

Waterford Crystal

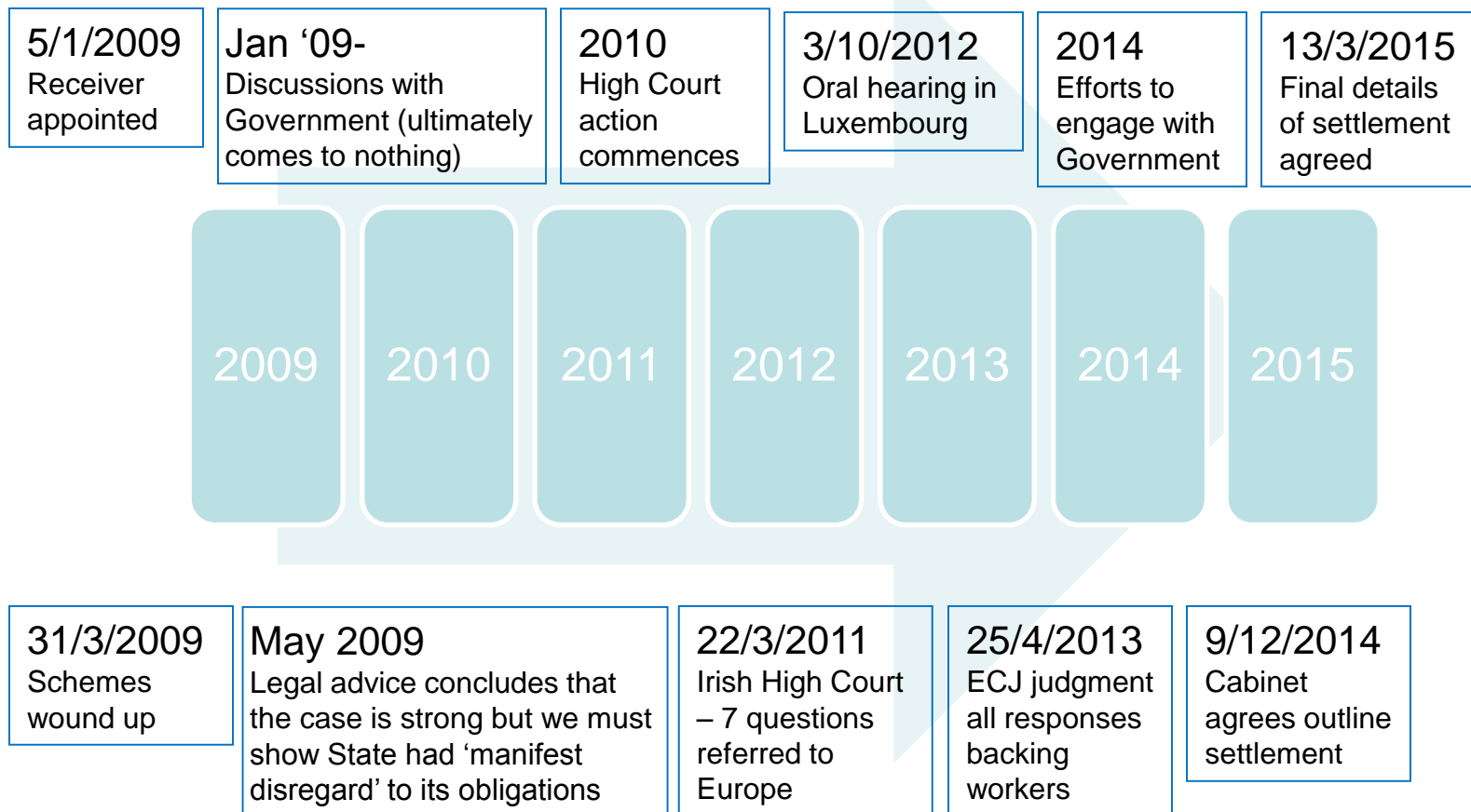


Presentation 30 April 2015

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The journey





The case

- Robins II
- EU Insolvency Directive, Article 8
 - Member States shall ensure that the necessary measures are taken to protect the interests of employees and of persons having already left the employer's undertaking or business at the date of the onset of the employer's insolvency in respect of rights conferring on them immediate or prospective entitlement to old-age benefits, including survivors' benefits, under supplementary occupational or inter-occupational pension schemes outside the national statutory social security schemes.



Robins Judgment

- “ ...a guarantee of benefits limited to 20% or 49% of the expected entitlement, cannot be considered to fall within the definition of the word ‘protect’ used in Article 8 of the Directive.”
- It is a common practice of Courts to deliver judgment solely to the extent required by the circumstances of the case.
- The ECJ was clear that 49% was not enough; the Court however did not specify what was enough.



- Prior to the ECJ delivering its judgment, the UK introduced a system of pension protection.
 - 100% for those who have reached their normal retirement age
 - 90% of the lower of the deferred pension and £36,401 for those who have not reached their normal retirement age
 - Pensions increase at inflation up to 2.5% p.a.



