

## Pensions law – the week in review

17 August 2009

### AT A GLANCE

#### ASSOCIATION OF BRITISH INSURERS

- Research published on pre-retirement “wake-up” packs

#### DEPARTMENT FOR WORK AND PENSIONS

- Consultation on draft Financial Assistance Scheme (FAS) regulations

#### HM REVENUE & CUSTOMS

- Disclosure of tax avoidance schemes - guidance updated

#### PERSONAL ACCOUNTS DELIVERY AUTHORITY

- “Myth busting” programme launched

#### CASES

- Mr P J Anderson v The Trustees of the Yell Pension Plan

### 1 ASSOCIATION OF BRITISH INSURERS (ABI)

#### 1.1 Research published on pre-retirement “wake-up” packs

As part of renewed industry focus on the governance of defined contribution (DC) pension arrangements, in particular efforts to improve retirement experiences for customers of DC pension providers, the ABI published new guidelines for pension provider “wake-up packs” in July 2008. DC providers are required to communicate with customers in the four to six months before an individual’s selected retirement date, to inform them of their options for taking pension benefits. The packs outline the key choices available and

## **Pensions law – the week in review 17 August 2009**

inform the customer of the potential benefits of shopping around for an annuity under the Open Market Option (OMO).

The ABI has recently carried out research to review the effectiveness of improvements made to providers' wake-up packs, and the impact they are having on customers. Generally, the packs appear to have increased consumer awareness. The results (which were published in ABI Research Paper No.18 of 2009) indicate, among other things, that:

- awareness of the right to take an OMO increased significantly as a result of reading the wake-up pack - from 62% before reading it to 82% after;
- of those who were aware of the right to shop around, the pack encouraged 51% to actually consider doing so;
- reading the pack increased the proportion of participants feeling quite or very comfortable about understanding their retirement options from 70% to 80%;
- 36% said the pack made them aware of sources of information or support; and
- 69% said they would prefer to receive the pack between four and six months before retirement (as now) but 24% said they would prefer to receive it between one and three months before retirement.

The ABI's press release and research paper can be accessed by clicking on the links below:

[ABI Press Release: 13 August 2009](#)

[ABI Research Paper No.18 2009: Pre-retirement wake-up packs](#)

## **Pensions law – the week in review 17 August 2009**

### **2 DEPARTMENT FOR WORK AND PENSIONS (DWP)**

#### **2.1 Consultation on draft Financial Assistance Scheme (FAS) regulations**

The DWP is consulting on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, which are intended to deliver the remaining changes to the FAS that were part of the package of amendments originally announced by the government in December 2007.

The draft regulations deal with two major issues:

- the transfer of residual FAS scheme assets to government, for use in part-funding the improvements provided for by the FAS; and
- enabling the FAS to make payments to members of those schemes which would previously have been made by scheme trustees. In particular, these will allow the FAS to:
  - make payments to members whose share of scheme assets would have been sufficient to pay pensions in excess of standard FAS assistance; and
  - enable members who have not yet started taking a scheme pension nor reached their normal retirement age to take up to 25% of their FAS payment or their share of scheme assets (whichever is the lower), as a tax free lump sum.

The press release of the PPF (which has been responsible for the management of the FAS since 10 July 2009), together with the DWP's consultation document, draft regulations and impact assessment, can be accessed by clicking on the links below:

PPF Press Release: [http://www.pensionprotectionfund.org.uk/index/fas/fas\\_news.htm](http://www.pensionprotectionfund.org.uk/index/fas/fas_news.htm)

Consultation: <http://www.dwp.gov.uk/docs/fas-misc-amend-regulations2010.pdf>

Draft Regulations: <http://www.dwp.gov.uk/docs/fas-misc-amend-regs-2010-draft-si.pdf>

## **Pensions law – the week in review 17 August 2009**

Impact Assessment: <http://www.dwp.gov.uk/docs/fas-misc-amend-regulations2010-ia.pdf>

### **3 HM REVENUE & CUSTOMS (HMRC)**

#### **3.1 Disclosure of tax avoidance schemes - guidance updated**

From 2011, individuals with an annual income of £150,000 or more will face a reduction in the tax relief available on their pension contributions. Relief will be tapered away, so that for those earning over £180,000 it will be worth 20% (equivalent to basic rate tax).

Transitional measures take effect from 22 April 2009 to prevent affected individuals from taking advantage of available tax relief in the interim by making significant additional pension savings. The Finance Act 2009 imposes a Special Annual Allowance Charge (SAAC) of 20%, which effectively restricts tax relief on pension savings for affected high income individuals (who have overall annual pension savings of more than £20,000 - the level of the Special Annual Allowance) to basic rate tax, in respect of any new savings above the pattern of their existing normal, regular, ongoing pension savings.<sup>1</sup>

In the light of these changes, HMRC has amended its disclosure regime with a view to obtaining early disclosure of any arrangements that seek to avoid the SAAC. It has published an update amending its guidance on disclosure of tax avoidance schemes which will be effective from 1 September 2009.

HMRC's update can be accessed by clicking on the link below:

<http://www.hmrc.gov.uk/avoidance/income-corp.htm>

---

<sup>1</sup> For more information, please see our Sackers Extra Alert: "Finance Act 2009 - this time it's Personal" (dated 24 July 2009)

## **Pensions law – the week in review 17 August 2009**

### **4 PERSONAL ACCOUNTS DELIVERY AUTHORITY (PADA)**

#### **4.1 “Myth busting” programme launched**

We reported in 7 Days on 8 December 2008 that PADA had published two documents, “Key Facts” and a “Myth Buster”, both of which are designed to clarify perceptions relating to workplace pension reform.

