Sackers extra

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At a glance

LEGISLATION

- Britain says no to European Solvency II rules for pensions as Commission announces delay

HM REVENUE & CUSTOMS

- Salary sacrifice Q&A

FINANCIAL REPORTING COUNCIL (FRC)

- FRC to consult on executive remuneration

FINANCIAL SERVICES AUTHORITY (FSA)

- Annual report for 2011/2012

LAW COMMISSION

- Annual Report 2011/12

NATIONAL EMPLOYMENT SAVINGS TRUST (NEST)

- New campaign: "Tomorrow is worth saving for"

PENSION PROTECTION FUND

- Dun & Bradstreet failure scores
- Leaflet on the fraud compensation fund

THE PENSIONS REGULATOR

- Auto-enrolment compliance approach
- Recovery plans of UK defined benefit and hybrid schemes

CASES

- Dalriada v Woodward

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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
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

DEPARTMENT FOR WORK AND PENSIONS

Britain says no to European Solvency II rules for pensions as Commission announces delay

The European Commission is reviewing the Institutions for Occupational Retirement Provision (IORP) Directive which provides the EU framework within which funded occupational pension schemes are regulated. The Commission has said it wants to harmonise the rules governing pensions with Solvency II capital rules for insurance.

On 21 June 2012, the Pensions Minister, Steve Webb, issued a press release, confirming that "the Government remains resolute it will fight EU plans to apply Solvency II funding rules to pensions".

The statement explains:

> "The Government is adamant there is no "one size fits all" model for pensions across EU member states and had made this clear in Parliament and to the European Commission. The European Commission has said it is listening and has just announced an extension to its timetable. However this prolonged uncertainty still means that schemes are increasingly unsure about their long term investment strategies.
>
> If Solvency II rules were imposed they would affect all private sector companies offering [DB] schemes in Britain, which represent around half the private pension assets in this country, with liabilities of about £1,200 billion.
>
> The Commission says its aim is to improve the efficiency and occupational retirement provision across the EU ensuring a level playing field between insurance firms and better pension protection. But the Government argues that there are fundamental differences between insurance products and pensions and Britain already has comprehensive protection in place.
>
> The Commission says changes are needed to remove barriers to workers mobility and portability of pensions. But European studies show only 1.5 per cent of workers live in different a member state from their country of origin. And only 4 per cent of Europeans ever moved to another Member State and only 18 per cent moved outside their region."

As noted in 7days,[1] TPR is encouraging the UK pension sector to play a full role in responding to the European Insurance and Occupational Pensions Authority's (EIOPA) consultation document on technical specifications which will inform EIOPA's quantitative impact study.

[1] See 7days dated 18 June 2012

HM REVENUE & CUSTOMS

Salary sacrifice Q&A

HMRC has updated its Q&A document on salary sacrifice arrangements in order to add additional information on workplace pension schemes and auto-enrolment.

FINANCIAL REPORTING COUNCIL (FRC)

FRC to consult on executive remuneration

The FRC has announced that it will consult on whether to amend the UK Corporate Governance Code to address a number of issues relating to executive remuneration. The consultation will be carried out after the Government's legislation on voting and reporting on executive remuneration has been finalised.

The FRC will consult on two proposals that the Government has asked it to consider:

- to extend the Code's existing provisions on claw-back arrangements; and
- to limit the practice of executive directors sitting on the remuneration committees of other companies.

It will also seek views on whether companies should engage with shareholders and report to the market in the event that they fail to obtain at least a substantial majority in support of a resolution on remuneration.

FINANCIAL SERVICES AUTHORITY (FSA)

Annual report for 2011/12

The FSA has published its annual report for 2011/12. The report reviews the FSA's performance during 2011/12 against its five key objectives:

- executing the Government's regulatory reform programme;
- executing a credible deterrence and enforcement approach throughout 2011/12;
- delivering the FSA's financial stability objective;
- delivering efficient, clean, orderly and fair markets that remain attractive and sustainable; and
- continued progress in developing a new consumer protection strategy.

The FSA will be replaced by the Financial Conduct Authority and Prudential Regulation Authority in 2013.

Press release

LAW COMMISSION

Annual Report 2011/12

The Law Commission has published its forty-sixth annual report.

NATIONAL EMPLOYMENT SAVINGS TRUST (NEST)

New campaign: "Tomorrow is worth saving for"

NEST has launched a national campaign to ask consumers what makes "tomorrow worth saving for" on the back of new research which shows that millions are not saving through fear of making mistakes.

The campaign is aimed at raising awareness of NEST and automatic enrolment.

