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

ACTUARIAL PROFESSION

Longevity Bulletin

The Actuarial Profession has launched a new publication, the "Longevity Bulletin".

The Bulletin, which will be published every six months, aims to provide a regular overview of research into longevity trends and a guide to prospects for long life.

The first edition looks at the findings of a new comparison of a range of international projections of future longevity. These include:

- uncertainty about the future range of longevity
- large differences in projected lifespan across countries
- expectation that females continue to live longer than males.

DEPARTMENT FOR BUSINESS INNOVATION & SKILLS (BIS)

Proposals for reform of parental leave and flexible working

Today the Government launched a consultation on plans to introduce a new system of flexible parental leave from 2015.

The consultation includes the following proposals:

Flexible Parental Leave

- 18 weeks maternity leave and pay – in one continuous block around birth.
- Four weeks of parental leave and pay exclusive to each parent to be taken in the first year.
- 30 weeks of additional parental leave available to either parent - of which 17 weeks would be paid and can be broken in blocks between parents.

Flexible Working

- Extending the right to request for all workers who have been with their employer for 26 weeks.

- The Government will consider publishing a statutory Code of Practice for businesses and will propose that employers should be allowed to take into account employees' individual circumstances when considering conflicting requests.

- There are no plans to alter the current 8 business reasons for a business to turn down a request.

- The Government recognises that legislation is not the only answer to promoting flexible working practices. Non-legislative measures are being developed to promote flexible working opportunities both for those with a job and for those looking for one.

Equal Pay

- Employment Tribunals that have found an employer to have discriminated on gender in relation to pay, will order the employer to conduct a pay audit and publish their results. Except in some circumstances, such as where an audit has already been conducted.

Press release

Consultation: Supporting documents

DEPARTMENT FOR WORK AND PENSIONS

Revised auto-enrolment and pension reform factsheet

The DWP has published a revised factsheet on Automatic Enrolment and Workplace Pension Reform.

The document provides information for employers about the forthcoming changes and their role in the changes.

HM TREASURY

Treasury sets out how Equitable Life Payment Scheme will work

The details of how the Government scheme to make payments to Equitable Life policyholders will work were published by Mark Hoban MP, Financial Secretary to the Treasury today.

The Equitable Life Payment Scheme design document sets out:

- the Scheme rules;

- the Scheme administration and timetable;

- the methodology behind loss and payment calculations;

- the Scheme's approach to making payments;

- the details of the queries and complaints procedure; and

- the plans for communicating with policyholders.

In line with the Financial Secretary's ambition to start making payments by the middle of this year, the Scheme is on track to make the first payments before the end of June.

Press Release

PENSION PROTECTION FUND

New levy framework

The PPF has announced details of its new pension protection levy framework which will take effect from 2012/13.

Key features of the new framework include:

- fixing levy rules for three years to provide the certainty levy payers have asked for;
- averaging funding levels so that short-term volatility in financial markets is not reflected in the measure of underfunding risk;
- reflecting investment risk in the levy calculation for the first time; and
- a system of ten insolvency rating bands, an increase from the six originally proposed. This responds to industry concerns that six bands would create "cliff-edges" where schemes could possibly face large levy rises.

The PPF has also issued a consultation on its draft guidance on how to calculate a bespoke measurement of investment risk. Comments should be submitted by 24 June 2011.

Press release

Fraud compensation levy

The Fraud Compensation Fund ("FCF") was established under the Pensions Act 2004 to provide compensation to occupational pension schemes, with insolvent employers, that suffer a loss that can be attributable to an offence involving dishonesty. The FCF is funded from the Fraud Compensation Levy. This levy is raised, when appropriate, from all UK defined benefit and defined contribution pension schemes.

The Board has decided, for 2011/12, to raise a Fraud Compensation Levy. The levy will be charged at the rate of 25p per scheme member.

The amount of levy payable is calculated by reference to the total number of members of the scheme on the last day of the scheme year before the beginning of the previous financial year. So for the levy year 1 April 2011 to 31 March 2012, the reference point for many schemes is likely to be 31 March 2010.

Invoices are being billed by TPR on the Board's behalf and include details of how to query the invoice if you believe an error has been made.

CASES

The Michelin Pension and Life Assurance Scheme

The PPF Ombudsman has determined that the PPF should reconsider its levy calculation in respect of the Michelin Pension and Life Assurance Scheme (the "Scheme") for the 2008/09 pension protection levy.

Background

In multi-employer schemes the insolvency risk taken for the calculation of the PPF's risk-based levy is based on a weighted average of the employer's insolvency probabilities. The weighting given to each employer depends on the proportion of members attributable to the employer.

