

Carillion, regulation and survival

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Pinsent Masons

Why was Carillion such a big deal?

- Carillion was just another services company that went bust, so what. . ?
- . . .but
 - Big (£5B turnover, 40,000 employees, lots of subcontractors)
 - Government relevance (prisons, hospitals, schools)
 - High profile (PFI and the Labour Party)
 - Politics post BHS: pensions deficit of around £1B



History of the end

- **2007:** credit crunch: turnover dropped 20% overnight
- **2009:** EAGA – feed-in tariffs cut: Lost £400M
- **2010+:** Built largest mosque in world + World Cup stadiums in Middle East: couldn't get paid £400M
- **Restructuring/rights issue:** conflict of interest of shorters
- 'Hiding' cash problems
- Banks were 'unhelpful'
- **Management failures** (Aberdeen by-pass, Liverpool hospital)



BUT collapse not inevitable

- Fresh financing available
- Good contracts as well
- Margins increased from 2% to 5%
- Profits doubled or trebled over 10 years



Challenges to restructuring

- New FD
- Did old FD leave everything well organised?
- Legacy issues (Carillion was collection of Wimpy, Tarmac, McAlpine, Mowlem etc)
- Timing
- Pension fund liability/PPF/TPR



The UK pension scheme(s)

- 13 DB schemes
- 6 run as one
- Deficit grew over 10 years from £200 to £1B (or £2.6B on B/O)
- 16 trustees
- Advisers: Actuaries, investment consultants,, lawyers (x2), accountants, covenant advisers (x3)
- Internal support:
- Employer's concerns:
 - Cash
 - Discount rate



After the crash (1)

- July 2017 write down of £1.2B
- Initial conclusions no worries for pension fund!
- UK Regulator intervention
 - **Lawyers** not up to it
 - **Advisers** not up to it
 - **Trustees** not up to it
 - **Paper** deluge
 - Micromanagement
 - 'Pro-active engagement'
 - Gang culture



Just to note, UK Regulator before the crash . . .

- Close monitoring for 10 years
- Carillion on Regulator watch list
- Requests for risk evaluations (VAR)
- Attending meetings
- Views on CNTs and MNTs
- Was Regulator help or hindrance?



What can we learn?

- Keep file notes!
- Write and keep notes **for the file**
- Understand costs
- Avoid blame
- Things happen to everyone
- Manage the press (or not)
- Manage advisers
- Seek pragmatic advice
- Seek support (including PR)



Pensions and politics. . . I

- Politicians have a **game plan**
- The press is an **unreliable friend**
- Believe in **training**
- The Regulator and government are **not your friends**
- Minutes with a view to **posterity**, as much as accuracy
- Use **advice**
- Parliament is **theatre**
- It's never **just pensions. . .**
- The Regulator is **not** there to help
- What else. . . ?



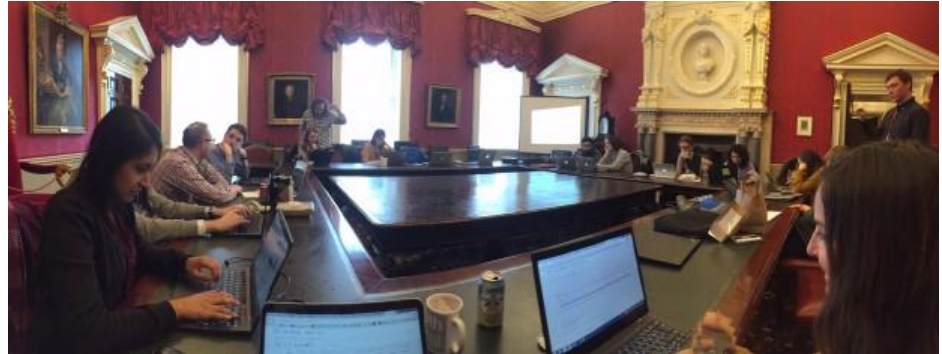
Pensions and politics. . . II

- What does a regulator want?
- What does a government want?
- The genius of panto
- The blame game
- The genius of counter narrative
- The need to control the story



Incidentally . . .

- PPF appointment of new trustees/administrators
- W&P Select Committee procedure
- Pre collapse negotiations
 - Cabinet Office
 - Board discussions
- The blame game / black box
- Pencils



Conclusions I

- Governance is key – not for member outcomes, but for self-protection
- Hard to fight conventional wisdom
- TPR interfere, hard for them to help, and broadly unhelpful and patronising
- Pensions include politics, finance, restructuring, press, human relations, client management
- Post insolvency back-up/PPF
- Creative opportunities/rebirth
- Trustees MUST take TRAINING and PR support



Regulation is not to help members



Conclusions II

- Check insurance frequently
- Check exemption clauses
- **Keep** meticulous defensive records
- **Assume** discovery orders
- **Hire** advisers: law, covenant, actuarial, PR and check they know their duties
- **Take** training
- **Communicate** to members and the public



Conclusions III

- To protect members:
 - Rethink **investment strategy**: gilts
 - Rethink Regulator: the **Canute** problem
 - Rethink what happens on **sponsor failure**: avoid PPF
 - Rethink **communications**: bad DB is better than good DC
 - Rethink **scheme design**: CDC
 - Rethink **select committees**: fire in the theatre



Meanwhile. . .



For regulation management TIA. . .

- OITO/OIOO
- Regulators Code
- Penal policy
- Capitalism involves failures
- Regulator is not your friend
- Members come first
- Tell your story / control the narrative