PENSION PROTECTION FUND

Dun & Bradstreet failure scores

On 25 June 2012, the PPF published a press release advising schemes that Dun & Bradstreet (D&B) has now completed the majority of the quality assurance process work on the average failures scores from April 2011 to March 2012 that will be used for the PPF risk based levy. The final score allocated to each of the employers in a scheme will be the one that appears on the scheme's PPF invoice.

The scores are now available and can be obtained by contacting D&B directly on 0870 850 6209, by emailing them with "PPF" in the title of the email to customerhelp@dnb.com, or by using their online contact form.

Leaflet on the fraud compensation fund

The PPF has published a new leaflet on the fraud compensation fund (FCF). The 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 became operational on 1 September 2005 and replaced the former Pensions Compensation Board. It applies to most DB and DC occupational pension schemes. It does not apply to state retirement pensions.

"All you need to know about the fraud compensation fund" describes what the FCF is and how claims can be made.

THE PENSIONS REGULATOR

Auto-enrolment compliance approach

In the Pensions Act 2008, TPR was given a new statutory objective; to maximise compliance with employer duties (including the requirement to automatically enrol eligible employees into a qualifying pension provision and pay a minimum contribution) and with certain employment safeguards.

On 20 June 2012, TPR published its "compliance and enforcement" strategy and policy for auto-enrolment. It explains how it will use its powers and includes details on the approach it will take to prosecutions and inspecting business premises.

TPR intends to provide information and support so that employers know what they need to do to fulfill their new duties and enable them to take action at the right time. However, employers who fail to comply with their new duties may be subject to statutory notices, penalties or escalating fines.

In addition to the requirement to auto-enrol, from July 2012 all employers will be banned from offering incentives to their workers to opt-out of an auto-enrolment pension. This will include refusing to employ someone because they want to join the company pension scheme. TPR will consider using powers against employers where there is evidence of this behaviour. To help detect behaviour of this sort, TPR will provide a whistleblowing facility, through which confidential reports of suspected non-compliance can be made.

Press release

Recovery plans of UK defined benefit and hybrid schemes

TPR has published an update to its annual report on the funding of UK DB and hybrid schemes which are in deficit on a Technical Provisions basis. The report is based on recovery plans submitted by schemes to TPR.

This June 2012 statistical release follows the December 2010 report[2] on the technical assumptions underpinning recovery plans and the June 2011 report[3] on funding and other forms of scheme security.

CASES

Dalriada v Woodward

Following on from the recent decision in Dalriada Trustees Limited v Faulds[4], this is the latest in a run of litigation on "pensions liberation" arrangements.

Background

The Pennines and the Mendip Retirement Benefit Schemes (the "Schemes") were established as occupational pension schemes for the sole purpose of providing pensions and lump sum benefits for their members. In each case, Mr Woodward and Ms Ilett were the trustees (the "Trustees").

Facts

The Schemes were established as part of a "pensions liberation" plan. Members of other occupational and personal pension schemes were to be encouraged to transfer their benefits to one of the Schemes. The sums would then be invested by the Trustees and, ultimately, used to fund:

- a loan to the member if they wanted one; and
- the investments held by the company which provided the loans.

[2] See 7days dated 20 December 2010

[3] See 7days dated 4 July 2011

[4] [2011] EWHC (Ch) 3391. See 7days dated 9 January 2012

TPR appointed Dalriada Trustees Limited ("Dalraida") as trustee to the Schemes on 28 March 2012.

Dalriada brought claims against the Trustees that they had acted in breach of trust as:

- the purpose of the investments was not the provision of pensions and lump sum benefits, meaning they were outside of the scope of the Trustees' powers;
- the true purpose of the investments was to facilitate loans to the members of the Schemes which was a fraud on the power of the Schemes purportedly exercised in making them; and
- the loans were "unauthorised payments" within the meaning of the Finance Act 2004 (the assets were being used to provide a benefit to the members other than a payment by the Schemes) and therefore prejudiced the Scheme's registered status; and
- the investments breached the Occupational Pension Schemes (Investment) Regulations 2005.

Accordingly the investments were void and Dalriada applied for their return.

Decision

The Trustees' (as defendants to the action) claimed that, as the schemes were DC, only the members' had any rights in respect of their individual "pots" and therefore only a member could bring a complaint. For this reason, Dalriada had no causes of action on which it could rely and no real prospect of success in the action so it should be summarily dismissed.

The judge concluded that, "a member of the [Schemes] is not the sole beneficiary of a sub-trust. He is one of many beneficiaries entitled to benefits from the trust assets, the rate or amount of which is ascertainable in accordance with the rules and by reference to the amount credited to his account for contributions made by or in reference to him and investment returns thereon. It must follow from that conclusion that applications of the assets of the scheme as a whole are the responsibility of the trustees, not the members individually or collectively".

The Trustees' application for summary judgment was dismissed. The case will now go to full trial.