



Pensions Levy – Legal Issues

Kirstie Flynn, Willis



iapf

Who is liable for levy?

- Contracts of assurance: Insurer
- All other assets: Administrator
- “Administrator” ... means the trustees or other persons having the management of the assets of the scheme...”
- Investment manager/administration manager?



iapf

Who is liable to pay?

- Trustee liability on contracts of assurance?
 - Not liable to deliver statement
 - Jointly and severally liable (with insurer) for payment
- Can trustees demand (not request) employer pays?



iapf

What are assets?

- Annuities?
- Debts – due or owing?
- Transfer payments
 - Transfer between scheme A's year end 31/1 and scheme B's y/e 31/3 – could have double liability
 - Schemes in winding up with insolvent employer not liable – but scheme receiving transfer payment is



iapf Can members sue trustees?

- Protection under s125B(6) from claim for disposing of assets
- But no such protection under s125B(12) for reducing benefits

- Impact of reducing benefits
 - Duty to act in best interests of beneficiaries
 - Trustees required to ask employer to pay?
 - Treating different classes differently
 - But equity does not necessarily mean treating equally
 - Look at scheme history
 - Must surplus be used up first?
 - Late payment interest and penalty



iapf

- Restrictions on amendment power
 - s125B(12) overrides
 - Cut dependants' benefits, PAOs?
 - When can benefits be reduced?
 - s125B(13) – Revenue can review disposal of assets and reduction in benefits



iapf

- Constitutionality – “Eddie Hobbs letters”
- Seek higher member contributions instead of reducing benefits?
 - Would need member consent



Reducing benefits

Documentation/Disclosure Issues

- Rule amendment?
- Update: explanatory booklets
 - Benefit statements
 - Leaving service options
 - Retirement options
- Trustees reduce benefits – Employment contract/HR issues for Employer?