Society of Actuaries in Ireland

Philip Smith

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Legal considerations

- Can SAs be used by trustees? If yes, then:
  - Should they be used?
  - What are the duties?
  - What are the risks?
  - … so when might they be helpful?
  - … and when can they not be used?

Can/Should they be used?

- What is a pension – an income for life
- Is an SA "fit for purpose" to secure a pension … the income for life is not guaranteed under the terms of the product?
- **Not straightforward - How and when could they help?**

What are the duties?

- To administer the trust – to provide/secure the benefits
- To act as a prudent man of business would
- To act in member's "best financial interests"

What are the risks?

- “Closure” is not closure.
- The members claim against the trustees and/or the company now or later
  - maladministration in using SAs;
  - breach of trust in using SAs;
  - loss in the event that the SA fails;
  - loss in the form of inappropriate reduction in benefit/lack of security

So can/should they be used?

- This is scheme specific and not straightforward
- SAs cannot routinely secure pensions but they may be better than nothing in very difficult circumstances and/or to achieve secondary purposes

Couple of examples
Example 1 – neat fantasy world

- Mature scheme in wind-up – all pensioners – enough to cover pensions but not increases
- Not all members have increases
- Do we “secure” with SAs - everyone gets 100%; OR; do we “secure” with real annuities so everyone gets 100% of pension and increase members get some element of increase?
- DEPENDS …

Some of the considerations

- Provide the benefits– pensions then increases - deeds
- “Secure” the pensions – Alitalia, Bartlett, Nestlé
- Equity of the circumstances
- Section 48 appears to enable but does not assist, discharge or indemnify: and what is the “actuarial value of the benefits” on wind-up (does 53B basis apply?)
- Take advice
- Less likely to be punished for being conservative (Nestlé) than for speculating (Bartlett)

Example 2 – messy real life

- SME scheme in deficit – large proportion (not all) of pension liability is exec who retired last year – 90% coverage for pensions for last 3 years – closing to accrual/contributions.
- White knight with cash has arrived. Proposes scheme will be funded out eventually BUT requests buy-out existing pensions with SAs to reduce FP bill…
- Do trustees:

(i) accept condition to prejudice pensioners in return for some coverage and additional cash for actives; or

(ii) resist and have lower secure pensions and no benefit for actives and deferreds; or

(iii) try to negotiate something else?

When not to use SAs?

- IT DEPENDS … but unlikely to be wise:
  - as part of a ongoing scheme buy-out
  - as part of a section 50 exercise
  - on wind-up unless to achieve an additional purpose (e.g. core/excess)

So can/should they be used?

- SAs may be better than nothing in difficult circumstances
- May have a role in:
- core/excess redistribution exercises
- Buy-in pending later eventual wind-up “when bond yields improve …” – scheme retains risk
- As an alternative to investing in sovereign bonds (in order not to lose the funding proposal “discount benefit”) but … buy the bonds now to trade for the annuities later
- None of the above involve securing a pension as the primary purpose

So can/should they be used?

- DUTY – option not obligation
- PRUDENCE – difficult to justify
- HONESTY – difficult to justify
- CARE – one out four ?