ASSOCIATION OF ACA CONSULTING ACTUARIES

St Clement's House, 27-28 Clement's Lane, London EC4N 7AE
Tel: +44 (0)20 3207 9380 Fax: +44 (0)20 3207 9134 EMail: acahelp@aca.org.uk
Web: www.aca.org.uk

10 March 2009

Angela Perera
Department for Work And Pensions
Flexibleretirementconsultation@dwp.gsi.gov.uk

Dear Angela

Consultation on flexible retirement and pension provision

I am writing on behalf of the Association of Consulting Actuaries, in response to your consultation on flexible retirement and pension provision dated 16 December 2008.

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and are subject to the code of professional conduct of the Faculty and the Institute of Actuaries. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of defined benefit pension schemes.

The ACA is the representative body for consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies.

In our response to the 2007 consultation we highlighted the need for "further clarifying exemptions on flexible retirement". In particular, our 2007 response highlighted the uncertainty over continued benefit accrual, the application of late retirement factors, and the provision of death benefits. Therefore, we are pleased to see that Option 1 would address all of these areas.

However, we are disappointed that the proposed Option 1 exemptions cover only a very limited definition of flexible retirement. As is highlighted in more detail below, the proposed exemptions do not cover existing flexible retirement arrangements; they do not cover individuals continuing to work in the same grade with the same hours; they do not cover reduced benefit accrual; they do not cover flexible retirements before the later of NPA and SPA.

Clearly therefore we would be even more disappointed if Option 2 was progressed, as this would provide even more limited exemption in relation to death benefits only.

It seems to us that if the proposed flexible retirement exemptions are to be limited to those under Option 1 (and even more so if they are limited to Option 2), guidance on the subject would potentially produce more clarity than legislative exemptions.

By way of emphasis, we are specifically concerned that:

- The proposed exemptions would not apply in respect of members already working under flexible retirement arrangements. Surely it is perverse to create a situation under which two employees have identical flexible retirement arrangements but one can claim age discrimination and the other can't. We ask you to consider ways of making the proposed exemptions apply to existing flexible retirement arrangements.

- Having set out very clearly in the consultation document the arguments for employees in flexible retirement arrangements not being entitled to both pensioner and active member death benefits, your proposals will potentially leave employers having to provide just such double benefits for flexible retirement cases below the later of NPA and SPA.

- The proposed exemptions appear to be drafted with defined benefit schemes in mind. We suggest there may be corresponding issues in relation to defined contribution schemes.

We also seek clarification of "state pension age" as defined in the draft regulations. By referring to paragraph 1(1) of Schedule 4 of the 1995 Pensions Act, it appears to be setting this as age 65 irrespective of gender or date of birth. Is this the intention?

As regards the specific consultation questions:

Question 1

The definition of 'flexible retirement' excludes members continuing in the same grade with the same hours, but who take all or part of their age-related benefits. Do you (or employers or schemes you advise) enable workers to continue to work after NPA in the same grade and with the same hours whilst taking their age related benefits? If so, does the practice cause significant problems for the scheme and are you (or any of the employers or schemes you advise) considering withdrawing the policy? If not, please explain why the practice has not been adopted.

Response

We are not aware of significant numbers of employers who have this as a policy, but we expect it may happen from time to time. If the proposed exemption is to proceed it would be illogical for it not to apply to members continuing in the same grade and on the same hours, and if it didn't, it would simply encourage artificial changes in grades or hours.

Question 2

As drafted, the exemption could be used to justify stopping further accrual of benefits, but not to provide future accruals at a lower rate than that previously enjoyed. Would you welcome a more flexible approach which would allow accruals at a lower rate?

Response

Yes. It would be completely illogical to do otherwise.

Question 3

Given this, do you consider that the implementation of these regulations would meet the Government's overall aim of encouraging employers to provide flexible retirement arrangements?

Response

.
On the face of it, the implementation of these regulations could encourage employers to provide flexible retirement arrangements, but only in the limited circumstances covered by the proposed exemptions. To the extent that these regulations might increase the uncertainty in relation to flexible retirement arrangements not covered by the exemptions, arguably they discourage the extension of any flexible retirement arrangements to these wider situations. If this is the Government's aim, it would be helpful to have guidance clarifying this.

Furthermore, employers might then become worried that it is discriminatory to offer flexible retirement arrangements only to those (predominantly older) employees who would be covered by the exemption, and might then conclude that the safer option is to disallow flexible retirement altogether (i.e. not to allow it even for the limited group of employees who would be covered by the exemption), thereby frustrating the stated aim of the Government to encourage flexible retirement arrangements.

Question 4

We welcome further evidence to determine the extent to which the Age Regulations deter employers from offering flexible retirement arrangements. Do you (or the employers or schemes you advise) currently provide flexible retirement arrangements to staff? If so, are you (or the employers or schemes you advise) considering withdrawing or limiting those arrangements? Why? If you (or the employers or schemes you advise) do not offer flexible retirement arrangements, what is the reason for this? Would an exemption from the Age Regulations lead you (or the employers or schemes you advise) to change your current practice?

Response

At present, any discussions with clients on flexible retirement arrangements inevitably involve lengthy consideration of the uncertainties posed by age discrimination legislation. We have no doubt that this uncertainty discourages the implementation of such arrangements.

Question 5

We welcome views on whether the provision of ill-health benefits during a flexible retirement arrangement should form part of the exemption. Does your scheme currently provide ill-health benefits? What (if any) detriment does the continued provision of ill-health benefits during a flexible retirement arrangement cause?

Response

Some forms of ill health benefits fall into the same category as death benefits and effectively mean that employees are potentially entitled to both pensioner and active members' benefits at the same time. Other forms of ill health benefit are normally based on prospective service to NPA, the meaning of which is uncertain in relation to a member who is already over NPA. We advocate that provision of ill health benefits should form part of the exemption to remove this potential double counting and uncertainty.

We hope this is helpful.

Kind regards

Charles Young
Chairman
ACA Pension Schemes Committee