

Pensions law – the week in review

25 May 2009

AT A GLANCE

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- New service for local authority pensions specialists

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1 DEPARTMENT FOR WORK AND PENSIONS (DWP)

1.1 DWP Business Plan - 2009/10

The DWP has published its Business Plan for 2009/10. This seeks to build on the three year plan published earlier this month¹, which sets out the DWP's "key strategic challenges" over that period. The 2009/10 Business Plan sets out what the DWP intends to deliver in the first of those three years.

In respect of the reform of State and occupational pensions, the DWP notes that:

- it has begun the preliminary work relating to the implementation of state pension reform from 2010 (for example the increase in the State Pension Age for women from 60 to 65, which is being phased in from 2010, and the increase in the State Pension Age for men and women from 65 to 68, which is being phased in from 2024); and

¹ For more information, please refer to 7 Days dated 11 May 2009

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- that it will put in place an effective communication strategy to help individuals, employers, employees and the pension industry to understand the reforms covered in the Pensions Act 2007 and the Pensions Act 2008.

To view the 2009/10 Business Plan, please click on the link below:

<http://www.dwp.gov.uk/publications/dwp/2009/business-plan2009-2010.pdf>

2 NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

2.1 New service for local authority pensions specialists

The NAPF has launched a new information and support service, “LA PensionsConnection”, which is aimed at advisers and others involved in local government pensions.

The service, which is free and exclusive to NAPF members, is intended to provide “direct access to the latest developments and thinking on local authority pensions”. Membership benefits include:

- A specialist website - including online polls, surveys, presentations and a discussion forum.
- Quarterly newsletters - featuring latest news, views and interviews.
- Free subscriptions to *NAPFnews*, *LAPF Investments* magazine and *PolicyWatch*, the NAPF's fortnightly pensions e-newsletter.
- A free place for local authority fund members at the 2009 NAPF Annual Conference and Exhibition.

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To view the NAPF's press release and to access the LA PensionsConnection website, please click on the links below:

[NAPF Press Release](#)

<http://www.napf.co.uk/LAConnection/>

3 CASES

3.1 Colorcon Ltd v Huckell and others (High Court)

The High Court has recently granted an application for rectification where there was a mismatch between the scheme rules and actual practice in the context of revaluing deferred pensions.

Background

Final salary benefits of deferred members of the Colorcon Ltd Staff Benefits Plan (the Scheme), were revalued by the annual rate of the increase in the Retail Price Index (RPI) subject to a cap of 5% (known as Limited Price Indexation or LPI). However, following the appointment in 2002 of Gissings to provide actuarial and administration services to the Scheme, the new Scheme actuary (appointed in March 2004), when familiarising himself with the Scheme's rules, noticed a discrepancy between this practice and the wording in the rules. Instead of providing for revaluation at 5% LPI, the rules specified an annual increase of 5%.

The company argued that its understanding was that revaluation should always have been based on LPI, and that when the Scheme rules were adopted in 1996, neither they nor the trustees had intended for revaluation to be at a fixed rate of 5%. The parties' intentions were clearly reflected in other Scheme documents, including different versions of the Scheme booklet (prepared both before and after the 1996 rules came into effect), actuarial valuations and the Scheme's annual reports. It was not until the preparation of the 2003 actuarial valuation (in June 2004), that the discrepancy was highlighted.

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The company sought an order for rectification of the Scheme rules, to bring them into line with its understanding and existing practice. It is noteworthy in this case that the company made its application by way of summary judgment rather than a full hearing.

Rectification and the test in Scania v Wagner

Rectification is a remedy which is available through the courts, which results in the intended effect of a deed being written into it and the mistake in the drafting being corrected. Significantly, it is effective from the date of the deed, so that the rectified wording is deemed to have been in the deed all the time.

The judgment in this case includes a useful summary of the principles of the law of rectification from the 2007 case of *Scania v Wagner*. Broadly, these are that:

- documents relating to pension schemes (whether trust deeds, rules, or amendments to either) are “as amenable to rectification as any other document with a legal effect”;
- it must be shown that the relevant employer(s) and the trustees shared the same intention; and
- rectification will only be granted “if there is convincing proof on the balance of probabilities, that the employer and the trustees held the requisite common intention as to the meaning or effect of the relevant documents.”

On the question of “convincing proof”, there had been debate in earlier cases as to whether there needed to be “an outward expression of accord” between the parties. However, in 2006² this was determined to be more “an evidential factor rather than a strict legal requirement in all cases of rectification”.

² In the case of *Munt v Beasley* [2006] EWCA Civ 370

The judge also noted that, following *Gallaher*³ in 2005, “it is permissible to have regard to events after the transaction is entered into as evidence of the parties’ intention at the time of the transaction and (where required) as objectively manifesting that intention”.

Decision

Satisfied that the tests in *Scania* were met, the judge made an order for rectification of the Scheme rules. He found that:

- at the time the 1996 rules were entered into, the company and the trustees shared the intention that revaluation should continue at the rate of RPI, capped at 5%. There was no evidence that either party intended to change the pre-existing rate to a fixed revaluation rate of 5%;
- on the balance of probabilities, there was convincing evidence that “the employer and the trustees held the requisite common intention that this was intended to be the effect of the relevant documents”;
- there was no requirement to demonstrate “an outward expression of joint accord” when the rules were entered into in 1996 - the documents approved by the trustees since that date provided sufficient proof; and
- rectification “would give effect to the relevant intention and would cure the defect in the existing Rules.”

Comment

Because of the “formidable body of evidence” demonstrating the common intention of the company and the trustees, the court was able to order rectification on a summary judgment basis. Indeed, the defendant representing the deferred members of the Scheme did not defend the claim and could see no basis for a successful challenge to the evidence. The parties were therefore saved the significant time and expense that would have been involved in taking the case to full trial.

³ *Gallaher v Gallaher Pensions* [2005] 04 PBLR - [2005] EWHC 42 (Ch) - for a summary of this case, please see 7 Days dated 31 January 2005