

Pensions law – the week in review

19 October 2009

AT A GLANCE

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1 ASSOCIATION OF BRITISH INSURERS (ABI)

1.1 ABI publishes savings manifesto

One of the ABI's current aims is to encourage greater pension saving. With this in mind, it has published a "savings manifesto", in which it sets out a number of proposals designed to achieve this. The ABI's suggestions include:

- early voluntary automatic enrolment ahead of the introduction of the employer obligation to do so (due to commence in October 2012);
- automatic escalation of contributions, to encourage pension savers to move away from the default contribution rates required by the Pensions Act 2008, on the basis that these should only be viewed as a starting point, not a standard for retirement saving;
- harmonising the legislation relating to different types of defined contribution schemes; and
- amend the rules requiring annuity purchase at age 75 to allow sufficient flexibility to manage increasing longevity and other developments amending UK pension provision.

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

[ABI Press Release](#)

<http://www.abi.org.uk/Media/Releases/2009/10/44619.pdf>

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2 COMMITTEE OF EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS SUPERVISORS (CEIOPS)

2.1 Overview of legal requirements under the Pensions Directive¹

The Pensions Directive sets out various requirements for occupational pension schemes to meet in order to operate as cross-border arrangements within the European Union. One such requirement is that the trustees or managers of a scheme in a “home” state (where the scheme is established) which has members who work for a European employer in another European Member State (the “host” state) must comply with the social and labour law requirements of that host state.

As the Directive does not specify what comprises “social and labour law”, this differs from one Member State to another. As part of its initial review of key aspects of the implementation of the Directive (published in April 2008)², CEIOPS conducted a survey of the specific topics covered by social and labour law around the EU, as well as investment restrictions and information requirements imposed by Member States. CEIOPS has set its findings out in table form which it notes is likely to be of use to:

- Member States - to enable them to understand how home country supervision of cross-border pension schemes will interact with a host country’s legal requirements; and
- anyone who is considering setting up a cross-border scheme - to give them a broad overview of their obligations in the jurisdiction in which they intend to operate.

A note on CEIOPS’ findings, together with the table of host member state laws, can be accessed by clicking on the links below:

<http://www.ceiops.eu/media/files/supervisory-disclosure/CEIOPS-OPC-Survey-Law-applicable-to-Guest-IORPs.pdf>

<http://www.ceiops.eu/media/files/supervisory-disclosure/CEIOPS-OPC-Survey-Law-applicable-to-IORPs-Appendix.xls>

¹ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision

² For more information, please refer to 7 Days dated 7 April 2008

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3 COMMUNITIES AND LOCAL GOVERNMENT (CLG)

3.1 Local Government Pension Scheme Funds statistics

CLG has published statistics relating to the Local Government Pension Scheme (LGPS) for the financial year 2008/09. Among other things, these statistics show that during the period:

- LGPS expenditure on benefits was £5.6 billion, representing a 7% increase on 2007/08;
- 68% of LGPS income came from employer and employee contributions, while income from investments made up 27%;
- the market value of the funds at the end of March 2009 was £97 billion, a decrease of 19% on March 2008;
- at the end of March 2009 there were nearly 1.7 million employees in the LGPS (an increase of 2% from March 2008); and
- the number of deferred members rose to 1.1 million (an increase of 52% on 2004/05 figures) and now exceeds the number of pensioners.

The CLG's statistical release can be accessed by clicking on the link below:

<http://www.communities.gov.uk/documents/statistics/pdf/1357982.pdf>

4 DEPARTMENT FOR WORK AND PENSIONS (DWP)

4.1 The Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2010 - Consultation on draft regulations

The DWP is consulting on draft regulations which relate to the Government's proposals to amend the Pension Protection Fund (PPF) entry rules and other rules which apply to those schemes with a partial Crown guarantee.

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The draft regulations are designed to implement the European Commission's decision of 11 February 2009, that the partial exemption of the BT Pension Scheme from payment of a levy to the PPF, arising from the Crown guarantee, constituted an incompatible state aid.

The draft regulations therefore remove the partial exemption from payment of the PPF levy and also enable schemes with a full Crown guarantee to become "eligible schemes", where retaining these provisions would give rise to incompatible state aid. In addition, the DWP proposes to make changes to the levies regulations, as it considers that the Commission's state aid decision also applies to the administration levy.

The consultation closes on 12 December 2009.

The consultation document can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/docs/consultation-ppf-occ-pen-2010.pdf>

5 NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

5.1 New report - "DC default funds: Today & Tomorrow"

The NAPF has published a report which describes current practice in default investment funds for defined contribution (DC) pensions and sets out how experts believe they should develop in the future.

According to the NAPF:

- 70% of default funds are invested entirely in equities. Respondents to the survey considered that in future there should be more diversification to reduce the risk of falls in fund values which can discourage saving;
- lifestyling funds are widely used and, despite concerns that using an automatic approach to switching funds out of equities into bonds and cash in the run up to retirement, on balance this was considered to be the correct approach; and

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- governance in DC schemes tends to be better in larger, more mature schemes. To ensure good governance across the board, employers and providers should play a greater role in ensuring that a default fund meets members' needs.

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

[NAPF Press Release](#)

5.2 The NAPF calls on Government to make it easier for employers to talk about pensions

According to new NAPF research, pensions are the benefit which employers feel most constrained talking about, despite the fact that they can be the most valuable benefit an employer will offer.

