LEGAL UPDATE FOR ACTUARIES

Maximum Two Page Summary of Talk as requested by ACA

1. Introduction

This is just a maximum two page summary of the topics covered in my talk to the ACA Northern Conference on 21st September 2017 entitled "Legal Update for Actuaries".

I commend to you a somewhat longer full note of the talk not least because it contains a "talk within a talk" comprising quite full notes on the IBM case from a May 2017 talk I gave to the North West Association of Pension Lawyers Conference. It also has three blogs attached and has a style which some have described as Jane Austen meets William Shakespeare.

If you still want the short run, in sort of "tweet" format, here it is.

2. GDPR

Whilst Data Protection Act concepts, like "data controller" and "data processor" survive from the Data Protection Act, more subtle changes combine with some radical new departures to make 25 May 2018 an interesting coming into force date. Subtle changes include "personal data" being replaced by new "special categories of data". More radical departures include the direct data processor obligations, a 72 hour reporting obligation and up to 4% global turnover (€20 million fines).

3. From Silentnight to Box clever

The Pensions Regulator has successfully defended its procedural processes against legal challenge in these two cases. In Silentnight an application for judicial review was rejected. Mr Justice Whipple was satisfied TPR's procedures contained "ample" safeguards for issues to be resolved. In Boxclever additional grounds and fresh evidence were permitted post Warning Notice in TPR's FSD procedure.

4. The Coats Settlement

These pension schemes have been supported by £330 million which would otherwise have been paid to group shareholders to the schemes' detriment. This is the result of five years of patient work triggered by concern that the schemes were being disadvantaged.

5. The BHS Case

£343 million into a PPF plus scheme reflected in a Deed of Settlement following the high profile BHS sale to Dominic Chappell's company in March 2015. A Regulated Apportionment Arrangement had been under discussion prior to the BHS sale. 123 section 72 information notices were issued, 100,000 documents reviewed, 300 page Warning Notices were produced. TPR now look to make greater use of the section 231 process and are looking at technical provisions and inappropriate recovery plans. Timelines and clarity of earlier communications are in the "could have done better" category.

6. Section 72 Prosecutions

Four of these with one on Monday 18 September. These are criminal prosecutions TPR is now exercising more frequently. Absolute attention to TPR processes (see Silentnight and Box clever) and information requests (see BHS) and the practical lessons.

7. Tata Steel RAA

£550 million payment to PPF plus scheme and 33% equity stake to the PPF. Careful note that foreign parent company had no legal obligation to the scheme sponsored by its UK subsidiary. Parent company guarantees and other valuable contingent assets come into sharper focus.

8. Pensions Ombudsman

A very busy and wide ranging year with decisions which would have attracted more attention in a quieter year for TPR and the courts. Pension scam decisions remain very difficult. *Hughes vs Royal London* still gives members the final decision on transfers. Unauthorised payment "jobsworth" attitudes have been given short shrift. Those who miss deadlines or do not sign things likewise. Religious sentiments not really catered for in the Disclosure Regime.

9. Walker vs Innospec, same sex spouse benefits

The 5 December 2005 backstop on same sex spouse benefits never had that permanent look about it. Now it has gone.

10. British Airways case

635 paragraphs of good, wholesome High Court fun. Trustee decision making was applied in the face of legal challenges which ran into double figures (if you count an "all of the above"/"Hail Mary" challenge at the end as adding to the previous nine challenges).

11. IBM case

Like British Airways but the other way around. Here a sponsoring employer decision was ruled unlawful by the High Court but upheld on appeal by the Court of Appeal. Combined both BA and IBM upheld the primary decision maker's authority to make difficult and unpopular decisions and reaffirms that the role of the Court is not to substitute the Court's decision for those of the primary decision maker.

12. BBC case

This one has been up and down the Courts and around the Pensions Ombudsman quite a lot. The legal challenge about the section 91 Pensions Act 1995 prohibition on surrender of pension rights was clever but doomed because the rights concerned never came into existence as a result of a cap on pensionable salary. If the BBC had lost the licence fee might have risen by 10%.

13. Surety Pension Bonds

We at Gateley acted on the first of these Type C PPF recognised contingent assets. A syndicate of sureties stand behind the employer obligation to support the scheme. The section 47 scheme actuary is often the party who is charged with clarifying the deficit the sureties have to pay with this on demand instrument. Something to keep all good section 47 scheme actuaries busy in 2018.

Enjoy the conference.

Patrick Kennedy.