The risks to the workers

- Pension scheme members of solvent employers not protected so no deterioration of security for members of insolvent employers
- Minimum transfer value basis deemed equivalent to deferred pensions
- The Court might determine that 50% was sufficient compensation
- Irish regime not compliant but State not in manifest disregard of its duties



The risks to the State

- Court might determine that the cost of purchasing annuities is the appropriate level of compensation
- The Court might determine that 100% is required to satisfy the word 'protect'



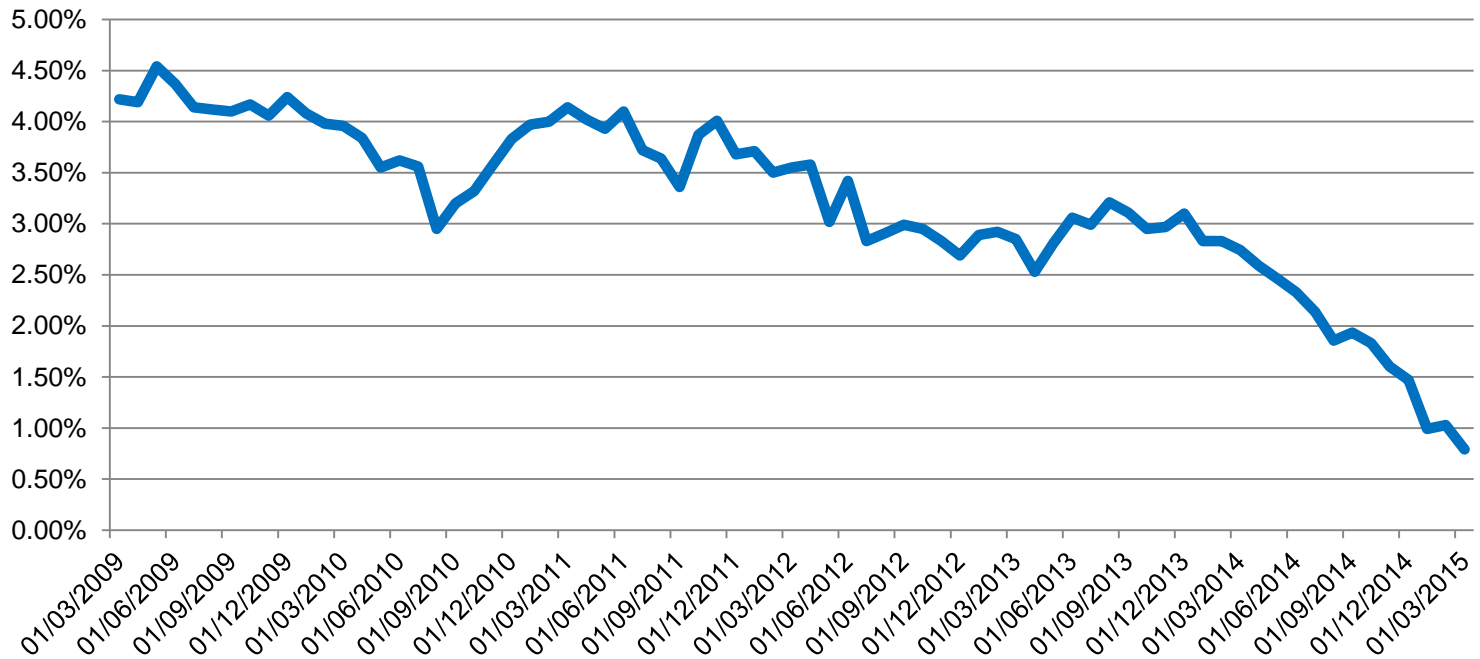
- While the ECJ judgment was entirely in the workers' favour, there remained risks in the High Court determining the settlement
- Percentage to be reinstated 50% → 100%
- Value of deferred pension .. TV → annuity
- High Court only settles cases on the basis of capitalised amounts



Changing environment

- Fall in interest rates since 2009 increased the cost of settling the claim

5.75% France Tresor 2032





Changing environment

- In the meantime, the transfer value basis was mentioned in a number of High Court actions
 - Element Six case – differences between transfer value and full cost of securing benefits discussed
 - Omega Pharma
- By 2014 the transfer value basis had come under question: not regarded by many as a fair substitute for the value of a deferred pension



Effect on case (1)

- Risks eroded over time
 - “Robins not applicable”
 - ECJ judgment
 - Transfer value is the value
 - Element Six / Omega Pharma judgments helpful
- Remaining risk
 - 50% enough
 - Unlikely that this would be deemed consistent with the word ‘protect’



Effect on case (2)

- Lower interest rates resulted in very high increase in capitalised cost
- Made sense to mediate:
 - Uncertainty of Court ruling
 - Possibility of stepped payments rather than Court which only deals with capitalised settlements