The survey found that:

- 98% of employers consider that amending the legal regime would help improve communications, while 94% think that clearer guidance from the Pensions Regulator and the Financial Services Authority would help; and
- 98% believe that employers should have a role in providing information and support to employees about pensions but 57% feel that the law prevents them from doing so.

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

[NAPF Press Release](#)

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5.3 New “Made Simple” guides published

The NAPF has published two new guides in its “Made Simple” series: “Indices and Benchmarks” and “Custody”.

Indices and Benchmarks Made Simple (written with the NAPF’s FTSE Group), explains the main features of each term, why indices and benchmarking are used, how they are constructed and the different types available.

Custody Made Simple (written with Northern Trust), looks at the key questions that a pension scheme manager should ask of their custodians. It also examines risk, performance and how to manage the relationship between custodians and schemes.

The NAPF’s press release can be accessed by clicking on the link below:

[NAPF Press Release](#)

6 PENSION PROTECTION FUND (PPF)

6.1 Levy invoicing underway for 2009/10

The PPF has announced that schemes will receive their 2009/10 pension protection levy invoices from 16 October 2009 onwards.

More information is available from the invoicing page of the PPF’s website, which can be accessed by clicking on the link below:

<http://www.pensionprotectionfund.org.uk/levy/invoicing/Pages/invoicing.aspx>

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7 CASES

7.1 Equitable Members Action Group, R (on the application of) v Her Majesty's Treasury (Parliamentary Ombudsman)

In the latest development in the long running Equitable Life story, on 15 October 2009 the High Court published its decision in relation to judicial review proceedings brought by the Equitable Members' Action Group (EMAG) (a group of around 21,000 current and former policyholders with The Equitable Life Assurance Society (Equitable Life)).

Background

In July 2008, the Parliamentary Ombudsman, Ann Abraham, published a report (which was four years in the making) on the regulation of Equitable Life between 1990 and 2001.³ This followed an inquiry led by Lord Penrose, commissioned by Treasury Ministers in August 2001 which culminated in the "Penrose Report" in March 2004.

In her report, the Ombudsman made ten determinations of maladministration and injustice against the former Department of Trade and Industry (one determination), the Government Actuary's Department (four determinations), and the Financial Services Authority (five determinations), in relation to their regulation of Equitable Life during that period. She also called on the Government to apologise to Equitable Life policyholders for what her report described as the "serial regulatory failure" that she had identified, and to establish and fund a compensation scheme for those policyholders.

While the Government accepted some of the findings of maladministration and injustice, it rejected others, in particular the recommendation for a compensation scheme. Instead, it said that some ex gratia payments would be warranted.

³ The report can be accessed via the Ombudsman's website:
http://www.ombudsman.org.uk/improving_services/special_reports/pca/equitable_life/index.html

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Subsequently, Sir John Chadwick was appointed by HM Treasury to advise on matters arising from the Government's Response.⁴ In August 2009, he published an interim report setting out, among other things, an approach for assessing relative loss, so that the ex gratia payment scheme could be delivered fairly, quickly and with minimal burden placed on policyholders.

Judicial Review Proceedings

EMAG brought the present proceedings on the grounds that:

- the Government had failed to put forward cogent reasons for its rejection of certain of the Ombudsman's findings of maladministration and injustice;
- in rejecting the Ombudsman's recommendation for a compensation scheme, the Government had acted unlawfully; and
- certain of Sir John Chadwick's terms of reference were unlawful or in any event unintelligible.

Decision

The High Court upheld EMAG's challenge in relation to three of the findings of maladministration against the Government Actuary's Department (GAD) including:

- GAD's failure to resolve questions relating to the valuation rate of interest used to discount Equitable Life's liabilities and the affordability and sustainability of its bonus declarations; and
- failure to ask for the information that GAD required to ensure that Equitable Life's valuation in 1995 was at least as strong as the minimum required by the applicable regulations and to pursue the missing information that led to users of Equitable Life's regulatory returns to misconstrue its financial strength.

⁴ The terms of reference are annexed to the Government's response, which can be accessed by clicking on this link: http://www.hm-treasury.gov.uk/equitablelife_govt_response.htm

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These claims were upheld on the basis that the Government had not provided cogent reasons for rejecting the Ombudsman's findings.

However, the remaining challenges were rejected and Sir John Chadwick will continue his work to devise an ex gratia payment scheme to compensate those members who were worst affected.

Comment

The Equitable saga therefore continues. The Government has been given 21 days to inform the court and EMAG how it proposes to respond to the judgment; and the court will reconvene in 28 days to consider that response.

Commenting on the High Court's decision, the Ombudsman said:

"How this judgment affects the Government's proposals for an ex gratia scheme is a matter for others to consider. However, while this judgment is welcome I am very aware that the injustice suffered by many people affected by the Equitable Life affair remains unremedied so many years after the relevant events.

I therefore hope that every effort is now made to ensure a just and speedy outcome for all those people."

The Ombudsman's press release and that of Bindmans (solicitors to EMAG), can be accessed by clicking on the links below:

http://www.ombudsman.org.uk/pdfs/Equitable-Release_15-10-09.pdf

<http://www.bindmans.com/index.php?id=608>



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