

## **Internal Dispute Resolution Procedures (IDRP)**

### **Response to Consultation**

The comments set out below form Sacker & Partners LLP's formal response ("Response") to the following consultations published on 25 October 2007:

- The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 (the draft IDRP Regulations) issued by the Department for Work and Pensions (DWP); and
- The Code of Practice: Dispute Resolution – reasonable periods (the draft Code) issued by The Pensions Regulator (TPR).

These consultation papers ask for views of trustees, employers and pensions professionals. Sackers is a firm of solicitors specialising in pensions law.

Given the complicated nature of this area, we note that there may be a number of other points to be made. The fact that we have restricted ourselves to making the points below does not mean that we believe other issues are either not of concern or indeed less important than those in this Response.

#### **1. General Comments**

- Sackers are very supportive of the policy intention of allowing schemes to switch to a one-stage IDRP, as we believe that this is a genuine piece of simplification.
- Allowing a simplified one-stage procedure would be beneficial to a number of our clients but we also anticipate that a significant proportion of our larger clients would wish to retain their current procedures.
- For larger clients the benefits of a two-stage procedure are clear - it enables the pensions manager, or a sub-committee of the trustees, to act as a filter for clear-cut or spurious claims.

## **2. Retaining the existing procedure**

- The ability for schemes to retain their existing procedure is the key element in the new IDRPs provisions, especially given the history to the changes proposed in these consultation documents.
- The framework of the IDRPs provisions in the original drafting of the Pensions Act 2004 included the condition that the "trustees" make the decision at each stage. An Opinion from Leading Counsel confirmed that it was not possible for individual trustees to delegate their decision-making powers. In practice, this would have rendered it impossible for a scheme to operate a two-stage process as the trustees would have needed to make the decision at both stages.
- Among others, we were concerned that the Pensions Act 2004 IDRPs provisions could, in fact, have created an additional burden for schemes as most schemes would have needed to amend their IDRPs in order to comply. As a result the DWP decided to defer implementation until changes were made to primary legislation – this was effected by the Pensions Act 2007.
- Allowing flexibility regarding who makes the IDRPs decision (see section 3) and the reasonable periods which apply to a two-stage IDRPs (see section 5) are the crucial elements in ensuring that a scheme can retain its current procedure.

## **3. Who must make the IDRPs decision?**

- Our understanding of the draft IDRPs Regulations is that if the trustees choose to operate a two-stage procedure, a third party – typically the pensions manager – can decide the dispute at the first stage, provided that if the applicant wants to take the matter further the procedure enables that person's decision to be "confirmed or replaced" by a decision of the trustees.
- The statutory default is that the dispute must be decided by the trustees (or a sub-committee of the trustees) so if the trustees wish to operate a single stage IDRPs, they cannot take advantage of the flexibility to allow a third party to make the decision.

#### **4. Reasonable periods – General**

- Schemes currently have two months to respond to an IDRP. We believe that the periods suggested in the draft code (an increase from two to four months) is helpful and reasonable, particularly where the decision is made by the trustees, given the periodic nature of trustee meetings.
- However, we note that at the first stage where the pensions manager makes a decision alone and an extensive fact find is not required, a shorter period may be reasonable.
- We also support the explicit statement in paragraph 10 of the draft code that these periods may need to be extended in certain circumstances.

#### **5. Reasonable periods – Two-stage procedure**

- However, the code does not differentiate between schemes which operate a single stage IDRP and those which have a two-stage procedure. Although not made explicit in the code, we understand that TPR are considering making it explicit in the code that each stage has its own “reasonable period”.
- So, reading between the lines, provided it is reasonable in the context of the scheme, an existing two-stage procedure which sets 10 months as its allowed time frame<sup>1</sup> could comply with framework requirements.
- As this element is crucial in ensuring that the stated aim of allowing schemes to retain their current procedures is fulfilled, it is essential to have clarity on this issue within the final code.
- The one area that is not addressed in the code is the length of time a member has to appeal the decision at the first stage, if the scheme offers a two-stage procedure. We would suggest that this should be no longer than 3 months, unless exceptional circumstances apply, as any longer could be prejudicial to the scheme.

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<sup>1</sup> Currently this is broken down into two months for stage one, a period of six months for the member to appeal and a second period of two months for the second stage

## **6. Forum Shopping**

- We were initially concerned that members could abandon the IDRPs in favour of a complaint to the Pensions Ombudsman. Although existing Regulations provide that the Ombudsman is prevented from investigating any complaint until the IDRPs are complete, section 50 requires that once the Ombudsman takes on the dispute the IDRPs cease.
- But we understand that this is designed to allow flexibility for the Ombudsman to take on a complaint where there is no reasonable prospect of it being settled by the IDRPs. (Indeed, the Ombudsman's Annual Report states that he declined to take on 229 complaints (or approximately 7% of the total) in 2006-7 because they had not been through the IDRPs.)
- We would be grateful for confirmation that members are expected to complete their scheme's IDRPs before the Ombudsman starts to investigate a claim.

**Sacker & Partners LLP**  
**18 December 2007**