The Ilford case

ITS v Hope – the legal bit

(Abandon hope, all ye who enter here?)

A presentation to APL/ACA meeting
by Stephen Scholefield

22 April 2010

The Ilford case: background

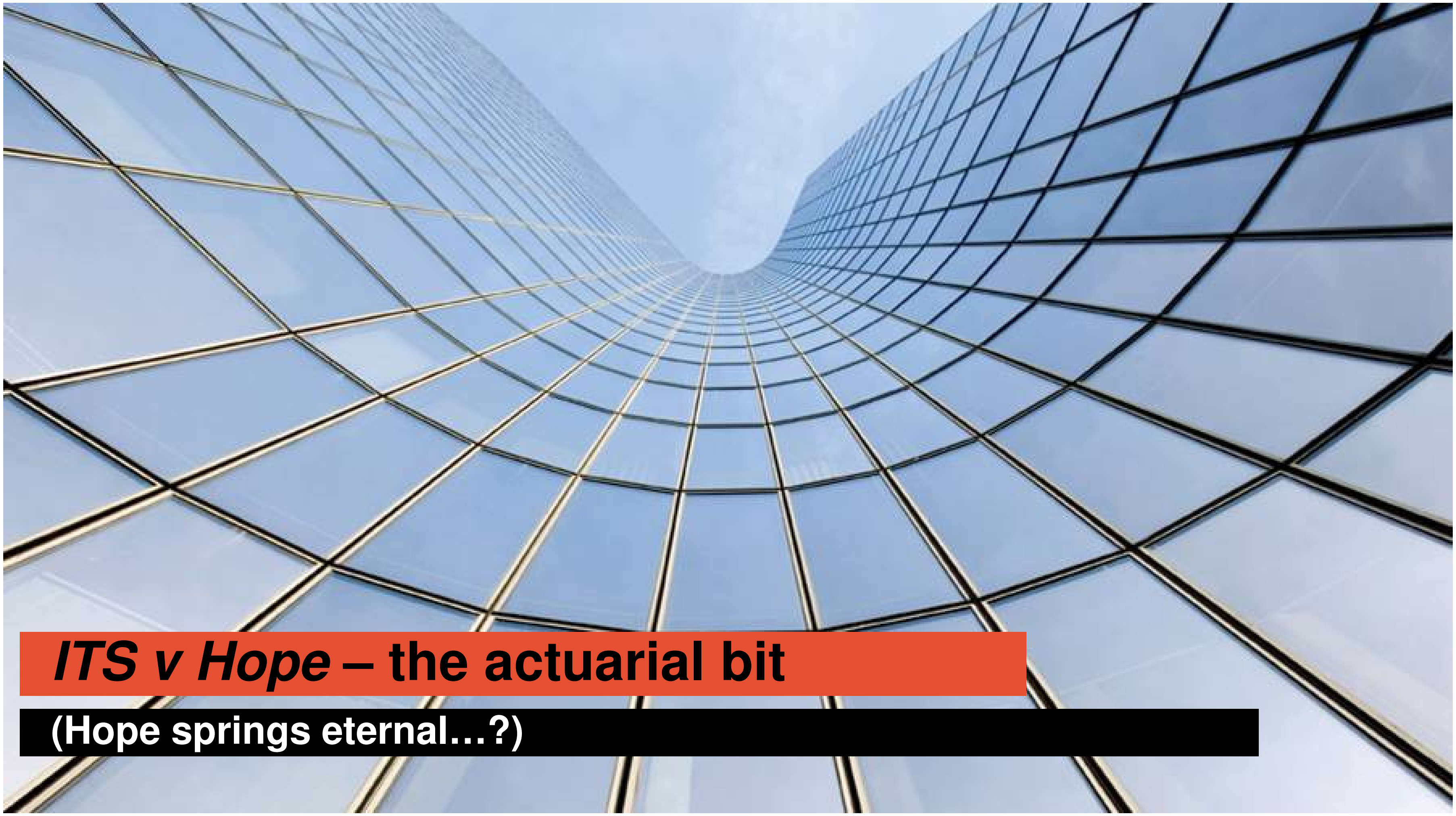
- Scheme on brink of the PPF
- Benefits would be cut back
- Trustee considering buying out some benefits in full
- Maximise members' benefits, but disadvantage the PPF
- Conflicting legal advice

The Ilford case: how the court said 'no!'