Outcome

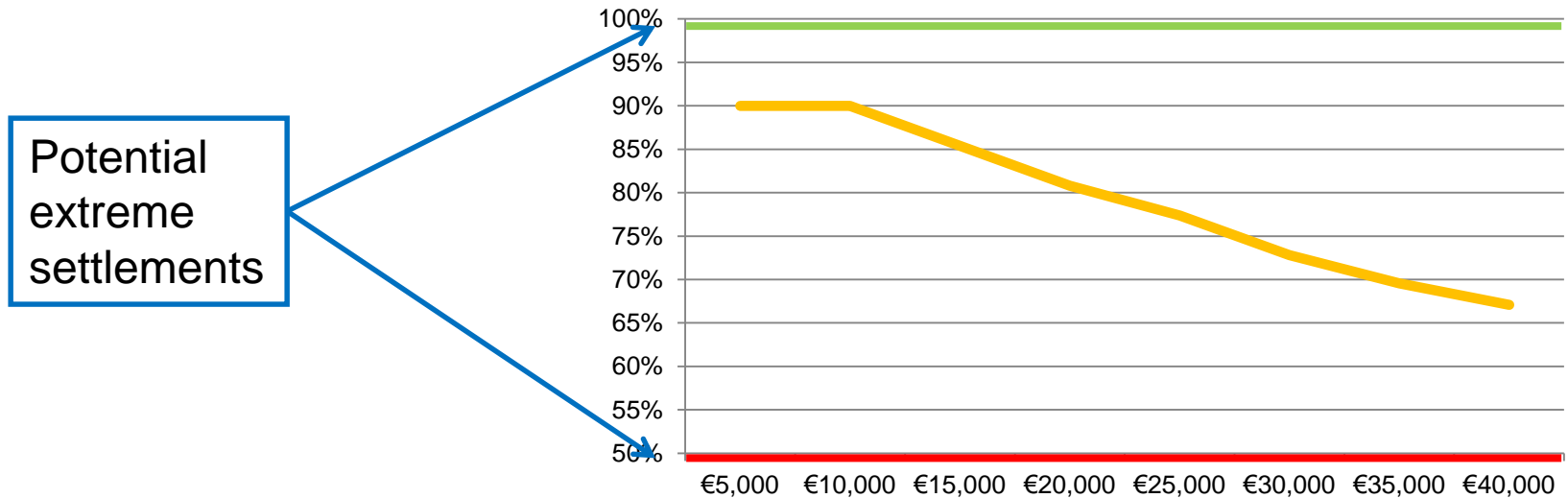
- Lump sum of €1,200 per year of service as special compensation
- Pension to be paid by the Exchequer
 - 90% of expected pension up to €12,000
 - 67% of expected pension from €12,001 to €24,000
 - 50% of expected pension from €24,001 upwards
- Gross Exchequer pension to reflect prior payments from scheme
 - 23% reduction for factory scheme members
 - 19% reduction for staff scheme members



Outcome

- Settlement fair to workers
- Settlement efficient as it avoided the purchase of annuities and the costs to the Exchequer will be spread over time

Percentage reinstatement





- The Social Welfare and Pensions (No. 2) Act 2014 inserts section 48B into the Pensions Act
- The State may make payments in respect of eligible pension schemes

*Social Welfare and Pensions (No. 2)
Act 2014*

[No.41.] S.4

subsection shall be paid out of the Central Fund or the growing produce thereof.

(4) In this section—

‘approved person’ means a person authorised under subsection (2);

‘eligible pension scheme’ means a relevant scheme where the date of the winding up of the scheme is on or after 25 January 2007 and before 25 December 2013 and in respect of which— 5

(a) the employer participating in the relevant scheme is, or where more than one employer participates in such scheme, all of the employers participating in the scheme are, at the date of the winding up insolvent for the purposes of the Protection of Employees (Employers’ Insolvency) Act 1984, and 10



Limited protection for schemes that wound up before 25 January 2007 or after 25 December 2013

- Very limited protection
- Not clear that this is consistent with the word 'protect'

Double Insolvency Order

Benefits will be distributed in the following order of priority:

1. AVCs and transfers in of AVCs; and DC benefits and transfers in of DC benefits.
2. 50% of pensioner benefits, including post-retirement increases.
3. 50% of active and deferred benefits, including post retirement increases.
4. Pensioner benefits up to a maximum of €12,000 per year, excluding post-retirement increases.
5. Remaining pensioner benefits, excluding post-retirement increases.
6. Remaining active and deferred benefits, excluding post-retirement increases.
7. Any remaining benefits, including post-retirement increases.

N.B. The benefits which scheme members receive in a wind up will depend upon the scheme assets which are available for distribution.

However, in a double insolvency, if the scheme does not have enough assets to pay for the benefits under priorities 2, 3 and 4, the Minister for Finance will provide the necessary money to make up the shortfall, subject to criteria set out in legislation.



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Limited protection for schemes that wound up
before 25 January 2007 or after 25 December 2013

- To avoid the possibility of future cases, the approach of the State appears to be to force poorly funded schemes to wind-up or restructure or increase their funding.
- Significantly reduces the possibility of another similar case



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Questions