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

DEPARTMENT FOR WORK AND PENSIONS

Review of regulatory differences between trust and contact based pensions

The DWP has today (31 January 2011) issued a call for evidence to review the regulatory differences between trust-based occupational pension schemes and contract-based workplace personal pensions.

In 2010, the report of the independent review team on Government plans for the introduction of automatic enrolment, "Making automatic enrolment work"[1], recommended an urgent review of "the scope for regulatory arbitrage between the trust and contract based regulatory environment."

As a result, the current consultation seeks evidence and views on:

- whether regulatory differences could influence behaviour in a way which may jeopardise the workplace pension reforms' objectives of increasing persistent saving for retirement; and
- for each issue identified, what the possible solutions could be to help ensure automatic enrolment is successful and that the pensions industry is supported by an appropriate legislative framework.

The consultation focuses in particular on: short service refunds; trivial commutation rules; and disclosure.

The DWP describes this consultation as "the first step towards ensuring that the legislative framework for workplace pension schemes is straightforward and supports the goals of increasing individuals' retirement savings."

The consultation closes on 18 April 2011.

HM REVENUE & CUSTOMS

Normal minimum pension age (NMPA): Draft regulations

NMPA is the earliest age at which a member's pension benefits can be taken under a registered pension scheme without higher tax charges applying. On 6 April 2010, the general position changed so that NMPA increased from age 50 to 55 (although pensions can still be paid from an earlier age if a member has a "protected pension age" or because of ill-health).

However, legislation (unintentionally) imposes an unauthorised payments tax charge where an individual who is aged 50 and over but under age 55 transfers their pension in payment to another pension provider or changes to a different type of pension. To address this, HMRC has published draft regulations (which were originally announced by the Government

[1] Published 27 October 2010

in July 2010). The draft regulations also cover situations where an individual buys a scheme pension or an annuity using funds from an unsecured pension fund.

Both sets of regulations will be backdated to cover transfers made on or after 6 April 2010.

Comments on the draft statutory instruments are requested by 21 February 2011.

More information on these changes is set out in Pension Schemes Newsletter 44 (reported in 7 Days on 3 January 2011).

The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) Regulations 2011 (draft regulations)

The Registered Pension Schemes (Transitional Provisions) (Amendment No...) Order 2011 (draft order)

HM TREASURY

Report of the Independent Commission on Equitable Life Payments

On 26 January 2011, HM Treasury published the report of the Independent Commission on Equitable Life Payments (the Commission).

The Commission was established in July 2010, to provide advice to the Government on how best to allocate the £775 million fund for Equitable Life members, which was announced in the 2010 Spending Review. The Commission was also asked to identify any groups/classes of persons which should be paid as a priority. It was asked not to advise on With-Profits Annuitants and their estates, as a decision to pay these in full was made at the Spending Review.

Commission recommendations

The Commission recommended that the £775 million should be allocated as follows:

- a pro rata allocation in proportion to the size of Relative Losses* (equivalent to 22.4% of non With Profit Annuity policyholders' Relative Losses), mainly on the grounds that the Commission considered no group of policyholders to merit favourable treatment at the expense of others;
- a single policyholder view, so that, wherever practicable, relative gains are offset against relative losses for those with more than one policy; and
- a minimum amount, in the region of £10, beneath which payments should not be made. This is to reflect the fact that payments below this amount would be disproportionate to the administrative costs of making them.

*Relative Loss is defined in the Government's Methodology as the difference in the value of a notional policy which the policyholder might have held had they made an investment in a similar product in a comparator company's with-profits fund and the value of the actual Equitable Life policy.

In addition, the Commission recommended that the oldest policyholders be prioritised in the order of payment (as they are least able to wait for payment and are also least likely to be in a position to mitigate the effects of a delay). It also recommends the prioritisation of the estates of deceased policyholders and, as far as possible, the estates of those who die, before receiving a payment, in the next three years. These recommendations are intended to prevent delays to beneficiaries receiving payments when they might be at their most vulnerable and to reflect the difficulties that could arise from prolonging payments owed to the estates of deceased policyholders.

Next steps

The Government has accepted the principles recommended by the Commission. The next stage is for it to determine how those principles can best be applied in practice, while allowing the Government to begin making payments as soon as possible.

The Government intends to publish a document detailing the design of the payments scheme, as well as setting out practical implications, such as the timetable for making payments and the complaints and challenges procedure. The scheme design document is expected to be made available for Parliamentary scrutiny in the spring.

HM Treasury Press Release

PENSION PROTECTION FUND

PPF announcement on 2012/13 levy framework

The PPF has today (31 January 2011) confirmed its intention to implement the new levy framework from 2012/13. Although the details have yet to be finalised, the PPF has made this announcement with a view to enabling schemes to meet levy deadlines and provide accurate data. A policy statement is due in the spring.

The announcement comes in the wake of industry calls for an early announcement on the PPF's intentions, so that schemes can take them into consideration when meeting deadlines for providing the information needed to calculate future levies.