- Not by treating PPF as a beneficiary, but ensuring powers used for proper purpose
- Proper purpose of buy out power is to use fair share of scheme assets
- Scheme can't be amended to change the proper purpose of the buy out power
- PPF is not a relevant factor on buy out, as this would undermine/take advantage of PPF – public policy
- Expect similar approach wherever trustees rely on PPF to justify improper acts

The Ilford case: new problems (or are they?)

- Difficult cases make bad law
- Public policy is an unruly horse
- What about investment strategy?
- What about buy ins, or buy outs?
- What about deferring inevitable insolvencies, so members reach NPA, or get an increase?



ITS v Hope – the actuarial bit

(Hope springs eternal…?)

A presentation to APL/ACA meeting
by Graham Everness

22 April 2010

TOWERS WATSON

The Ilford case: "relevant factors"

- "… availability of compensation under the PPF… is not a relevant factor… because to take it into account would be contrary to the clear legislative policy… and… thus… to public policy"
- "I would expect a similar approach to be adopted in any instance where trustees seek to take advantage of the existence of the PPF as a justification for acting in a way which would otherwise be improper."

- Buyouts and transfers
- Investment
- Funding
- Scheme design

The Ilford case: wider application?

- Systematic buying out of annuities in payment
- Generous (or unreduced) transfer values?
- A big investment gamble, or some ‘modest’ risk-taking
- A weaker funding target or longer recovery plan
- Scheme design – ‘maximising your protection’
  - Minimum pension increase
  - Minimum spouse’s benefit
  - Executive top-up scheme

The Ilford case: EU Insolvency Directive

- *Marleasing* principle
- Hopeless?
- But is the PPF ‘good enough’?
  - “a difficult question”
  - high earners different?

The Imperial Home Decor case

Bridge **– the legal bit**

(A bridge too far?)

A presentation to APL/ACA meeting
by Stephen Scholefield

22 April 2010

The Imperial Home Decor case: background

- Scheme winding up, pre PPF
- All sorts of benefits and guarantees
- How does priority order work?
- What is a money purchase benefit?
- What is a benefit derived from a voluntary contribution?

The Imperial Home Decor case: what the court said

- Money purchase benefits can have guaranteed investment returns
- Existence of gmp doesn't stop a benefit being money purchase
- Neither do certain other guarantees
- Internal annuitisation doesn't stop a benefit being money purchase
- Benefits derived from voluntary contributions include matching employer contributions

The Imperial Home Decor case: new problems (definitely)

- Issues that may be appealed
- Implications for pension schemes
- Implications for the PPF
- Implications for the government
- The voluntary contributions bit

Bridge – the actual bit

(Three Bridges too far?)

A presentation to APL/ACA meeting
by Graham Everness

22 April 2010

TOWERS WATSON

The Imperial Home Décor case: money purchase benefits

- “one of the most challenging pensions cases to date”; “brimful of technical difficulty”
- “only concerned with the winding up provisions and the meaning to be given to MP benefits in that context”
- More benefits could be ‘money purchase’
  - No PPF protection? Good or bad for the PPF?
  - Implications for scheme funding and employer debt?
- Whole schemes could be ‘money purchase’?
  - Implications for scheme funding and employer debt
  - … and for the Scheme Actuary

The Imperial Home Décor case: an 'anti-franking' nugget?

- Distinction drawn between pre-97 and post-97 pots when testing against GMP
- Resolves uncertainty on interpretation of 'Regulation 55' (SI 1996/1172)?
- Not exactly argued in depth…

The Imperial Home Décor case: AVCs

- May be more of the benefits than thought
  - Salary sacrifice
  - Choice of level of contributions or benefit
- Matching/tiered (etc) DC no longer an issue (post-2005)?
- DB optional tiers
  - priority order on wind-up
  - LPI

The Imperial Home Decor case: EU IORP Directive

- *Marleasing* principle
- Hopeless?
- Winding up in this case started before 23 September 2005
  - but what if it hadn't?
- Unlikely, but another bridge to cross if we come to it…