Sackers extra

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Abbreviations commonly used in 7 Days

Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
ECJ: European Court of Justice
FAS: Financial Assistance Scheme
FSA: Financial Services Authority
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

AUTOMATIC ENROLMENT

Automatic enrolment begins

Starting today (1 October 2012), the UK's largest employers (those with a PAYE scheme of over 120,000) are required to enrol their eligible jobholders into a qualifying pension scheme and pay contributions. (An eligible jobholder is a worker between the ages of 22 and State Pension Age, who earns more than £8,105.) For more information, please see our checklist for employers on auto-enrolment.

For other employers, the duty to auto-enrol will be phased in between now and 2017 (again, determined by PAYE scheme size).

Staging date timeline

DWP press release

LEGISLATION

The Pensions Act 2008 (Commencement No. 14 and Supplementary Provisions) Order 2012

Since 2001, employers with five or more relevant employees have been required to offer their employees access to a stakeholder pension scheme and facilitate payroll deductions for contributing members. The legislation does not require employees to join, nor does it require employers to contribute to the scheme.

As noted above, starting today, all employers will be required to automatically enrol qualifying employees into a qualifying workplace pension scheme, and to make a minimum contribution to this. In light of these new obligations, these regulations (which come into force on 1 October 2012) remove the requirement for employers to designate access to a stakeholder pension. However, if employees are already contributing into their stakeholder pension scheme by payroll deduction, employers will be required to continue deducting and paying these contributions to the pension provider, until the employee asks the employer not to make a contribution to the stakeholder scheme or ceases to make contributions at regular intervals.

FINANCIAL REPORTING COUNCIL (FRC)

Updates to UK Corporate Governance Code and Stewardship Code

Following consultation in April 2012,[1] on 28 September 2012 the FRC announced limited changes to the UK Corporate Governance Code and Stewardship Code (the "Codes") which are intended to increase accountability and engagement through the investment chain. Both Codes will continue to apply on a "comply or explain" basis.

The UK Corporate Governance Code sets out good practice for UK listed companies on issues such as board composition and effectiveness, risk management, audit committees and relations with shareholders. The Stewardship Code sets out good practice for institutional investors on monitoring and engaging with investee companies and reporting to clients and beneficiaries.

Changes to the UK Corporate Governance Code include:

- FTSE 350 companies are to put the external audit contract out to tender at least every ten years with the aim of ensuring a high quality and effective audit, whether from the incumbent auditor or from a different firm. The FRC will be holding discussions with companies, auditors and investors to consider whether guidance on tendering would be useful;

- audit committees are to provide to shareholders information on how they have carried out their responsibilities, including how they have assessed the effectiveness of the external audit process;

- boards are to confirm that the annual report and accounts taken as a whole are fair, balanced and understandable, to ensure that the narrative sections of the report are consistent with the financial statements and accurately reflect the company's performance;

- companies are to explain, and report on progress with, their policies on boardroom diversity. This change was first announced in October 2011, but its implementation was deferred to avoid piecemeal changes to the Code; and

- companies are to provide fuller explanations to shareholders as to why they choose not to follow a provision of the Code.

Changes to the Stewardship Code include:

- clarification of the respective responsibilities of asset managers and asset owners for stewardship, and for stewardship activities that they have chosen to outsource;

- investors are to explain more clearly how they manage conflicts of interest, the circumstances in which they will take part in collective engagement, and the use they make of proxy voting agencies; and

- asset managers are encouraged to have the processes that support their stewardship activities independently verified, to provide greater assurance to their clients.

The updated Codes apply from 1 October 2012.

[1] See 7days dated 23 April 2012

HMRC

Consultation: Implementing the UK-US Foreign Account Tax Compliance Agreement (FATCA)

Background

FATCA aims to combat tax evasion by US persons with non-US accounts. As the US tax system is based on citizenship, US persons do not need to be resident in the US.

FATCA requires financial institutions outside the US to report information on US account holders to the US Internal Revenue Service (IRS). If financial institutions fail to report the required information, 30% US tax would be withheld on all US payments to them.

Consultation

As part of its commitment to tackling tax evasion and increasing international tax transparency, the UK Government has signed an Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA (the "Agreement"). The Agreement represents a commitment by both governments to increase the scope of information that is automatically exchanged.

The Agreement exempts most UK occupational pension arrangements from the new reporting requirements.

HMRC is now consulting on how to implement the Agreement and seeks views on its proposed approach. It also requests information on the expected costs of complying with the Agreement to inform the impact assessment.

Next steps

Draft legislation is expected to be published once the consultation process has been completed, with final legislation due to be included in the Finance Bill 2013.

PENSION PROTECTION FUND

Pension Protection Levy Set At £630 Million

On 25 September 2012, the PPF announced that the pension protection levy estimate for 2013/14 will be £630 million.

This is the same aggregate amount that the PPF now expects to be collected for the 2012/13 levy year, some £80 million more than the original estimate of £550 million (an increase of 15%).

Alongside this announcement, the PPF published a consultation on its 2013/14 pension protection levy determination. In order to provide predictability, the intention is that the new levy formula will remain broadly unchanged until the next three yearly review. The results of the consultation will be announced in December, alongside a final confirmation of the levy estimate.

Press release

THE PENSIONS REGULATOR

Helping savers receive the right pension scheme contributions

TPR is consulting on updated codes of practice to ensure that retirement savers receive in their scheme the contributions they are due.

