Sackers extra

23 August 2010

At a glance

EUROPEAN FEDERATION FOR RETIREMENT PROVISION

- Working group to examine EU Pensions Green Paper

HM TREASURY

- Public invited to vote on savings suggestions

NATIONAL ASSOCIATION OF PENSION FUNDS

- NAPF publishes submission to Government review of 2012 pension reforms

PENSIONS POLICY INSTITUTE

- PPI publishes submission to DWP review of State Pension Age

SOCIETY OF PENSION CONSULTANTS

- Framework for the establishment and operation of DC schemes

CASES

- Catchpole v Trustees of the Alitalia Airlines Pension Scheme and another (High Court)

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
FAS: Financial Assistance Scheme
NEST: National Employment Savings Trust
HMRC: HM Revenue & Customs
PPF: Pension Protection Fund
TPR: The Pensions Regulator

EUROPEAN FEDERATION FOR RETIREMENT PROVISION (EFRP)

Working group to examine EU Pensions Green Paper

We reported in 7 Days on 12 July 2010 that the European Commission has launched an EU-wide consultation, to gauge views as to whether, and how, the European pensions framework should be adjusted to provide the best support for Member States to allow them to achieve their agreed goal of adequate and sustainable pensions for EU citizens.

The EFRP (the European umbrella body for the National Association of Pension Funds) has now established a special working group to:

- provide information on the Green Paper;
- stimulate the debate in Europe on pensions; and
- explain to European citizens what the EU is doing to promote adequate, sustainable and safe pension systems in Europe.

The group will focus specifically on the Green Paper's proposals on the security of workplace pensions, which suggest a revised solvency regime for workplace pensions and a Europe-wide system to guarantee pension benefits (the role fulfilled in the UK by the PPF).

The group's website provides an overview of all the relevant information related to the Green Paper consultation process, and invites those interested to join their online debate.

HM TREASURY

Public invited to vote on savings suggestions

The general public is being asked to vote to find the best ideas from over 44,000 submitted to the Treasury as part of the public engagement through the Spending Challenge website.

The suggestions cover a wide range of aspects of Government spending, including defence, welfare and the environment. Pensions-related suggestions include:

- the reduction of the annual allowance from £255,000 to £5,000;
- a move away from final salary pensions in the public sector;
- linking pension age to life expectancy; and
- the simplification of welfare benefits generally.

The most promising ideas will be taken forward as part of the Spending Review process, which will set budgets for public services for the next four years.

Voting closes on 31 August 2010.

HM Treasury Press Release

NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

NAPF publishes submission to Government review of 2012 pension reforms

One of the Coalition Government's first announcements concerning pensions was that it would review the former Labour administration's planned reforms of workplace pensions. This review is being conducted over the summer and the Government is due to report on its conclusions and recommendations by 30 September 2010.

The NAPF has this month published its submission to the review, in which it responds to key points in the review's terms of reference.

The NAPF considers the scope of auto-enrolment to be broadly correct, and does not see the case for any fundamental change. However, it does make some suggestions which are designed to help the Government focus on the detail of auto-enrolment.

These include a number of easements aimed at benefitting good quality existing schemes, without putting the 2012 objectives at risk, for example:

- a change in the definition of "qualifying earnings" to one based on basic earnings so that it fits with the way most schemes currently operate;
- allowing a three-month waiting period, instead of requiring auto-enrolment from day one; and
- allowing employers greater flexibility to determine their own staging dates, so that these fit with other employer activities, such as payroll cycles. It is currently envisaged that the auto-enrolment obligation will apply to larger employers first, with the duty phased-in for smaller employers in accordance with the staging dates set out in regulations.

The NAPF notes that "pension providers have been unable to develop a model for reaching smaller employers and people on lower incomes at a reasonable charge, and there is little enthusiasm for replacing NEST in the pensions industry". It considers that "the objectives of the reforms are best served by continuing with NEST, as NEST is more likely to be ready on time than any new alternative".

PENSIONS POLICY INSTITUTE (PPI)

PPI publishes submission to DWP review of State Pension Age

The Government is also reviewing the proposed rise in the State Pension Age (SPA), and in June 2010 published a call for evidence (which closed on 6 August 2010).

The PPI has recently published its submission to this review, in which it outlined its analysis and evidence. Among other things, the PPI concludes that:

- the primary driver behind increasing the SPA should be to recognise improvements and potential future improvements in longevity;
- on PPI calculations, if policymakers want to keep the proportion of adult life in receipt of the state pension constant at 2010 levels of 33% of adult life, the SPA would need to rise to 66.5 by 2030. By contrast, the SPA would need to rise to 72 by 2030 to keep the proportion of adult life in receipt of the state pension constant at 1981 levels;
- the Government should take account of various factors when considering the timing of future increases in the SPA, including economic activity rates at older ages, employers' attitudes to employing older workers and inequalities in life expectancy / healthy life expectancy; and
- there must be recognition of the fact that individuals will need time to adjust their behaviour to any increases in SPA.

