Sackers extra

25 January 2010

At a glance

DEPARTMENT FOR WORK AND PENSIONS
- Financial Assistance Scheme: Response to consultation and final regulations

EQUALITY AND HUMAN RIGHTS COMMISSION
- EHRC proposes changes to address ageing workforce

HM REVENUE & CUSTOMS
- Updates to Registered Pension Schemes Manual published

NATIONAL ASSOCIATION OF PENSION FUNDS
- Corporate Governance Policy updates 2009/10

THE PENSIONS ADVISORY SERVICE
- Partha Dasgupta appointed Chairman

THE PENSIONS REGULATOR
- Fourth Purple Book published

CASES
- Construction Confederation: winding-up order (High Court)

S07

Abbreviations commonly used in 7 Days

DB:	Defined benefit	**PPF:**	Pension Protection Fund
DWP:	Department for Work and Pensions	**RPSM:**	Registered Pension Schemes Manual
EHRC:	Equality and Human Rights Commission	**TPAS:**	The Pensions Advisory Service
FAS:	Financial Assistance Scheme	**TPR:**	The Pensions Regulator
NAPF:	National Association of Pension Funds		

DEPARTMENT FOR WORK AND PENSIONS

Financial Assistance Scheme: Response to consultation and final regulations

In December 2007, the government announced a package of measures which were designed to extend the remit of the FAS. These enhancements are being introduced in stages.

Between August and October 2009, the DWP consulted on the final batch of regulations relating to the FAS, which will implement the remaining measures from the 2007 announcement.

The outstanding elements cover:

- the transfer of remaining assets of relevant pension schemes to government;
- the payment by the FAS to members of qualifying pension schemes where payments would previously have been made by scheme trustees, in particular:
  - the making of payments to members whose share of scheme assets would have been sufficient to pay pensions in excess of standard FAS assistance; and
  - allowing certain members to commute part of their assistance for lump sums calculated broadly in line with the tax legislation for pension commencement lump sums and restricted to the amount of the member's share of scheme assets.

As Pensions Minister, Angela Eagle, noted: "The FAS now provides help that is broadly similar to that provided by the PPF - at least 90% of the defined benefit pension accrued by individuals when their scheme began to wind up, which may be subject to a cap, paid from their normal retirement age."

The DWP's consultation response was published on 20 January 2010. In it, the DWP notes that the responses submitted concentrated mainly on the level and nature of the FAS assistance that would be paid in respect of the assets of qualifying schemes which transfer to government.

The final regulations will now be laid before Parliament, and will come into force "in due course", subject to Parliamentary approval.

DWP Press Release

© Sacker & Partners LLP 2010

EQUALITY AND HUMAN RIGHTS COMMISSION

EHRC proposes changes to address ageing workforce

The EHRC has today launched a set of proposals "for fundamental changes to employment policies to open up more work opportunities for older Britons and address the challenges of an ageing workforce".

The proposals include abolishing the default retirement age, the extension of the right to request flexible working to all, and overhauling employer recruitment practices to prevent discrimination and improved training and development.

The DWP has already committed to review, this year, the default retirement age of 65 and in October 2009 called for businesses and individuals to submit evidence on the default retirement age to feed into the review.[1]

HM REVENUE & CUSTOMS

Updates to Registered Pension Schemes Manual published

A number of updates to the RPSM were published on 14 January 2010. Although many of these are minor, some new member pages have been added which focus on the Special Annual Allowance which was introduced in the 2009 Budget.[2]

NATIONAL ASSOCIATION OF PENSION FUNDS

Corporate Governance Policy updates 2009/10

The NAPF has published updates to its Corporate Governance Policy and Voting Guidelines. These are intended to apply during the 2010 AGM voting season.

The amendments relate to:

- short-notice general meetings;
- director independence;
- director suitability;
- director re-election;
- termination payments; and
- investors' responsibilities.

The NAPF envisages that it will make more wide-ranging changes to its Policy once the Financial Reporting Council's review of the Combined Code on Corporate Governance has been finalised. It anticipates that the NAPF Policy will be re-issued in the autumn of 2010.

[1] For more information, please see 7 Days dated 2 November 2009

[2] For more information, see our Alerts: "Budget 2009: Building Britain's Future" (dated 23 April 2009) and "Pensions and the Pre-Budget Report" (11 December 2009)

THE PENSIONS ADVISORY SERVICE

Partha Dasgupta appointed Chairman

The DWP announced on 21 January 2010 that Partha Dasgupta has been appointed as the new Chairman of TPAS. His appointment takes effect from 4 January 2010, for a term of three years.