The codes of practice explain existing duties and show TPR's intention to build on current good practice to ensure the accurate and timely flow of contributions into schemes. TPR will encourage resolution of disputes about contributions between those that are already involved: those running schemes, employers and employees.

As a risk-based regulator, TPR will focus its resources and enforcement powers on situations where employers wilfully or deliberately do not pay the contributions due.

We will issue an alert on this consultation shortly.

Press release

CASES

Mr B Fitzgerald

In a recent decision, the Deputy Pensions Ombudsman (DPO) considered a complaint in which an overpayment paid to a member over 10 years exceeded £90,000. The member was required to repay the sum but the scheme's inadequate systems led to a finding of maladministration.

Facts

Mr Fitzgerald applied for early retirement from the Teachers' Pension Scheme (the "Scheme") in July 1997, on redundancy. It was made clear to him that if he was re – employed it could result in reduction or suspension of his pension and that he must notify the Scheme if he were to be re-employed in the future (by providing a certificate of re-employment). But, despite being re-employed on several occasions between 6 April 1999 and April 2010, he formally notified the Scheme of his re-employment only once. This resulted in him being overpaid pension benefits of approximately £90,000.

As Mr Fitzgerald was due a pension from his re-employment, the Scheme withheld the lump sum that would otherwise have been paid (of about £20,000) and then sought to recover the remaining monies from him.

Decision

The DPO concluded that the overpayment was a result of Mr Fitzgerald's failure to notify the Scheme of his re-employment; an obligation he was made aware of by the literature provided at his retirement. However, she considered that the Scheme's lax systems contributed to the overpayment. For instance, in 2001, 2003 and 2007, Mr Fitzgerald was communicating with the department which dealt with pensionable service and membership but not the department which dealt with abatements to existing pensions.

The DPO did not consider it reasonable for a member to know they needed to contact different departments dealing with different aspects of related issues, particularly when this was not well advertised. She therefore ordered the Scheme to pay Mr Fitzgerald compensation of £200 for the distress and inconvenience caused to him by its poor administration.

In relation to the overpayment, the DPO stated that Mr Fitzgerald and the Scheme needed to come to an arrangement that did not cause "undue hardship". The DPO explained that "undue hardship to my mind means [the Scheme] completing a means assessment and both parties agreeing to repay the overpayment within a reasonable period of time. Typically the repayment should cover the period Mr Fitzgerald received his unabated pension. This means the repayment should be made over a 10 year period".

Comment

The DPO confirmed the general rule of thumb that an overpayment should be repaid over the same period that it was received.

Captain P Squibbs

This Pensions Ombudsman decision considers the extent of pension trustees' duty to members in respect of their retirement options. In this case, a member exercised his right to a level pension option, or bridging pension, which turned out not to be to his advantage.

Facts

Captain Squibbs ("CS") is a member of the Airways Pension Scheme (the "Scheme"). He retired on 16 February 1991 when he reached age 55, the mandatory retirement age at that time for all BA pilots (other than those in managerial roles).

Prior to his retirement, CS was provided with information on his pension entitlements, including details of the "Variable Pension Option" ("VPO"), a bridging pension. A bridging pension aims to smooth pension entitlement during retirement. This is achieved by applying an increase to the member's scheme pension until the state pension is payable and a reduction thereafter.

It was explained to CS that, were he to elect to take the VPO, he would receive an annual increase of £1,170.72 until age 65 but then a permanent annual decrease of £2,734.44. Details of the operation of the VPO were also available in a pamphlet (CS held a copy of this). This pamphlet stated that, once commenced, the VPO could not be altered or cancelled under any circumstances.

CS elected to take the VPO. Following this election, he received a further letter explaining the effect of this on his pension.

However, from 1999 onwards CS became worried about his decision to take a level pension and asked to repay the increase, with interest, in order to reinstate his original pension. He was informed that he could not.

CS was concerned that the VPO repayments were considerably in excess of the amount of uplift received. As at 2012, the uplift amounted to a total of £11,707,20 and the repayments to £30,078.84. He brought a claim to the Pensions Ombudsman that the trustees of the Scheme had breached their fiduciary duty by failing to operate the VPO is a fair and reasonable way. In particular by:

- failing to explain the VPO clearly so that CS had sufficient information to make a fully informed decision on whether to take up the VPO based on his personal circumstances; and

- failing to ensure that, within the parameters of cost-neutrality for the Scheme, the factors used were fair and reasonable.

At the time of the complaint he was 76.

Decision

The Pensions Ombudsman noted that "it was not for the [trustees] to provide [CS] with financial advice, but to provide him with sufficient information to enable him to select the option appropriate to his personal circumstances at the time he needed to make a choice." On the evidence, the Ombudsman was satisfied that it had been made clear to CS that, if he took up the VPO, his pension would be subject to a permanent reduction from state pension age.

Further, the Pensions Ombudsman concluded that the trustees had "at least adequately" reviewed the VPO on a number of occasions between 1984 and 2006, including taking actuarial advice in relation to both the factors and the terms of the VPO. They had made decisions taking account of relevant factors, bearing in mind their duties under the Scheme as a whole.

Therefore, CS's complaint was not upheld.

Comment

The Ombudsman confirmed that trustees are only under a duty to provide sufficient information for members to make informed benefit choices. Trustees are not required to give members advice (and indeed may be prevented from doing so under FSA rules).