The Board of the PPF may review a scheme's levy "where it subsequently appears to the Board that the information upon which the calculation was based was incorrect in a material respect…information is not incorrect for this purpose where it is correct and legitimate in itself, but it would have been open to the person supplying it to have supplied some different or additional information which might have caused this Schedule [to the levy determination] to be applied differently". In a footnote the Board explains that it may take steps to correct validated data in "appropriate cases, including (without limiting the exercise of the Board's discretion) any case in which a scheme would otherwise be advantaged by the submission of inaccurate information".

The Facts

The Scheme has four participating employers. Historically, the Scheme's actuary allocated individuals who were paid pensions following the death of an employee or former employee (the "Dependant Members") to the largest employer. This was the case in the Scheme's January 2008 return to TPR.

In previous years no issue had arisen as each employer had a similar insolvency risk score. However, on receipt of its levy invoice in September 2008, the Scheme's trustee realised that, for that year, had the Dependant Members been allocated differently, the Scheme's risk-based levy would have been considerably less (an estimated saving of £660,000).

In October 2008 the trustee applied for a review of the levy calculation and submitted a revision of the allocation of members to TPR.

Under the Board of the PPF's determination for the financial year 2009/10, the data to be used remained as in the determination for the previous levy year. It was therefore based on information held by TPR on 31 March 2008. This was done deliberately to allow the levy scaling factor ("LSF") to be calculated and published in the determination for the year. This meant that schemes would know in the preceding November what their levy would be for the following financial year. The result for the Scheme was that their risk-based levy was again significantly higher than it would have been had a different allocation of Dependant Members been used.

The trustee also applied for a review of the 2009/10 levy calculation.

The Board's Reconsideration Committee

On 29 June 2009, the Board's Reconsideration Committee (the "Committee") decided that the data for the 2008/09 levy year was "correct and legitimate in itself" and therefore there was no discretion for it to exercise. However, it also considered whether it would have exercised discretion of the information had been incorrect and decided that it would not.

In reaching its conclusion it noted its published policy not to generally accept corrections for the year. In summary, the reasons for this policy were:

- if corrections were accepted there was a higher risk that the Board would under collect against the levy estimate as the LSF could only be based on information provided to the Board by the relevant deadline;
- building in a margin of error to the LSF to mitigate against risk of under collection against the levy estimate would inherently lead to all schemes being disadvantaged, which was felt to be inappropriate; and
- it was reasonable to expect schemes to provide the correct data at the right time, in particular as this was the third year for which data was being submitted for pension protection levies.

In respect of the 2009/10 levy year the Committee concluded that the data was incorrect but did not consider it appropriate to exercise its discretion to review the levy. It did not believe there was anything sufficiently unusual in the circumstances of the case to justify a departure from the general policy of not taking account of corrections to Scheme Maintenance System data requested after 31 March 2009.

The trustee brought the case to the PPF Ombudsman.

PPF Ombudsman's decision

The Board asked the Ombudsman to proceed on the basis that the data was incorrect for both years, that it exercised its discretion for each year and decided not to review the levy.

The Ombudsman considered whether the Committee's decision was reached correctly, i.e. whether its exercise of discretion took into account all relevant factors and no irrelevant ones and whether the Committee exercised it in a way that such a body, acting reasonably, could.

In the Ombudsman's opinion, the Committee was wrong to decide (as it had accepted), in relation to the 2008/09 levy calculation, that the information was correct. This conclusion meant that the Committee's consideration of its discretion in relation to the 2008/09 levy was hypothetical. Its reason for not accepting the correction to the information was wrong. Therefore, the Ombudsman concluded that the decision was reached incorrectly.

However, the Ombudsman considered that the Committee's decision relating to the 2009/10 levy year was reached correctly. It found that the Board's policy reasons were sufficient to justify adhering to the policy other than exceptionally and the trustee had not been able to make out a case that the Board should have taken into account anything that it did not.

Directions

The Board was directed to reconsider the calculation of the 2008/09 levy based on the information and submissions that were available at the time of the Committee's decision of 29 June 2009, but on the basis that the information as at 31 March 2008 was incorrect. Following the reconsideration, the Board must then revoke and replace its decision with a new decision and give clear reasons for the decision.

Comment

It is unusual for the PPF Ombudsman not to uphold the PPF's actions. However, in its decision it noted that "on neither occasion…was the decision one that no reasonable body could reach in any circumstances. There are policy reasons that would support not allowing a correction". It therefore seems likely that in its new decision the PPF will come to the same conclusion.