This autumn, PADA is embarking on a “myth busting” programme which will explain how the personal accounts scheme will fit into the pensions landscape from 2012. The initiative will consist of meetings with key audiences (including advisers, trade bodies and employers) to explain the likely features of the scheme, clarify misunderstandings about its role and explore how the personal accounts scheme might be used.

PADA’s press release (which contains links to the Key Facts and Myth Buster documents (as recently updated)) can be accessed by clicking on the link below:

<http://www.padeliveryauthority.org.uk/documents/press-release-17-08-09.pdf>

### **5 CASES**

#### **5.1 Mr P J Anderson v The Trustees of the Yell Pension Plan (Deputy Pensions Ombudsman)**

Although pension trustees are not typically involved in decisions relating to how or why an employer seeks to terminate the employment of its staff, in a recent case the Deputy Pensions Ombudsman (DPO) has upheld a complaint against the trustees (the Trustees) of the Yell Pension Plan (the Plan) for failing to give a proper explanation of the grounds on which they concluded the member had left service.

#### *Background*

In September 2005, Mr Anderson was called to a meeting at which he was told that the Company wished to terminate his employment. A standard draft form of compromise agreement was handed to him which described the reason for the termination as “redundancy”. Following the meeting, Mr Anderson contacted

## **Pensions law – the week in review 17 August 2009**

the Plan's administrators to inform them of his impending redundancy and ask for a statement of his benefits.

Under the Plan rules, no actuarial reduction would be applied for early payment if a member left service "in the interests of efficiency (as determined by the Principal Employer)" or "by reason of redundancy [as defined in statute] or on structural grounds or on the grounds of innovatory change in the nature of his work".

Mr Anderson received details of his pension which showed an actuarial reduction. A compromise agreement was eventually agreed after several months of negotiation during which the Company denied that Mr Anderson was being made redundant. The agreement stated that his employment was being terminated "by reason of re-organisation". Under the agreement, Mr Anderson was paid a significant sum in full and final settlement of claims against the Company, but excluding any claim "in respect of accrued pension rights under the employer's pension scheme".

When Mr Anderson wrote again to the administrators for details of his pension, they responded that they were only able to provide an unreduced early retirement quotation in circumstances where the Company had first advised that a member had been made redundant. As the administrators had not received instructions to this effect, they were unable to pay an unreduced pension.

Mr Anderson complained under the Plan's internal dispute resolution procedure (IDRP) in March 2006. Three months later he received the Stage 1 decision rejecting his complaint. He appealed under Stage 2 of the procedure in July 2006. There was then a delay of approximately six months before the Trustees responded under Stage 2.

The Trustees decided that, on the basis of the evidence obtained and legal advice, Mr Anderson had not left service by reason of redundancy or on structural grounds and, in particular, it was for the Company to determine whether he had left in the interest of efficiency and the Company had denied that that was the case. The Trustees were therefore satisfied that the Company no longer wished to employ him for "other reasons".

## **Pensions law – the week in review 17 August 2009**

Mr Anderson then complained to the Pensions Ombudsman, alleging maladministration on account of:

- the delay in dealing with his complaint under the Plan's IDRPs and;
- the Trustees' failure to act in accordance with the Plan rules when determining what the reasons were for the termination of his employment.

### *The DPO's decision*

The DPO held that while there had been a slight delay in providing Mr Anderson with a response under Stage 1 of the IDRPs, this was not unreasonable in the circumstances. (The Stage 1 decision maker had been unwell, the case was complex and a detailed response was provided.) However, a delay of over six months to complete Stage 2 was substantial and amounted to maladministration. Mr Anderson was awarded £100 in recognition of the distress and inconvenience caused by this delay.

In relation to the Trustees' decision not to permit early payment of an unreduced pension, the DPO held that it was proper for the Trustees to look into the factual circumstances behind the termination of Mr Anderson's employment in order to satisfy themselves whether the criteria under the Plan rules had been met.

In the DPO's view, the relevant criteria of either redundancy, efficiency, structural or innovatory change left very little else as to the basis for termination (other than clear and demonstrable personal underperformance which was not evident in this case). It was therefore necessary for the Trustees to establish and explain clearly and logically why the termination of Mr Anderson's employment did not fall under any of those heads.

The DPO focussed particularly on whether the reason for termination was "in the interests of efficiency". He determined that the Trustees should have looked more critically at the explanation from the Company as to why the termination was not, in fact, on grounds of efficiency. In effect, the Trustees had concluded that Mr Anderson was dismissed on "other grounds", but had failed to elaborate what those "other grounds" were. In short they failed to give proper reasons for their decision and this amounted to maladministration.

The DPO therefore directed the Trustees to reconsider the circumstances underlying the termination of Mr Anderson's employment within 56 days. If they then remained of the view that he was not entitled to an unreduced pension, they would need to explain their conclusions fully.

*Comment*

While the DPO concluded that the ground of "efficiency" was not one for the Trustees to decide, they nevertheless had some responsibility to satisfy themselves that the matter had been properly considered by the Company, bearing in mind the Company's implied duty of good faith towards its employees in the exercise of its rights and powers under the Plan. The decision therefore leaves open to question the lengths to which trustees should go in order to examine more critically decisions made by an employer, where the employer exercises its discretion in a manner which may have an impact on members' benefits.