Because of the expected move to a new framework, the new deadline for submitting scheme information for the 2012/13 levy is 31 March 2012. As currently, there will be later deadlines for submitting deficit reduction certificates and block transfer information, again in 2012.

Schemes still need to provide up-to-date information by **31 March 2011**, as the PPF will use this to set the levy scaling factor (which schemes use to calculate their individual levy bills) for the first three years under the new framework.

In addition, if the PPF implements transitional protection, this will be based on employer insolvency scores as at 31 March 2011.

PPF Press Release

Equalisation of Guaranteed Minimum Pensions (GMPs): PPF announces its next steps

On 25 January 2011, the PPF published a consultation on the equalisation of GMPs for PPF compensation and FAS assistance purposes.

Differences in compensation or assistance payments for men and women can arise as a result of GMPs, primarily due to differences in retirement ages. In 2008, the PPF confirmed that it has to take account of GMPs to ensure the equal treatment of men and women. A similar requirement applies to FAS assistance.

Having taken advice from Counsel, the Board of the PPF has now concluded that the most appropriate treatment of GMPs is to regard them as an 'underpin'. The Board states that "given the complexities of the topic", it aims to set out in the consultation document the context and the reasoning behind its implementation by:

- explaining how the underpin approach operates for both PPF compensation and FAS assistance
- explaining the implications of the underpin approach for GMP equalisation; and

- asking stakeholders whether they consider the Board's proposals to be appropriate.

It is proposed that the approach will apply both to schemes which have already transferred to the PPF, as well as to schemes in a PPF assessment period.

The consultation closes on 21 March 2011.

This is the PPF's second consultation on the equalisation of GMPs. For more information on the first, please see our Alert: "PPF approves GMP equalisation solution" dated 5 November 2009.

PPF Press Release

THE PENSIONS REGULATOR

Enabling good outcomes in DC pension provision

On 28 January 2011, TPR published a discussion paper: "Enabling good member outcomes in work-based pension provision", in which it proposes a strategy for achieving its statutory objectives in respect of DC pension provision.

TPR notes that there are currently 2.5 million DC memberships in occupational pensions (trust-based schemes) and 3 million in work-based personal pensions (contract-based arrangements). With the introduction of auto-enrolment in 2012, it is anticipated that between five to eight million people will be newly saving or saving more, in all forms of workplace pension scheme.

TPR is therefore inviting views on the possibility of the further raising of standards in DC pension provision, and how it can contribute to greater confidence in pension saving.

The discussion paper, sets out six elements which TPR considers important for achieving good outcomes for savers, and explores the ability of the different segments of the DC market to provide these elements in the pension products they offer. These are:

- appropriate decisions with regards pension contributions;
- appropriate investment decisions;
- efficient and effective administration of DC schemes;
- protection of scheme assets;
- value for money; and
- appropriate decisions on converting private pension savings into a retirement income.

The document also outlines a number of other areas which TPR wishes to discuss with stakeholders, including:

- effective and efficient administration;
- raising standards in small schemes;
- multi-employer occupational schemes with non-associated employers (sometimes known as 'master trusts');
- costs and fair value;
- protection of assets; and

- appropriate decision making at retirement.

The consultation closes on 22 April 2011. Following this, TPR intends to consult on further specific proposals during 2011 and, ultimately, publish an updated approach to DC regulation.

TPR Press Release

CASES

Copple v Littlewoods Plc (Employment Appeal Tribunal)

This case considered the appropriate remedy for a group of part-timers who were unlawfully excluded from their employer's pension scheme (the "Scheme") but who, evidence indicated, would not have joined even if they had had the ability to do so.

Background

Prior to 1 April 1990, part-timers were excluded from the Scheme. Between 1 April 1990 and 1 July 1995, eligibility was opened up in stages depending upon hours worked. It was finally opened to all on 1 July 1995.

Under the Equal Pay Act 1970 (and now the Equality Act 2010), it is unlawful for an employer to exclude part-timers from its occupational pension scheme. In *Preston v Wolverhampton Healthcare NHS Trust*[2] it was established that part-timers should have been able to join their employer's scheme from the later of:

- the date they commenced employment;
- the date the scheme was established; and
- 8 April 1976.

EAT decision

The EAT considered that most of the claimants were not entitled to a declaration of retrospective access to the Scheme. This was because, although they were unlawfully excluded, as they would not have joined even if they had been able to do so, they had suffered no loss.

Three of the claimants successfully demonstrated that they would have joined the Scheme, had they been eligible to so, despite the delay in their joining. However, the EAT confirmed the Employment Tribunal's decision that it was not appropriate to extend the declaration of retrospective access beyond the period during which the claimants were excluded from the Scheme. Once part-time employees became eligible for admission, their not joining was down to personal choice rather than discrimination.

Comment

This case perhaps indicates that we have not yet seen the last of the part-timer cases. However, the decision not to extend retrospective access beyond the date on which part-timers became eligible for admission may be of some comfort to employers whose part-time employees did not rush to join the pension scheme at their first opportunity.

[2] House of Lords decision: [2001] UKHL 5

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