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

DEPARTMENT FOR WORK AND PENSIONS

Bridging pensions: Alignment with State Pension Age

In the 2012 Budget, the Government announced its intension to legislate (in the Finance Bill 2013) to align the tax rules on the payment of bridging pensions with forthcoming DWP changes to the state pension age (SPA). Currently, bridging pensions are subject an upper age limit of 65, under the Finance Act 2004 (the Act).

The Pensions Minister, Steve Webb, has now issued a written ministerial statement, stating that the Government will introduce a limited power for the trustees of schemes which currently provide bridging pensions within the terms of the Act to amend their schemes' rules (if they wish to do so) to take account of later SPAs. This easement is designed to assist the trustees of schemes with difficult amendment powers, who may otherwise find themselves unable to amend their bridging pension rules to track changes in SPA.

DB Pensions to peak in 2012

According to DWP statistics which look at the evolution of the average payment to pensioners from DB pension schemes between 2007 – 2060, the average amount paid from DB schemes will reach the highest ever level this year and will fall in subsequent years. The DWP notes that average DB pension in payment is set to peak at around £7,100 per year towards the end of 2012 and will fall to just about £2,400 by 2060.

The DWP's modelling tool assumes that there will be no new entrants to private sector DB schemes after 2018. The DWP notes that this is largely consistent with the assumptions of the Government Actuary's Department for DWP modelling "that there will be only a very small stock of private sector workers contracted out of Defined Benefit schemes by 2018 with virtually no contracted-out DB provision remaining in the private sector by the 2030s".

DWP Press Release

State pension increases for 2012/13

The DWP has announced that, from the week commencing 9 April 2012, the average weekly state pension payment for 2012/13 is estimated to be £124 - an increase of £6 from last year. This includes both the basic and additional state pension. The basic state pension will increase from £102.15 to £107.45 a week.

The DWP notes that the £5.30 per week increase in the basic state pension is the biggest ever cash increase in the basic state pension, representing a rise of 5.2%. It puts the basic state pension at 17.3% of average earnings.

According to DWP figures, the Government's triple guarantee - that it will uprate the basic state pension by the highest of earnings, prices or 2.5% - will mean that the average person reaching state pension age in 2012/13 can expect to receive an additional £15,000 in basic state pension over their retirement.

DWP Press Release

HM REVENUE & CUSTOMS

Accounting for tax (AFT) guidance updated

HMRC has published a revised version of its Accounting for Tax Guidance (APSS 302) following changes made by the Finance Act 2011. This guidance relates to the completion of the AFT return by pension scheme administrators (which may be a scheme's trustees). New guidance is included on:

- the payment of the new serious ill–health lump sum charge (introduced in conjunction with the removal of the requirement to annuitise at age 75); and
- the payment by a scheme of a member's annual allowance (AA) charge (known as "scheme pays"), following the reduction of the AA to £50,000 from 6 April 2011.

Pension Schemes Online: System updates

HMRC made a number of changes to its Pension Schemes Online service with effect from 6 April 2012. The updates include the ability to report:

- the reliance, by individuals, on their fixed protection certificates;
- the payment of AA charges using scheme pays; and
- flexible drawdown payments.

THE PENSIONS REGULATOR

Consultation procedures for TPR's Case Team and Determinations Panel

On 3 April 2012, TPR announced the publication of two consultations on the procedures for its case team and Determinations Panel (the Panel).

The consultation on the Case Team procedure covers a range of matters, including:

- the issue and contents of a "warning notice", which invites parties potentially subject to TPR's powers to respond to its case; and
- subsequent steps culminating in a decision whether or not to put the case to the Panel to make a determination.

The Panel is also consulting on proposed revisions to the procedure that it follows in reaching decisions. This includes more detail on the "special procedure" which allows the Panel to make an initial determination without giving parties prior notice, where there is a need to act urgently to protect the interests of members or pension scheme assets.