SOCIETY OF PENSION CONSULTANTS (SPC)

Framework for the establishment and operation of DC schemes

The SPC has published a basic framework which is designed to assist scheme sponsors in the setting-up and operation of DC pension arrangements (both trust and contract based).

The framework covers the three main stages of a scheme - establishment, operation and decumulation - looking at features such as contribution levels, scheme governance and communications.

While the document does not aim to set out legal obligations or to dictate best practice, the SPC's intention is to help scheme sponsors meet these goals.

CASES

Catchpole v Trustees of the Alitalia Airlines Pension Scheme and another (High Court)

This appeal against a determination of the Pensions Ombudsman (PO) is the first successful pensions estoppel case for many years.

Background

Mr Catchpole (C) lived with his long-term partner, Ms Brahja (B), until her death in September 2007.

B was a member of the Alitalia Pension Scheme (the Scheme). In March 2004, she wrote to the Scheme Secretary to enquire what C's status would be in connection with death benefits under the Scheme. She asked, in particular, for clarification of the definition of "Spouse", and whether B and C needed to be legally married for C to receive death benefits from the Scheme in the event of B's death.

A response was issued the same day by Ms A-H, the personnel services specialist at B's employer. She stated that for the purpose of B's enquiry, "spouse" included a person who was "living with the member as his spouse". This was however incorrect, as the Scheme rules only provided for a pension to be paid to a person who was legally married to the member, or if there was no such person, to a person who was "…wholly or mainly dependent on the Member for maintenance and support…". The definition of spouse quoted in Ms A-H's letter only applied for a limited purpose and not for the purposes of the rule which provided for a spouse's pension.

B had generally been in good health until 2004, when she suffered from weight loss following the death of her uncle and was consequently signed off work for an extended period. In 2007 B was diagnosed with depression and prescribed appropriate medication. Later that year she developed jaundice and was admitted to hospital on 13 August. In September her condition was diagnosed as terminal and she died on 24 September.

C applied to the trustees of the Scheme (the Trustees) for a spouse's pension. He was informed that he had no right to a spouse's pension under the Scheme and, following an invitation to provide documentary evidence to provide documentary evidence to demonstrate his dependency to claim a discretionary dependants' pension, his claim was rejected by the Trustees.

In May 2009, C complained of maladministration on the part of the Trustees to the PO. In the evidence provided to the PO, C asserted that he and B would have married, had they been informed in 2004 that this would have affected C's entitlement to a pension, as B and C had no principled objection to marriage. Ms A-H was also of the view that B and C would have married (and this was recorded in trustee meeting minutes).

The PO upheld the Trustees' decision and dismissed C's complaint in January 2010. C appealed to the High Court.

Decision

In the High Court, Warren J found the PO's decision to be one which, on the evidence before him, was not one he could properly have reached. He found that the only proper conclusion which could be drawn from the evidence was that B and C would have married had they known of the true position under the Scheme rules.

As such, "the necessary classic ingredients for an estoppel by representation" were established:

- there was a clear representation on behalf of the Trustees by which they were bound to the effect that C would be entitled to a spouse's pension;
- B and C would have married "but for" the incorrect information received; and
- the opportunity to put matters right was lost when B died - before she and C had appreciated the true position. In Warren J's opinion, C would suffer detriment unless the Trustees were held to their misrepresentation so as to treat him as a spouse for the purpose of the benefits payable on B's death.

Warren J went on to note that although the letter in 2004 from Miss A-H was sent to B, C could now assert an estoppel as B's request could be seen as having been made on behalf of both of them and/or that the response was intended to one on which both of them could rely. The Trustees were therefore estopped as against C from denying that he was not her spouse for the purposes of the relevant Scheme rule.

Secondly, C could argue that B was entitled to, and did, rely on the Trustees' representation and as a result they did not marry. Even if the representation was not made to C directly, he clearly knew about it. Warren J stated that it "would be unconscionable now, when [B] was no longer alive so that there is no possibility of her eliminating the adverse consequences of the misrepresentation by marrying, for the Trustees to assert as against [C] that he is not to be treated as a spouse".

Although the scheme was in deficit, and provision of a benefit outside the Scheme rules in these circumstances may adversely affect the interests of other beneficiaries, Warren J held that those interests did not justify a departure from the conclusion that it would be unconscionable for the Trustees to deny C's claim. Warren J also noted that, although it might be said that C's claim was really only against the persons who were trustees at the time of the misrepresentation, their successors would continue to be bound by the representation, as it could be seen as a representation becoming "institutionalised" within the trust.

Comment

This case, the first in recent years to allow a successful pensions estoppel claim, serves as a stark reminder of the need to check scheme rules closely when communicating with members about their entitlement to benefits.