Mr Dasgupta also serves a non-executive director of the UK Statistics Authority and a member of the audit committee, a non-executive member of the Save the Children (UK) Investment Committee and a director of the SAUL Trustee Company. In 2005, he joined the PPF as Director of Investment and Finance and served as its Chief Executive and Accounting Officer from 2006 to 2009.

DWP Press Release

THE PENSIONS REGULATOR

Fourth Purple Book published

Jointly with the PPF, TPR has published the fourth edition of The Purple Book, which provides an in-depth analysis of risks faced by DB schemes.

The Purple Book 2009 uses information relating to 97% of the DB schemes which are eligible for PPF compensation and 99% of their estimated total liabilities (some 6,885 schemes, representing 12 million DB pensions).

Much of the analysis is based on information contained in the returns which schemes provided to TPR by the end of March 2009 (including details of valuations, asset allocation and membership), and shows how schemes fared during 2008 and early 2009, when the deterioration of the economic and financial market environment led to heightened risks for DB schemes.

Among other things, the 2009 findings indicate that:

- the proportion of DB schemes which are open to new membership and new accrual continues to decline - down to 27% from 31% in 2008 and 36% in 2007;

- schemes sponsored by firms in the manufacturing sector continue to dominate the Purple sample, constituting 27% of section 179 liabilities (i.e. those which are taken into account when calculating a scheme's risk based levy), compared with the sector's 12% share of economic output;

- movements in financial markets have resulted in large changes in funding. The aggregate funding position on a section 179 basis has deteriorated from a surplus of £12.3 billion (a funding level of 101.5%) at 31 March 2008, to a deficit of £200.6 billion (a funding level of 79.5%) at 31 March 2009. Over the same period, the average full buy-out funding level decreased from 62.9% to 57.7%;

- the estimated number of schemes in deficit was at its lowest point in June 2007, at around 3,000 schemes, and peaked in March 2009 at around 5,900 schemes; and

© Sacker & Partners LLP 2010

- in terms of asset allocation, equities and gilts and fixed interest continue to dominate. The joint share of equities and gilts and fixed interest has, however, declined from 89.4% in 2006 to 83.5% in 2009.

TPR Press Release

PPF Press Release

CASES

Construction Confederation: Winding-up order (High Court)

The High Court has recently ordered the winding-up of an unincorporated association. Although the judge did not specifically rule on the impact for the association on its potential eligibility for entry to the PPF, he indicated that there was a real prospect that the Scheme's members would be eligible for PPF protection.

Background

Construction Confederation (CC) is a trade association - "a substantial commercial organisation" - which acts as a representative body for contractors.

CC was the subject of a winding-up petition under Insolvency Act 1986 (the 1986 Act), which was brought by the trustees of its pension scheme - the Construction Confederation Staff Pension Scheme (the Scheme) - which had substantial liabilities.

As well as the Scheme, CC was responsible for a number of other liabilities, in respect of which detailed provisions were contained in its constitution. Its rules also set out a series of objectives which read like a trading company's objects clause. In very broad terms, CC had carried on the business on a non-profit-making basis of providing lobbying services for the construction industry generally and other defined services to its membership.

The judge had to consider whether the association could be wound-up.

Decision

The judge held that CC could be wound-up under the 1986 Act.

The 1986 Act provides that any "unregistered company" may be wound-up. The term "unregistered company" is widely defined to include "any association and any company".

Although the judge acknowledged case law precedents which demonstrated that not every unincorporated association is an association within the meaning of the 1986 Act, he considered that CC was the sort of organisation which would have been within the contemplation of Parliament when re-enacting the winding-up jurisdiction to unregistered companies by reference to the concept of an association.

By way of example, while ordinary members' clubs set up for the purpose of recreation in return for an annual subscription limit the liability of members to their subscription (and would not therefore fall within the 1986 Act), there were detailed provisions in CC's constitution relating to the payment of liabilities. CC's rules clearly envisaged that its members may become liable to contribute to its liabilities.

© Sacker & Partners LLP 2010

Having determined that CC could be validly wound-up under the 1986 Act, the judge made an order for its winding-up.

While he did not make a final ruling on the subject of PPF eligibility for the Scheme, the judge considered that there was “a real prospect” that if CC were placed into liquidation by the court, the liquidation would operate as a triggering event for PPF purposes, allowing CC access to the PPF. The judge also noted that “the potential advantage of eligibility for the PPF was itself a reason for exercising the jurisdiction at the suit of the pension fund trustees, who are substantial creditors”.

Comment

While the winding-up order awarded here does not amount to confirmation of the association’s eligibility for the PPF, the judge’s comments will be welcomed by trustees and sponsors of DB schemes for whom there is a question mark over potential PPF eligibility because they have not been set up in a conventional structure.

© Sacker & Partners LLP 2010 Nothing stated in this document should be treated as an authoritative statement of the law n any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners LLP January 2010