TPR notes that, read together with the relevant parts of the Pensions Act 2004, these two procedures represent an end-to-end process as to how TPR will progress cases relating to its "reserved powers".

TPR Press Release

CASES

Woodcock v Cumbria Primary Care Trust (Court of Appeal)

The Court of Appeal has confirmed that a dismissal which prevented an individual from qualifying for an enhanced pension was not discriminatory on age grounds as it was objectively justified.

Background

Mr Woodcock was the Chief Executive of the North Cumbria Primary Care Trusts (PCT). Following a reorganisation of PCTs in the North West in 2006, Mr Woodcock's post disappeared and he was unsuccessful in securing a new position.

Realising that Mr Woodcock was due to reach age 49 in June 2007 and that if notice was not given before then he would become entitled to an enhanced early retirement pension (at a cost of c. £500,000), the Trust dismissed him without formal consultation.

Mr Woodcock brought claims to the employment tribunal for compensation for unfair dismissal and for discrimination on the grounds of age.

Employment Tribunal (ET) decision

The ET dismissed the unfair dismissal claim. It found that, although the Trust had discriminated against Mr Woodcock on age grounds, this treatment was justified.

Employment Appeals Tribunal (EAT) decision

The EAT allowed the appeal against the unfair dismissal claim as the PCT had not followed the correct statutory procedure. However, it agreed with the ET's decision that, although there had been discrimination on age grounds, the treatment was justified.

The EAT considered that the PCT's decision to issue the notice of dismissal was direct age discrimination. It was clear that had Mr Woodcock been turning 48 there would have been no problem with his notice period as he would not have reached 50 at the end of it. The PCT's aim was to bring about Mr Woodcock's dismissal for redundancy and to prevent the additional costs arising associated with his attaining age 50 (namely an entitlement to an enhanced pension) before the end of his notice period.

The EAT noted that avoidance of cost could not in itself be a legitimate aim (*Cross v British Airways Plc*[1]). However, a discriminatory act to avoid an employee receiving a windfall can be a legitimate aim (*Loxley v BAE Systems*[2]).

The EAT was of the view that preventing Mr Woodcock becoming entitled to a "windfall benefit" and avoiding the corresponding loss to the PCT was a legitimate aim "going beyond the mere wish to reduce costs". It therefore concluded that Mr Woodcock's accelerated dismissal was objectively justified.

[1] [2006] 26 PBLR - [2006] EWCA Civ 549

[2] [2008] 84 PBLR - [2008] ICR 1348

Court of Appeal

The Court of Appeal agreed that the PCT's treatment of Mr Woodcock was not aimed solely at saving or avoiding costs. The dismissal notice had been served with the aim of giving effect to the PCT's genuine decision to terminate Mr Woodcock's employment on the grounds of redundancy. This was a legitimate aim. It was also a legitimate part of that aim for the Trust to time the dismissal to save costs. In addition, in the Court's opinion, Mr Woodcock had "no right [...] to the enjoyment of the enhanced benefits" that he would have received had he remained in employment with the PCT to age 50. Therefore had he become entitled to them at this stage, "he would have been the beneficiary of a pure windfall".

The Court was satisfied that the treatment was a proportionate means of achieving a legitimate aim. Although Mr Woodcock had been deprived of his right to consultation, in the circumstances, such consultation would have achieved nothing; there was no suitable alternative position available. Ultimately therefore, he was not deprived of anything of value.

Comment

Comments made by the EAT in relation to the doctrine that "costs alone" cannot be a legitimate aim, led to speculation that the doctrine might be weakened or even removed by this decision. This is not the case. While the Court of Appeal acknowledged "some degree of artificiality" in the required approach, it confirmed that an employer will need more than a saving or avoidance of costs to have a legitimate aim capable of justifying discrimination.

Although employers may be disappointed that they still cannot justify discrimination on cost grounds alone, this decision is helpful for its acknowledgement of the role that costs can play.