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Pensions law – the week in review

12 October 2009

AT A GLANCE

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1 EUROPEAN COMMISSION

1.1 Commission to strengthen supervision of EU's financial sector

The EU Commission has adopted a package of draft legislation which is intended to strengthen supervision of the financial sector in Europe.

A European Systemic Risk Board will be set up to detect risks in the financial system. In addition, a European System of Financial Supervisors will be established. This would consist of a network of national supervisors, working in tandem with three new European Supervisory Authorities which will be created by the transformation of existing committees for the occupational pensions, banking and securities and

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insurance sectors. The new EU supervisor for occupational pensions will be known as the European Insurance and Occupational Pensions Authority (EIOPA) and will replace the existing Committee of European Insurance and Occupational Pensions Committee (CEIOPS).

EIOPA, the new European Banking Authority and the European Securities and Markets Authority (which will be set up at the same time) will take over all of the functions of the existing committees, as well as having additional responsibilities, which will include:

- the development of proposals for technical standards;
- the resolution of disputes between national supervisors where legislation requires them to co-operate or agree;
- ensuring the consistent application of technical EU rules; and
- adopting a role of co-ordinator in emergency situations.

The EU Commission's press release can be accessed by clicking on the link below

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1347&type=HTML

2 PENSION PROTECTION FUND (PPF)

2.1 Valuation assumption guidance updated

Following a consultation which began in July 2009 (and closed on 11 September)[1], the PPF has published updated valuation assumptions for valuations under both:

- section 143 of the Pensions Act 2004 – which are used to determine whether the Board of the PPF should assume responsibility for a scheme; and

[1] For more details of the PPF's consultation exercise, please see 7 Days dated 3 August 2009

- section 179 of the Pensions Act 2004 – which are taken into account when calculating a scheme's risk based levy.

In summary, the amendments:

- increase the yields used to discount future payments by 0.1% p.a. in deferment;
- increase the yields used to discount future payments by 0.3% p.a. in payment;
- change one of the yields used as a reference point to one with a longer duration;
- increase the assumption about future longevity improvements for males; and
- reduce the proportion of members who are married or who have relevant partners by 5%.

The PPF's press release, consultation response and valuation guidance can be accessed by clicking on the links below:

http://www.pensionprotectionfund.org.uk/News/Pages/details.aspx?itemID=129

http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/assumptions_consultation_response_Oct09.pdf

http://www.pensionprotectionfund.org.uk/TechnicalGuidance/Pages/ValuationGuidance.aspx

2.2 Barfield appointed to PPF Board

The PPF has appointed Dick Barfield to its Board as a non-executive director.

Mr Barfield spent most of his career at Standard Life, ultimately becoming Chief Investment Manager. Since leaving Standard Life he has held a number of non-executive roles, including chairman of the investment committee at Equitas. Mr Barfield is also Chairman of the Baillie Gifford Japan Trust, a director of four other investment trusts and a member of the Professional Oversight Board of the Financial Reporting Council.

The PPF's press release can be accessed by clicking on the link below:

http://www.pensionprotectionfund.org.uk/news/pages/details.aspx?itemID=128

3 PENSIONS REGULATOR (TPR)

3.1 New form for capturing recovery plan data

TPR has amended the valuation summary form, which is sent to TPR alongside a recovery plan. The changes are intended to make it easier for TPR to review recovery plans and also bring the mortality information requested into line with the requirements in scheme returns.

The new form is available on TPR's website from 12 October 2009.

TPR would like the pensions industry to transition to the new form as follows:

- For valuations with an effective date before 22 September 2008 schemes should continue to use the current form.
- For valuations with an effective date from 22 September 2008, if the form is being submitted on or after 9 November 2009, TPR requires the new form to be used. If the form is being submitted before 9 November 2009, either form may be used.

In its announcement, TPR also gave advance notice that it is improving the data collection process so that submissions of recovery plan documents can be made online via Exchange rather than by email to customer support. Further details of this will be provided in early 2010.

For copies of the valuation summary forms, please follow the link below:

http://www.thepensionsregulator.gov.uk/onlineServices/forms/2121.aspx

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4 CASES

4.1 Mr G A Baker v South East Arc Welding Company Limited (Pensions Ombudsman)

In this recent case, the Pensions Ombudsman upheld a complaint by Mr Baker that South East Arc Welding Company Limited (SEAW) refused, without justification, to authorise the release of Mr Baker's retirement benefits.

Background

Mr Baker was employed by SEAW for 16 years. He was provided with retirement benefits via an Individual Pension Plan (the Scheme). SEAW also acted as trustee of the Scheme. The benefits under the Scheme were to be provided by one or more policies effected with the Equitable Life Assurance Society (Equitable Life).

Mr Baker was made redundant on 21 January 2005. On 16 May 2005, he wrote to SEAW raising grievances relating to his employment. A settlement was reached before the case was heard by the Employment Tribunal.

Mr Baker experienced difficulties with SEAW when attempting to ascertain his benefits under the Scheme and sought the assistance of the Pensions Advisory Service (TPAS), who pursued matters on his behalf. On 7 November 2006 he wrote to TPAS, saying that he wanted to take his retirement benefits. They contacted Equitable Life and SEAW requesting a quotation and associate forms to effect this. A quotation was issued on 15 November 2006. (In the meantime, the relationship between Mr Baker and SEAW had deteriorated further, and SEAW had accused Mr Baker of bringing it into disrepute by telling mutual customers that SEAW had treated him harshly.)

On 18 January 2007, Mr Baker's agent wrote to SEAW requesting the release of the information required to arrange for payment of his benefits. SEAW failed to respond. When chased, SEAW stated that they would not provide the authority and information requested until Mr Baker returned certain items to it (allegedly taken when he left the company) and that, if he did not do so, he would have to wait until his 65th birthday to retire.

TPAS wrote to SEAW noting that there were no provisions barring Mr Baker from taking his benefits (neither employer nor trustee consent was required for early retirement) and explaining that it was therefore unclear under which provisions of the scheme's rules SEAW (as employer and/or trustee) were refusing early payment of his benefits. SEAW failed to reply or to respond to reminders from TPAS.

Mr Baker complained to the Pensions Ombudsman.

Decision

The Ombudsman noted that it was not for him to decide whether Mr Baker was guilty of the actions that SEAW alleged. Instead, the Ombudsman focused on whether SEAW was in breach of its obligations under the rules and / or legislation.

Upholding the complaint, he ruled that SEAW had acted unlawfully (in its capacity as trustee) in withholding Mr Baker's benefits. The rules of the Scheme did not contain a lien rule and the requirements for a lawful statutory lien (under section 91 of the Pensions Act 1995) were not met.

The Ombudsman considered the compensation to be provided to Mr Baker and adopted an approach that would not prevent Mr Baker from being able to take an open market option in the future. The Ombudsman directed SEAW to:

- complete all the documentation that would allow Mr Baker to receive his pension;
- provide Mr Baker with interest on the lump sum (taking into account any growth in the sum payable) plus arrears of pension and appropriate interest from 20 January 2007 up to the date he receives them; and
- pay Mr Baker £250 for the distress and inconvenience caused.

Comment

This case serves as a reminder to trustees to clarify what scheme rules and legislation allow before attempting to withhold benefits or exert a lien.

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