Sackers extra

13 August 2012

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S07

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

HM REVENUE & CUSTOMS

Updated guidance on calculating maximum drawdown for female pensioners

On 2 March 2011, in the *Test-Achats* case,[1] the ECJ ruled that, with effect from 21 December 2012, an exemption in a European Directive (the "Gender Directive") which permits insurers to use sex as a determining factor in their assessment of risk, where it is based on "relevant and accurate actuarial and statistical data", will no longer be valid.[2]

The ruling applies to annuity rates for men and women where the annuity purchase is covered by the Gender Directive - broadly, where the purchase is made by the individual without the involvement of their employer or an occupational pension scheme.

It is not yet certain how annuity providers will implement the decision in practice. HMRC states that, until the position becomes clearer, providers should calculate the maximum drawdown pension for both men and women aged 23 and over using the higher male rates from 21 December 2012. On 8 August 2012, HMRC updated its guidance about drawdown pensions accordingly. The change means that, from 21 December:

- women will be able to take higher drawdown pension income than before; and
- men will see no change in the maximum drawdown pension they can receive.

Drawdown tables

PENSION PROTECTION FUND

New Levy Framework: Be prepared for 2012/13 invoicing

This is the first year of the PPF's new levy framework.[3] To help pension schemes understand their invoices (which are due from September onwards), the PPF has published some new materials, including:

- an updated guide to the Pension Protection Levy 2012/13, which explains the main changes introduced this year. These include: the introduction of smoothing and stressing of assets and liabilities, and changes to the way in which insolvency risk is calculated;
- sample invoices; and
- updated "FAQs".

[1] Association belge des Consommateurs Test-Achats ASBL (Case C-236/09)

[2] Please see our Alert: "Is it the end of the road for sex based actuarial factors?" (dated 2 March 2011)

[3] Please see our Alert: "Pension Protection Levy 2012/2013: Don't leave it until the last minute" (dated 18 November 2011)

Information for Trustees about the Specialist Administration Services Panel (SASP)

As part of the on-going development of its "Assess & Pay" programme, on 2 August 2012 the PPF launched an SASP.[4] The SASP is intended to:

- help reduce the length of time that schemes are in assessment or wind-up;
- enable trustees to work with a small core of experienced experts;
- encourage best practice within a specialised group;
- produce transparency on costs and services being delivered; and
- leverage expertise and set standards in administration.

On 9 August 2012, the PPF published a letter for trustees of schemes that are in, or which are expected to go into, an assessment period, outlining what will happen next regarding the appointment of the SASP.

THE PENSIONS REGULATOR

Auto-enrolment guidance updated

TPR has published updated versions of its detailed guidance, which is aimed at large employers with in-house pensions expertise and those with a sound knowledge of pensions, and professional advisers.

TPR notes that the updates take account of recent DWP regulations which amend the staging dates for smaller employers, as well as the DWP's guidance on the certification of DB and hybrid schemes.[5]

CASES

Jacinth Kelly and others v Fraser (Privy Council)

This case demonstrates the importance of clarity when trustees are delegating their powers.

Facts

Mr Fraser was a member of the Salaried Staff Pension Plan (the "SSPP"). The trust deed and rules of the SSPP vested the management and administration of the SSPP in the trustees, but delegated the day-to-day administration to the Employee Benefits Division ("EBD") of the sponsoring employer.

The transfer-in rule gave the trustees "sole discretion" to refuse a request to transfer benefits to the SSPP from another pension scheme.

Mr Fraser had a pension arrangement from a previous employment. He discussed transferring his benefits from this scheme to the SSPP with the person responsible for the EBD (Mr Masters), following which a letter requesting a transfer of his benefits was then received by his former scheme. When the transfer was made, Mr Masters sent Mr Fraser

[4] For more information, please see 7 Days dated 6 August 2012

[5] For more information, please see 7 Days dated 9 July 2012 and 16 July 2012

a letter confirming this. Accruals to the transferred funds were notified to Mr Fraser in successive benefit statements.

The trial judge found that the trustees of the SSPP were not aware of the transfer request or the actual transfer of the funds.

The SSPP subsequently wound-up in surplus. The surplus was distributed to members in proportion to each person's benefit entitlements. The trustees argued that, as they had not approved the transfer, only Mr Fraser's benefits from his active membership of the SSPP should be taken into account.

Decision

The Privy Council concluded that the trustees must take into account his transferred-in benefits, as well as the benefits from his pensionable service in the SSPP.

The reasons given were that:

- the trustees had delegated the SSPP's administrative functions to the EBD. This must have included communicating with members and confirming members' entitlements;
- while Mr Masters never professed to have authorised the transfer, the SSPP could not have operated if he did not have authority to write letters informing members that transfers of funds had been accepted; and
- the transferred-in funds were accepted by the SSPP and Mr Fraser was notified of subsequent accruals.

Comment

This case serves as a useful reminder for trustees of the potential pitfalls of delegation.

When entrusting actions to scheme administrators, or even a sub-committee of a trustee board, it is imperative that trustees make clear the extent of the powers being transferred.