# What should the role of the Pensions Regulator be with regard to defined benefit schemes (including the new draft code for scheme funding)?

## ACA / APL joint session

Ian Pittaway

30 April 2014

# My premise

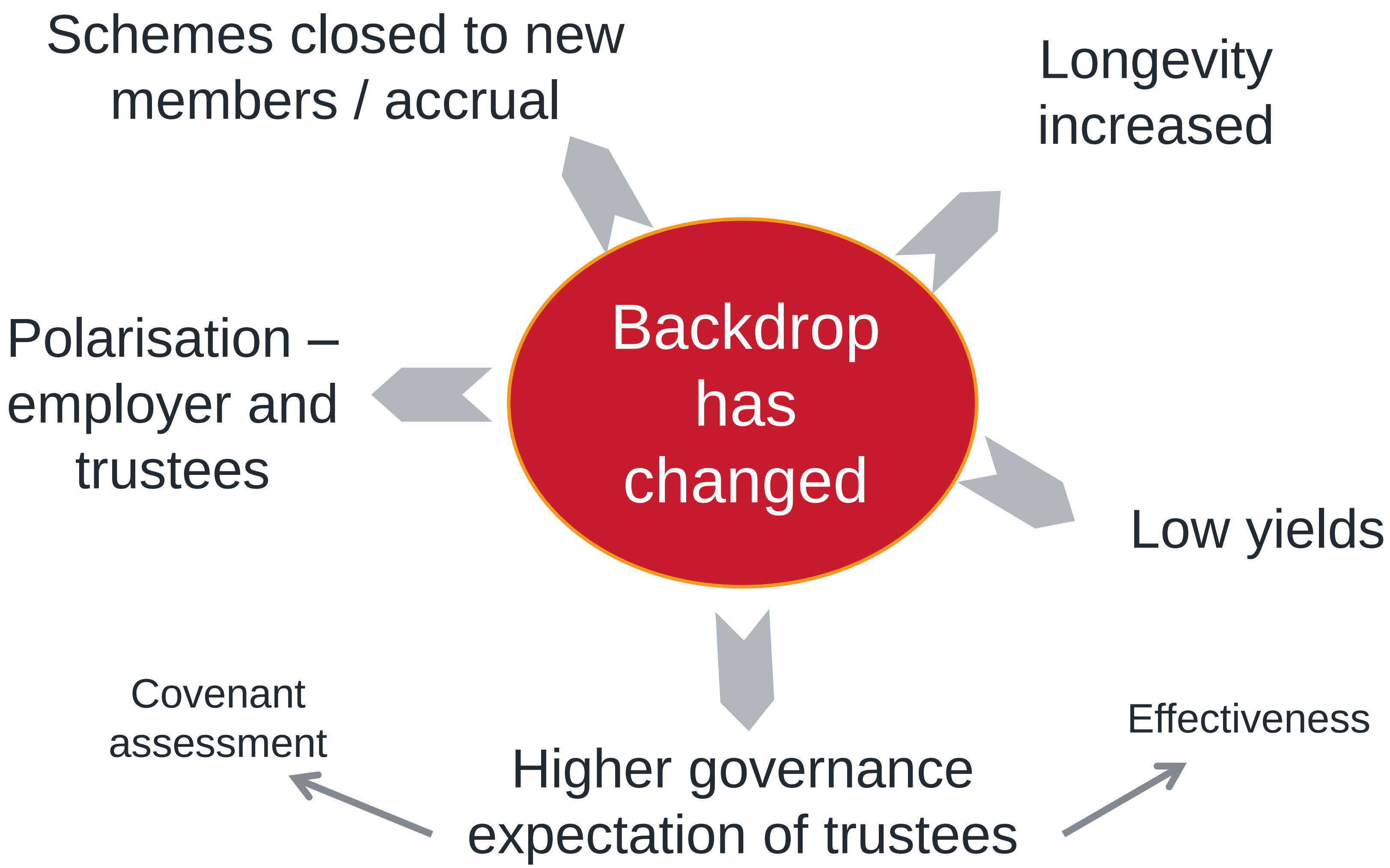
A fundamental misunderstanding at heart of TPR’s funding role

MFR

Scheme specific regime

Who decides what is prudent? TPR or the Trustees?

Emphasis should be on governance not outcome


Schemes closed to new members / accrual
Longevity increased
Polarisation – employer and trustees
Backdrop has changed
Low yields
Covenant assessment
Effectiveness
Higher governance expectation of trustees

# What does our identikit Regulator look like?

Firm
but fair

Consistent

Commercial

Supportive of
trustees

But understanding
of employers

Available /
accessible

Formal
guidance

Informal
steer

Takeover
Panel

Where has TPR done well?

- Improved governance of trustee boards eg conflict management / training
- Good quality guidance eg MNTs. Light touch
- Trustee toolkit
- Integrated approach to risk management. Covenant / investment / funding / governance

**But when has it been less effective?**

Is sometimes hostile towards trustees / not always supportive. Seeking to impose its own version of "prudence"

Regulator's statement of April 2012 – but have the people on the ground at TPR read it?

Never exercised its tiebreak power. Process can be abused

Employers don't really take TPR as seriously as they did. Declining number of clearance applications

Has rarely exercised its powers when it really comes to it.

- No tiebreak cases
- Few Scheme improvement notices
- Few appointments of trustees
- Few Contribution Notices / FSDs

Trying to do too much to too many – dilutes resources

New code falls into same trap of seeking to impose its own version of prudence

SAYS ALL THE RIGHT THINGS

- Scheme specific
- Proportionate
- Balanced

But creates son of “MFR” - emphasis on outcome. Not on a robust process

New statutory objective is the driver

“to minimise any adverse impact on the sustainable growth of an employer”

duty imposed on Regulator – not trustees

advocates flexibility but surprisingly leads to a more prescriptive detailed regime

# Covenant

Much higher standard for trustees

Equity investor

Not so subtle push away from d-i-y

Shadow board

Segmentation strong / tending to strong / tending to weak / weak

But ignores affordability

Should it be TPR determining covenant strength?

Isn't that for trustees?

Balanced Funding Outcome

- Covenant segmentation
- TPR assessment of the contributions that should be made for that covenant strength
- Risk Bar. BFO is primary trigger for intervention
- Is it for TPR to set a notional contribution level for several thousand schemes? How is that scheme specific?

Can affect a clear / robust negotiation with employer

Are trustees exposed if they get less?

Do we want a BFO?

Will it be public? Can it be calculated?

A clumsy, commoditised tool which is not in any way scheme / employer covenant specific

Our funding regime should be scheme specific – not centrally imposed

The new draft funding code falls into the same trap – we are on the wrong road

## Conclusion

TPR should focus on robust governance process – not impose specific "prudent" outcomes

Some good things from TPR at generic / educative level. But trying to conquer the world on funding