

**09 May 2011**

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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

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## DEPARTMENT FOR BUSINESS INNOVATION & SKILLS

### Employers guidance for new agency laws

The Government has published [guidance](#) to help employers prepare for the introduction of new rights for agency workers.

[Regulations](#) come into force on 1 October 2011 which will give agency workers the right to the same basic employment and working conditions as if they had been recruited directly by a company if they complete a 12 week qualifying period in a job.

Although the regulations do not give agency workers rights to occupational pensions (as these are excluded), they will be covered by automatic enrolment when it is phased in from October 2012.

[Press notice](#)

## DEPARTMENT FOR WORK AND PENSIONS

### New measure of pensioner poverty announced

A new way of measuring older people's quality of life has been introduced by the Government on 9 May.

A 'material deprivation' indicator for pensioners will capture wider elements of everyday life that many people take for granted but are in fact key indications of older people's quality of life.

Pensions Minister, Steve Webb said:

"Income is very important, which is why restoring the earnings link for the basic State Pension was one of the first things the Coalition did when it came to power. However, we want to be able to take a more rounded view. This new indicator raises important questions about how Government and wider third-party organisations could go beyond the issue of income to help transform lives. This is early days, but we are piloting ways to help older people overcome social isolation."

The indicator uses a set of fifteen goods, services and experiences which are judged to be the discriminators of deprivation – such as whether someone can replace a cooker, take a holiday away from home or go out socially at least once a month.

[Press Release](#)

## NATIONAL EMPLOYMENT SAVINGS TRUST

### Employer and Member Panel Chairs appointed

Nest Corporation has appointed the first Chairs of its Employer and Member Panels:

- Paul Jagger MBE has been appointed Chair of the Employer Panel; and
- Museji Takolia CBE has been appointed Chair of the Member Panel.

The Employer Panel is intended to provide a communication channel between the business world, employers who use NEST and the NEST Trustee. The Member Panel will be involved in representing the views of NEST scheme members and future scheme members to the Trustee.

The Chairs will now be involved in the selection process for their first Panel Members.

[Press release](#)

## PENSIONS POLICY INSTITUTE (PPI)

### Briefing note on proposed state pension reforms

The PPI has published a [briefing note](#) on the recent proposals issued by the Government in its Green Paper on state pension reform.<sup>1</sup>

## CASES

### Singapore Airlines v Buck Consultants<sup>2</sup>

In this case, Singapore Airlines (the “Employer”) failed to prove that Buck Consultants were negligent for including certain employee payments in the definition of “Earnings” when amending the trust deed and rules of the Singapore Airlines Pension and Life Assurance Scheme (the “Scheme”).

#### *Background*

The Employer claimed damages from Buck Consultants for negligence in relation to their drafting of a deed (the “2000 Deed”) which amended the trust deed and rules of the Scheme dated October 1981 (the “1981 Rules”).

The Employer alleged that the 2000 Deed had made certain employee payments pensionable which had not been intended to be pensionable. This had increased members’ benefits in the Scheme and therefore the Employer’s liability to pay the balance of the cost of those benefits.

The debate concerned three types of emolument:

- “13 month payments” – payment of an additional months’ pay at the end of each calendar year;
- “London Weighting Allowance” (“LWA”) – paid to staff living in the London area. Regularity of these payments varied; and
- benefits in kind, taxed as emoluments since 1976.

<sup>1</sup> Please see our Sackers Extra Alert: [“A State Pension for the 21<sup>st</sup> century”](#) dated 6 April 2011

An important element in the negligence action was the precise scope of members' entitlements under the 1981 Rules. Therefore, as a preliminary issue, the court was asked to determine what emoluments received by employees of the Employer were "Earnings" for the purposes of the calculation of "Pensionable Earnings" and "Final Pensionable Earnings" under the 1981 Rules.

### ***Decision***

Peter Smith J explained that "the meaning of the words in the 1981 Rules is to be derived from a consideration of the wording alone". He was not persuaded by the Employer's argument that Inland Revenue Statements from the same period or even the original 1976 trust deed and rules (the "1976 Deed") would provide him with much assistance in determining the questions before him. Neither was the way in which such emoluments had been treated during the history of the Scheme considered relevant to the question of construction.

In making his decision, the judge reviewed the 1981 Rules. The primary definition of "Earnings" was the same as that in the 2000 Deed and, in the court's opinion, provided for the inclusion of fluctuating emoluments.

The judge acknowledged that LWA was specifically included in the definition of "salary" in the 1976 Deed. Although the definition of "Earnings" did not specifically mention LWA, he considered it unlikely that the draftsman of the 1981 Rules would have intended retrospectively to remove benefits by his drafting, when he had no power to do so. For this reason, he decided that LWA should be included. As he had no basis for distinguishing LWA from 13 month payments, he concluded that that too should be included. This brought both within the definition of "Earnings" in the 1981 Rules.

Finally, he could find nothing in the 1981 Rules which indicated that only some fluctuating emoluments were to be included within the definition of Earnings. In his opinion, the fact that certain fluctuating emoluments might be difficult to ascertain (but not impossible) was irrelevant, not least because a number of such calculations would have already been done for the purposes of income tax.

The judge therefore concluded that the 2000 Deed accurately represented the definition of "Earnings" in the 1981 Rules and the claim was dismissed.

### ***Comment***

Ultimately, although it was a victory for the draftsman of the rules, this case reminds us of the importance of both clear and concise drafting of scheme documentation as well as careful analysis of previous rules in place.

Drafting issues have been in the spotlight recently with *Futter v Futter* casting doubt on the correct formulation of the rule in *Re: Hastings Bass*. Given the financial pressure on pension schemes, pension scheme rules which have the effect of uplifting benefits will continue to be under intense scrutiny.

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<sup>2</sup> [2011] EWHC 59 (Ch)