 6th 2018

"Tough and transparent laws are needed to protect pension scheme members"

https://www.thetimes.co.uk/edition/business/carillions-whopping-pension-deficit-shows-its-time-for-new-rules-vsd7nvv0k

A joint parliamentary committee grilled the chairman of the Carillion pension schemes last week on how much the trustees had done to protect members. The Pensions Regulator, which attended pension trustee meetings for six or seven years, will be grilled shortly.

Is it fair to blame the trustees and regulator for the whopping pension deficit when Carillion went bust? The 28,000 scheme members will lose part of their pensions and the Pension Protection Fund lifeboat has suffered the biggest loss in its history.

All three-year pension scheme valuations, including the timetable for deficit contribution payments, must be agreed between the company and trustees, but there is not much trustees can do to squeeze cash out of an unwilling company.

If a valuation is not agreed by the 15-month deadline, the regulator becomes involved and will hold the ring for further discussions. Eventually, if there is still no agreement, the regulator has legal power to impose on a company a deficit contribution timetable.

To say that the regulator is cautious in using this power is an understatement. It was only in 2017, after 15,000 valuations over ten years, that it issued its first contribution schedule warning notice — to an unnamed company.

The root cause of weak pension regulation is the Pensions Act 2004, which defined scheme funding rules and set up the regulator and PPF. The act does not require pension deficits to be measured against a clear and consistent funding standard, or require companies to inject cash over a set time. Instead, it has a DIY funding standard that differs for each scheme.

Weak pension regulation was not an accident of bad drafting. Gordon Brown, as chancellor, took the view that regulation — forcing companies to make cash deficit contributions and to match pension liabilities with bonds — was a “bad” thing, stifling investment and job creation. He entirely ignored the detailed, practical recommendations in the Institute of Actuaries’ report commissioned by the government.

We should not, however, view the regulator as a passive victim of weak and inconsistent regulation. The Pensions Regulator has a difficult job to do, but does it rather badly.

In 2013 the regulator dropped its key guidelines, which could trigger an investigation into a valuation and deficit contribution timetable; allowed companies, including Trinity Mirror, to extend their deficit payments; and bent its own rules to keep large schemes going as “zombies” without company sponsors, including Trafalgar House, Polestar and Kodak.

Forget tinkering. The only way to properly protect pension scheme members is for parliament, after proper consultation and debate, to make new tough and transparent laws.

Pension liabilities and deficits should be measured in a prescribed way against market bond yields. Schemes then would have to reach 100 per cent funding within a set number of years, with shorter periods to get to 80 per cent and 90 per cent, much like the minimum funding requirement ditched by Mr Brown.

Carillion shows that there must also be limits on dividend payments by companies with big pension deficits. The regulator would enforce these new rules, with some discretionary powers to agree waivers.

The good news for the 28,000 Carillion scheme members is that they will end up in the PPF as the complex insolvency process continues. The PPF has £6 billion of reserves to cope with the £800 million to £900 million hit — its biggest by a long way — even with little to recover from Carillion’s corporate assets.

Meanwhile, Capita is also in the news. It has various problems, including a pension deficit, but it doesn’t look like another Carillon waiting to happen. But if plugging its pension deficit — £381 million at June 2017 — is a priority, as Capita says, an additional contribution in 2018 of only £21 million is not enough. It should be putting in a big cash lump sum from its rights issue, disposals or borrowings.

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