

Sacker & Partners' Public Sector Solutions Unit has wide experience of working with organisations on the complex legal and compliance issues that face public sector schemes and broadly comparable "passport" schemes. In this newsletter we focus on just a few of the current issues facing such schemes.



Consultation on Admitted Body Status

Where a contractor takes on an outsourcing contract from the public sector and employees are transferred into its employment, under the "Fair Deal" requirements the ex-public sector employees must be offered a certain level of pension benefits. These benefits can be provided through a Broadly Comparable (BC) scheme operated by the contractor or through the Admitted Body Status (ABS) provisions. ABS allows a private contractor to participate in the Local Government Pension Scheme (LGPS).

Communities and Local Government issued a consultation document on the arrangements for ABS in January 2008 called "Review of Admitted Body Status in the Local Government Pension Scheme" to which Sackers responded in detail. The consultation period closed on 10 April 2008.

Consultation on the ABS was long overdue. Although we agree with the Government that nothing in the fundamental concept of ABS needs to be changed, the detailed arrangements have not, in our experience, been consistently applied.

In our response to consultation, we focused on ensuring that the Government's policy recommendations are consistent, simple and easy to implement for all the parties.

At the moment, contractors have no financial control over the local government scheme in which they participate, leading to uncertainty over the future cost of pensions. Contractors are expected to pick up pension deficits, without the opportunity to benefit in any surpluses created - a real lose/lose situation. But there is evidence that contractors are hitting back in the only way they can - through risk-averse contract pricing, as the Government itself acknowledges. This over-cautious hedging of pensions risk results in artificially inflated bids and, ultimately, a lack of value to the taxpayer.

Sackers hopes that as a result of this consultation ABS can be successfully adapted for the 21st century, principally to put the key players on a level playing field - resulting in more clarity as well as better value for everyone.

LGPS Investment Regulations 1998

For a long time local government pension schemes have been shackled by the restrictions set out in the Local Government Pension Scheme (LGPS) Investment Regulations 1998. There has also been much debate within the industry surrounding whether the use of derivatives (in particular the use of over the counter currency forward contracts) are permitted under the regulations.

The CIPFA Pensions Panel has established a working party to review the use and application of the current regulations with a view to possible changes being made to the regulations by the CLG.

We welcome this development and have provided the working group with our views on the key changes that we believe need to be made to the regulations - namely, less prescription alongside good governance. In our view, this is the best way to ensure that the LGPS can be quick on its feet when assessing whether to take advantage of the best investment opportunities in the market, whilst providing the CLG with comfort that proper specialist advice has been taken where necessary.

Ombudsman criticises Council over information to members and failure to take active role

This decision of the Pensions Ombudsman is a salutary lesson in knowing your scheme rules and how they operate.

Mr Hughes was an employee of the Isle of Anglesey County Council (the Council) and a member of the Local Government Pension Scheme (LGPS). He suffered joint pain caused by arthritis and went on long-term sickness leave in March 1999. The Council kept Mr Hughes "on the books" as an employee but on indefinite leave without pay.

To be eligible for an ill-health pension under the terms of the LGPS Regulations 1997 (the Regulations) he had to, in the Council's opinion, leave employment because he was permanently incapable of discharging his duties efficiently because of ill-health. Changes were made in April 2002 to the Regulations which required certification from an "independent medical practitioner" as to whether an applicant for an ill-health pension met the ill-health test.

In August 2002, a medical practitioner appointed by the Council concluded that Mr Hughes did not meet the ill-health test.

Mr Hughes asked to appeal this decision and submitted medical evidence from two additional doctors. He was told that he could not appeal unless he first resigned from employment with the Council. Mr Hughes then asked for details of the Regulations covering ill-health retirement. These were not provided.

After a lengthy period of correspondence and the involvement of both the Pensions Advisory Service and his MP, Mr Hughes made a complaint to the Ombudsman in February 2005. By a decision dated March 2008, the Ombudsman found that the Council was guilty of maladministration on a number of counts:

- The Council had misunderstood its decision-making responsibilities under the Regulations. The Ombudsman criticised the Council for relying on the opinion of an independent medical practitioner, reducing its own role to a rubber-stamping exercise.
- Mr Hughes was incorrectly told he was required to resign before he could appeal.
- Mr Hughes was not provided with the relevant information he requested.

The Ombudsman found that Mr Hughes had suffered no financial loss as a result of the maladministration and may in fact be better off in the long-term, but damages were awarded for stress and inconvenience.

This protracted dispute could have been avoided by the Council if there was a better understanding of how the scheme rules operated. Given that there are now different ill-health benefits in place under the New Look LGPS, employers should ensure they have a full understanding of how they work in practice.

We work closely with our clients to deliver a first-class public sector service. To discuss public sector pensions issues please contact a member of our Public Sector Solutions Unit.



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