

Pensions law – the week in review

8 June 2009

AT A GLANCE

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- New Government Department

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- 2009/10 Preparers, Insurance and Pension levies announced

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1 NEWS

1.1 Cabinet reshuffle

It has been announced that Yvette Cooper will be the new Secretary of State for Work and Pensions. Ms Cooper replaces James Purnell, who resigned immediately before last week's cabinet reshuffle.

Elected to Parliament in 1997, Ms Cooper is MP for Pontefract, Castleford and Knottingley. She has held several ministerial positions, including most recently, Chief Secretary to the Treasury.

To view the full list of cabinet members, please click on the link below:

<http://www.number10.gov.uk/Page19517>

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1.2 New Government Department

The Government has created a new department for Business, Innovation and Skills (BIS), whose key role will be to “build Britain’s capabilities to compete in the global economy”. The Department has been created by merging the existing Department of Business, Enterprise and Regulatory Reform (BERR) with the Department for Innovation, Universities and Skills (DIUS).

The new department is “the institutional realisation of the approach to promoting UK competitiveness and productivity” as set out in the New Industries, New Jobs paper of April 2009, produced by BERR and DIUS. The aims of the new department are, among other things, to:

- advocate the needs of business (especially of small UK businesses) across government;
- design tailored policies for sectors of the UK economy that represent key future strengths and where government policy can add to the dynamics of the market; and
- assess the changing skills needs of the UK economy, especially the intermediate and high skills vital in a global economy and design policies to meet them through public and privately funded life long training.

To access the new department’s press release (which includes a full list of BIS’ objectives), please click on the link below:

<http://www.berr.gov.uk/aboutus/pressroom/page51711.html>

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2 FINANCIAL REPORTING COUNCIL (FRC)

2.1 2009/10 levies announced

The FRC, the UK's independent regulator responsible for promoting confidence in corporate reporting and governance, has published the final rates for its preparers, insurance and pension levies for 2009/10. This follows a consultation carried out in December 2008 on two types of FRC levy:

- the “preparers” levy, which is paid by publicly traded companies and other entities with turnover of more than £1 billion and which is used to fund the FRC's responsibilities for accounting, auditing and corporate governance; and
- the FRC's levies on the actuarial profession, insurance companies and pension schemes in relation to their responsibilities for actuarial standards and regulation.

The insurance and pension levies are required to meet the cost of the FRC's activities in relation to actuarial standards and regulation and are funded by the actuarial profession, the insurance sector and the pension sector. In this context, the “pensions sector” means the pension schemes which are subject to the Pension Regulator's (TPR) general levy and includes occupational, personal and public sector schemes. In 2009/10, a levy of £3.00 per 100 members will apply to such schemes which have 1,000 or more members, using the latest information on scheme membership provided to TPR in scheme returns. There will be a minimum levy of £30.

The FRC's press release and levy paper can be accessed by clicking on the links below:

<http://www.frc.org.uk/press/pub1992.html>

<http://www.frc.org.uk/images/uploaded/documents/2009-10%20Levies4.pdf>

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3 LOCAL AUTHORITY PENSION FUND FORUM (LAPFF)

3.1 Governance Reform Agenda

The LAPFF has published a “statement on the financial crisis” which it hopes will “encourage the ongoing process of governance reform, and give companies a clear idea of what leading institutional shareholders are thinking.”

In its statement, the LAPFF notes that poor governance is one of a number of factors which has contributed to the present economic climate. It also considers that it is essential during such times for companies to strive “to maintain the highest standards of corporate governance”.

The steps that the LAPFF intends to take include:

- engaging with the UK’s banks, to ascertain what has gone wrong and how current issues will be addressed;
- seeking to improve the quality of boards, strengthening the role of non-executives and taking steps to prevent companies from using the challenging economic conditions to relax compliance with the Combined Code on corporate governance;
- working to ensure that remuneration arrangements are structured in the best long-term interests of shareholders and reforming executive pension arrangements; and
- extending its focus on the capabilities and competencies of fund managers in respect of environmental, social and governance (ESG) issues, including research into the role of fund managers in the run-up to the economic crisis, with particular focus on voting and engagement activity.

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The LAPFF's press release and statement can be accessed by clicking on the links below:

<http://www.lapfforum.org/news/425.html>

http://lapfforum.org/pubs/reports/LAPFF_statement_on_the_crisis_may09.pdf

4 CASES

4.1 Curran v IBC Pension Trustees Limited (Pensions Ombudsman)

The Pensions Ombudsman (PO) has upheld a complaint where there was insufficient evidence to demonstrate that trustees had gathered and considered enough information before reaching a decision in relation to the distribution of a lump sum death benefit. In addition, the trustees had failed to document their decision or to explain it to the widow who brought the complaint.

Background

Mr C was a member of the IBC Vehicles Pension Plan (the Plan) until his death in service in 2007. Under the Plan rules, the trustees had discretion to pay a lump sum death benefit to one or more of the "Named Class" or to the member's personal representatives. "Named Class" was defined to include any spouse of the member or any child of the member or his spouse.

At the time of his death, Mr C was married. He and his wife had five children, of whom three were in foster care; the other two had been adopted as babies. Mrs C appeared to be living with a new partner, but there was no explanation of her living arrangements, which remained unconfirmed.

Following a meeting in September 2007, at which the trustees heard oral evidence from the employer's occupational health therapist, they decided to distribute the lump sum equally between the member's five children. There were no documents relating to the decision.

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Decision

The PO concluded that it was maladministration for the trustees to have made their decision in such an informal way.

He found that the evidence that the decision was based on was inadequate, as the only documents to have been considered in addition to the oral presentation were two emails from the occupational health therapist. In addition, these emails had only been considered by two members of the trustee board. There was no evidence that the trustees had considered any other papers or information before reaching their decision, and they had not recorded any reasons for their decision. The PO also concluded that the information in the emails was not adequate information on which to make a proper decision. In particular, he took issue with the fact that the explanation of statements made by the member's parents had not been recorded and the fact that very little information had been given about the financial position of the potential recipients.

The PO commented that while the decision was one which the trustees could have reached - it was not an impossible or automatically perverse conclusion - he considered it to be unusual. And in the circumstances, it was not a safe decision.

The trustees were therefore ordered to ask Mrs C to provide further information to enable them reconsider their decision within 28 days of the determination. Provided Mrs C then responded to their requests for information within 28 days, the trustees would be required to make a fresh decision as to who should receive the lump sum death benefit and to communicate that decision to Mrs C. They were also ordered to inform Mrs C of their reasons and to provide an explanation of what they had taken into account in reaching their decision.

Comment

This decision serves as a reminder to trustees that when exercising a discretion under a scheme's rules, they must consider all relevant information and construe both the scheme rules and the law correctly, before coming to "a decision which any decision maker could reach when presented with the same circumstances (that is, a decision which is not perverse)". Although trustees need to do this in a timely manner, it is important that they take enough time to enable them collate and consider all relevant information before attempting to come to a decision.

Although there is a general trust law principle that members are not entitled to see documents which disclose the reasons for trustees' decision-making, since the determination in Allen¹ in 2002, the PO has consistently made it clear that failure to disclose reasons for exercising a discretion could be considered to be maladministration and that trustees and employers should give reasons for their decisions.

¹ TKM Group Pension Scheme: Complainant Mr C Allen. Ref L00370 (determined 24 April 2002)