

19 April 2010

At a glance

FINANCIAL SERVICES AUTHORITY

- Pension Switching: FSA update

HM REVENUE & CUSTOMS

- New Pension Scheme Services forms APSS155A and APSS155B published

LOCAL GOVERNMENT PENSIONS COMMITTEE

- Leaflet for high earners

THE PENSIONS REGULATOR

- Hoban to stand down as TPR Chief Executive

CASES

- Independent Trustee Services Limited and another v Knell (HC)

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

FSA: Financial Services Authority

HMRC: HM Revenue & Customs

PPF: Pension Protection Fund

TPR: The Pensions Regulator

FINANCIAL SERVICES AUTHORITY

Pension Switching: FSA update

The FSA has published the findings of its follow-up work to improve the quality of pension switching advice. This work included visits and file reviews, to check that firms have acted on the FSA's guidance to improve the quality of switches from a contribution pension scheme to personal pension plans or self invested personal pensions. (For background to the FSA's review, see 7 Days dated 9 February 2009.)

As a result of this follow-up work, the FSA notes that it has seen "great improvement in the market with many firms reviewing past sales and procedures to deliver improved outcomes for customers. However, there remain a number of firms still giving high levels of unsuitable advice."

Since its original review in 2008, the FSA has taken a wide range of actions to reduce the risk of poor advice being given. These included:

- writing to over 4,500 firms (a 'Dear Compliance Officer' letter) setting out the standards the FSA expects of firms;
- publishing a pension switching suitability assessment template to provide firms with a resource to assist them; and
- hosting 18 regional roadshows, attended by 1,500 small firms, providing further guidance and support in light of the thematic review's findings.

[FSA Press Release](#)

HM REVENUE & CUSTOMS

New Pension Scheme Services forms APSS155A and APSS155B published

HMRC has published new Pension Scheme Services form APSS155A (for use when making an election to surrender or request to cancel a contracting-out or appropriate scheme certificate) and form APSS155B (to make an election to vary a contracting-out or appropriate scheme certificate).

The forms have been published together with corresponding notes on how to complete the forms. They replace the earlier form APSS155 and notes.

HMRC's registered pension schemes returns, report forms and completion notes can be accessed via the [HMRC website](#).

LOCAL GOVERNMENT PENSIONS COMMITTEE

Leaflet for high earners

Following the March 2010 Budget, the Local Government Pensions Committee has updated its [leaflet](#) for high earners (those with incomes, from all sources, of over £100,000), which sets out the implications of tax changes from 6 April 2010 onwards.

Authorities administering the Local Government Pension Scheme may download and personalise the leaflets for their own use and the use of employers in their fund.

THE PENSIONS REGULATOR

Hoban to stand down as TPR Chief Executive

TPR's chief executive, Tony Hobman, will leave his post on 14 May 2010, to take up the role of chief executive at the newly-created Consumer Financial Education Body.

TPR Chairman, David Norgrove, said: "I am pleased for Tony that he has won this important new role, but very sorry to lose him. Tony was the regulator's first chief executive and under his leadership it has become an authoritative force for the protection of pension scheme members and the PPF. A succession of external reviews has praised the regulator for its work and Tony has been central to this achievement."

[Press release](#)

CASES

Independent Trustee Services Limited and another v Knell (HC)

The High Court has ruled on the interpretation of a scheme's rule amendment which sought to equalise benefits for men and women following *Barber*¹.

Background

In the *Barber* case, the ECJ concluded that pensions provided under an occupational pension scheme constitute "pay" for the purposes of Article 119 of the EC Treaty (now Article 157 of the Treaty on the Functioning of the European Union) and, as such, need to conform to the principle of equal treatment.

At the time, the majority of schemes had retirement ages of 60 for women and 65 for men, which resulted in unequal benefits in certain respects. In the wake of *Barber*, schemes were required to equalise retirement ages from 17 May 1990 (the date of the judgment). This could be done by increasing Normal Retirement Dates (NRDs) going forwards, but providing benefits on the more favourable basis for the period between the date of the *Barber* judgment to the date of a valid amendment to equalise benefits. The period is known as the "*Barber* window".

However, while it was clear from *Barber* that schemes needed to equalise benefits, it was not until two later cases had been decided that trustees and employers understood how to achieve this. In particular, *Coloroll*² confirmed that benefits under occupational pension schemes only needed to accrue equally for men and women for service from the date of the *Barber* judgment onwards and not for all service.

1. *Barber v Guardian Royal Exchange Assurance Group* [1991] QB 3440

2. *Coloroll Pension Trustees v Russell* (C-200/91 [1995] All ER (EC) 23)

Facts

Under the rules of the Hobourn Group Pension Scheme, NRD was age 65 for men and 60 for women. The trustee sought to equalise NRDs at age 65 from 1 July 1992, by means of an announcement in April 1992. This was subsequently expanded upon in a pensions newsletter the following month, and followed by an amending deed some 18 months later (but before the confirmation in *Coloroll* as to how *Barber* should be applied).

In the amending deed of 25 November 1993, NRD was defined as:

- “(a) in relation to a female Member before 1 July 1992, her 60th birthday, and
- (b) in relation to any other Member his or her 65th birthday”.

The trustees argued that the wording should be interpreted as if it read “...(a) in relation to *the Pensionable Service of a female Member before 1 July 1992, her 60th birthday, and (b) in relation to any other Member or Service his or her 65th birthday*”.

By contrast, the representative defendant argued that the definition should be interpreted as applying a NRD of 60 for female members who were Members on 1 July 1992, but a NRD of 65 for everyone else.

An application was therefore made to the court for a ruling as to the correct interpretation of the definition.

Decision

Norris J agreed with the trustees and held that wording of the amendment could be interpreted as creating two categories of Pensionable Service, rather than two categories of Member.

His view was that the amendment must be viewed within context of the scheme rules as a whole. To interpret the amendment otherwise, would render other provisions in the rules (including a proviso in the 1993 deed) nonsensical.

The judge did not, however, take account of either the announcement or subsequent newsletter as these were “statements of subjective intent on the part of the scheme Trustees”. As such, they were excluded as admissible background (such information only being relevant to questions of rectification).

The Judge also commented on the announcement which sought to change NRD to 65 for all new members joining the scheme from 1 March 1992. He held that this was wholly ineffective, as it did not constitute an amendment in accordance with the scheme rules.

Comment

Whilst this case does not create any new principles in relation to equalisation, it serves as a useful reminder of the care needed when implementing (or reviewing) any equalisation amendments.