Sackers extra

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SO7

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
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

Kay Review of equity investment: Panel announced

In June 2011, the Government announced an independent review, to be led by Professor John Kay, into the effect of UK equity markets on the competitiveness of UK business.

The terms of reference for the review include examination of the mechanisms of corporate control and accountability provided by UK equity markets and their impact on the long-term competitive performance of UK businesses, and to make recommendations.

Members of the advisory board for the Kay Review were announced on 3 August 2011. Professor John Kay has asked Sir John Rose, former Chief Executive of Rolls-Royce plc; James Anderson, Partner and Manager at Baillie Gifford; and Chris Hitchen, Chief Executive of the Railways Pension Trustee Company and Chairman of the Pensions Quality Mark, to help shape his recommendations.

The advisory board will investigate the way in which investors, shareholders, regulators and the boards of UK-listed companies can best serve the long-term interests of British businesses and the economy. Among other things, the review will examine the investment chain - from company boards, through pension advisers and fund managers, to the ultimate beneficiaries - and make recommendations to ensure the UK is home to successful companies with access to the capital they need.

Now that membership of the advisory board has been confirmed, it will start work ahead of the launch of a formal consultation in the autumn. An interim report is due to be published in early 2012, with final conclusions and recommendations for Government expected to follow in summer 2012.

BIS Press Release

DEPARTMENT FOR WORK AND PENSIONS

Pensions Bill 2011: Impact assessment published

The DWP has published an updated version of its summary of impacts for the pension reform provisions contained in the Pensions Bill 2010-11.

Measures in the Bill which are covered by the latest impact assessment summary include: the increase of the state pension age to 66; automatic enrolment; the move from RPI to CPI for increases to pensions in payment and deferment; and changes to pensions protection legislation concerning the PPF and TPR.

Differences in life expectancy between generations

The DWP has published an analysis of life expectancy, illustrating the chance of living to age 100 for those aged 25, 50 and 80, both in 2011 and at birth.

The analysis, which is based on 2008-based statistics from the Office for National Statistics, indicates that:

- twenty year olds are three times more likely to reach 100 than people of their grandparent's age (80 year olds) and roughly twice as likely to reach 100 than people of their parent's generation (50 year olds); and
- a baby born in 2011 is almost eight times more likely to reach 100 than one born in 1931. A baby girl born this year has a one in three chance of living to 100 and a baby boy has a one in four chance.

Commenting on the differences in life expectancy between the generations, Minister of State for Pensions Steve Webb said that "the dramatic speed at which life expectancy is changing means that we need to radically rethink our perceptions about our later lives …we will live longer and we will have to save more."

In 2066, it is predicted that there will be at least half a million people aged 100 or over.

DWP Press Release

THE PENSIONS REGULATOR

Automatic enrolment: Employers' awareness, understanding and activity

TPR has published a report of research which looks employers' awareness of the workplace pension reforms which will start to apply from October 2012.

Starting with larger employers first (based on the size of their PAYE scheme), employers will be required to enrol 'eligible jobholders' into a qualifying pension arrangement and pay contributions.

The research indicates that 39% of employers surveyed were aware (unprompted) of the forthcoming changes to pensions law that will apply to UK employers, with 22% aware that they must offer a pension under the new legislation and 6% aware (again, unprompted) of the contribution requirement. These figures increased when employers were read out five key features of the reforms.

The majority of employers agreed with the principles behind automatic enrolment, with 61% agreeing that its introduction is a good idea for their employees. However, 74% of all employers surveyed reported that they had not yet discussed the issue.

CASES

The rule in Hastings Bass: Leave to appeal granted in *Pitt v Holt* and *Futter v Futter*

On 1 August 2011, permission was granted to appeal the decision of the Court of Appeal of *Pitt v Holt* and *Futter v Futter*[1] (heard jointly).

The Court of Appeal decision was handed down in May 2011 and set out the correct formulation of the principle in *Re: Hastings-Bass*[2]. The court held that acts which are

[1] EWCA Civ 197
[2] [1975] Ch 25

outside the scope of trustees' powers are void, but that failing to take account of a relevant factor, or taking into account an irrelevant factor, merely makes a trustee decision voidable provided that it also amounts to a breach of a fiduciary duty. It also held that trustees will not be in breach of their fiduciary duty if they follow professional advice, even if that advice turns out to be wrong.

As yet no date has been announced for the appeal. The Supreme Court is currently in recess and will return in October.

For more on the Court of Appeal's decision, please see our Newsletter: "What is the rule in *Hastings Bass*?" (May 2011).

Ms J W Jones v JLT Benefit Solutions Limited (Pensions Ombudsman)

The Deputy Pensions Ombudsman (DPO) has upheld a complaint against a scheme administrator in relation to a few days' delay in completing a transfer request.

Background

Mr Ingram asked JLT Benefit Solutions (JLT) for a transfer value in May 2009. JLT sent him a statement quoting a transfer value of £30,050 on 13 July 2009. He was also informed that if he wished to proceed he needed to complete the transfer and discharge form and send a copy of the receiving scheme's Inland Revenue approval letter.

On 28 August 2009, Legal & General (L&G) wrote to JLT on Mr Ingram's behalf, requesting the transfer with the relevant form completed. This was received by JLT on 3 September. However, it then took until 21 September for JLT to inform L&G that the necessary Inland Revenue approval letter was still needed. The requisite letter was sent, and received by JLT on 25 September. It appears that, due to staff illness, the request for the trustees to authorise a cheque was delayed and in the meantime, on 9 October, Mr Ingram died.

As Mr Ingram was a deferred member of the scheme at the time of this death, Ms Jones (his wife) was offered spouse's benefits (i.e. a refund of contributions of £1,922 and pension of £926 p.a.). However, Ms Jones claimed that, had the transfer been effected before Mr Ingram's death, she would have received greater benefits from the personal pension nominated in the transfer request.

JLT claimed that, among other things, the manual cheque requisition process for the purposes of completing the transfer would typically have taken two weeks and they would not have been able to transfer the funds prior to 9 October. It also claimed that there was no breach of any specific service level agreement for transfer value payments and that it was clearly within the statutory time limits.

The Deputy Pension Ombudsman's decision

The complaint against JLT was upheld: there had been maladministration.

The DPO concluded that there had been sufficient time for the transfer to be carried out, whether looking at the period 3 September to 8 October as a whole or whether looking at the period from 25 September (when the receiving scheme's Inland Revenue approval letter - the last item necessary to proceed with the transfer - was received) to 8 October.

The DPO specifically considered that it should not take more than five working days to raise and issue a cheque, meaning that it should have been paid before Mr Ingram's death.

JLT was required to compensate Ms Jones for the difference in value between her spouse's benefits paid under the scheme and the amount of the transfer value. JLT was also directed to pay £150 for distress and inconvenience.

Comment

This case highlights the risk of delays in carrying out transfers, even where the period of delay appears quite short. It also serves as a reminder that the Pensions Ombudsman will not simply look at whether statutory time limits or contractual service standards have been breached before deciding whether a delay constitutes maladministration.

Trustees and administrators should be aware that there are very real risks in letting even a few days pass without carrying a transfer request from a member.