Sackers extra

# 21 February 2011

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### 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

# BANK OF ENGLAND

## Clothing and footwear prices: impact on inflation

The Office for National Statistics (ONS) started to implement changes to the way in which clothing and footwear prices are collected in January 2010, to address the fact that previous collection practices picked up the seasonal falls in prices during the winter and summer sales, but did not fully capture the recovery in prices after sales had finished.

The latest monthly inflation report from the Bank of England (for February 2011) suggests that the impact of those changes on Consumer Prices Index (CPI) inflation (assuming that UK CPI clothing prices were on average unchanged between 1997 and 2009) means that clothing prices were around 5.5% a year higher than measured in the CPI, equivalent to adding 0.3 percentage points to aggregate annual CPI inflation.

The changes to clothing price collection methods are likely to have a larger impact on RPI inflation than on CPI inflation because RPI is calculated using an arithmetic mean to aggregate individual prices into a single price index, while CPI uses a geometric mean.

Recent press reports have speculated that pensions for pensioners and deferred members of occupational pension schemes do not reflect the true inflationary position. But we understand that the DWP has confirmed that, despite the Bank of England's announcement, official figures are not to be recalculated, meaning the previously published figures remain valid for past increases.

# EMPLOYERS FORUM ON AGE (EFA)

## Age discrimination: Seldon granted leave to appeal to the Supreme Court

The EFA has announced that the Supreme Court has granted leave to appeal to Mr Leslie Seldon, who claims that he was the subject of unlawful age discrimination. The case concerns a partnership's ability to justify its use of compulsory retirement at age 65, which was found by the Court of Appeal to be objectively justifiable and therefore not discriminatory.

Although the Default Retirement Age (DRA) never applied to partnerships (and its removal[1] cannot affect the outcome of this case), the case remains relevant because of its focus on objective justification of compulsory retirement ages. Following the repeal of the DRA, any compulsory retirement will be assessed by reference to the same objective justification test as is disputed in this case, in other words, whether the retirement is a proportionate means of achieving a legitimate aim.

Mr Seldon's case is being supported by the Equality and Human Rights Commission.

[1] For more information on the removal of the DRA, please see our Alert: "The bell tolls for the Default Retirement Age" dated 17 January 2011

For background to this case, please read our summary of the Court of Appeal decision.

# EUROPEAN UNION

### European Parliament vote on EU Green Paper on Pensions

The European Parliament has adopted the Oomen-Ruijten report at the European Parliament on the European Commission's Green Paper "Towards adequate, sustainable and safe European pension systems".

The report puts forward a number of policy proposals for EU pension systems, including the issue of Solvency II standards applying to occupational pension schemes, as well as recommendations to support later working and flexible employment/retirement schemes and an EU wide tracing service to assist internationally mobile employees.

The application of Solvency II style insurance standards to occupational pension schemes now seems less likely following the comments of Chris Verhaegen, Secretary General of the European Federation for Retirement Provision. On receipt of the report she commented: "My reading of the Parliament's work is that there is no and will be no majority in Europe to apply Solvency II type of quantitative requirements to [occupational pension schemes]."

The adoption by Parliament of this report draws the Commission's consultation period on the Green Paper to a close.

European Parliament Press Release

# FINANCIAL SERVICES AUTHORITY (FSA)

### FSA issues statement on the Gender Directive

On 14 February 2011, the FSA published a statement on the European Gender Directive[2] and the forthcoming decision of the ECJ in *Association Belge des Consommateurs Test-Achats ASBL and others.*[3] The ECJ is expected to deliver its judgment on 1 March 2011.

The Advocate General (AG), in her opinion delivered on 30 September 2010, considered the use of actuarial factors based on sex to be incompatible with the principle of equal treatment for men and women. For details of the AG's opinion, please see our case report.

Although the ECJ is not bound to follow the AG's opinion, it is unusual for it not to do so. Should the ECJ declare the use of sex based actuarial factors unlawful, the effect on insurance contracts, including annuities, could be considerable.

The FSA notes that if the opt-out is deemed to be incompatible with EU law, the outcome may have implications for insurance firms, advisers, intermediaries and consumers. It explains that the product areas most likely to be affected by such an outcome are:

- motor insurance;
- term life insurance;
- private medical insurance;
- critical illness insurance; and

[2] Directive 2004/113/EC

[3] Case C-236/09

- annuity products.

While the FSA does not expect firms to make any immediate changes to their policies, or to communicate proactively with customers or prospective customers before 1 March 2011, it does expect any immediate concerns or queries raised by consumers to receive a response.

The FSA intends to publish further information once the judgment becomes available.

# HM REVENUE & CUSTOMS

### Drawdown pension tables published

HMRC has published its 2011 Drawdown Pension tables and guidance for calculating the maximum income from drawdown pension funds.

The tables are used for working out the “basis amount” for calculating the maximum income from drawdown pension funds, unsecured pension funds and alternatively secured pension funds.

There are two sets of drawdown pension tables. The appropriate table will depend on when the reference period for the drawdown pension or unsecured pension started and, for those aged 75 or over, when the drawdown pension year or alternatively secured pension year started.

http://www.hmrc.gov.uk/pensionschemes/gad-tables.htm

# PENSION PROTECTION FUND

### PPF announces changes to Valuation Assumptions

The PPF is responsible for keeping the assumptions used for valuations under sections 143 and 179 of the Pensions Act 2004 (used to determine whether the PPF should assume responsibility for a scheme or taken into account when calculating a scheme’s risk-based levy respectively) in line with estimated pricing in the bulk annuity market.

The PPF has today (21 February 2011), announced that it is considering, subject to consultation, making changes to these assumptions in the light of:

- the Government’s proposed change to the measure of inflation used for indexing PPF compensation from RPI to CPI; and

- recent developments in the buy-out market.

The PPF intends to introduce these changes for valuations with an effective date on or after 1 April 2011. It anticipates that the changes proposed to the assumptions will potentially lead to a small increase in the number of schemes transferring to the PPF, but has stated that it does not expect the financial effect to be particularly significant.

The consultation closes on 21 March 2011.

PPF Press Release

### Closed Scheme valuation guidance published

The PPF has also today published guidance for actuaries carrying out a valuation of a Closed Scheme under section 156 of the Pensions Act 2004.

According to the PPF, there are currently between 10 and 20 schemes operating as Closed Schemes, some of which will shortly be due to carry out a section 156 valuation.

## THE PENSIONS REGULATOR

### TPR clarifies role of audit in record-keeping

As part of TPR's current focus on administration issues in pension schemes, on 17 February 2011, TPR published a statement for trustees setting out what they should expect of their statutory auditors in relation to record-keeping. TPR also published a guide for trustees to assist them in discussions with their administrator around data to ensure that records are present, accurate and properly maintained.

In its statement, TPR highlights the fact that trustees should not assume that their statutory scheme audit will inform them of the quality and accuracy of their member data. It explains that this is because there is no statutory obligation for auditors to consider controls or risks (other than those associated with the financial transactions reports in the financial statements. It also sets out the steps that trustees can take to ensure they have the information needed to take further action if necessary.

TPR Press Release