Your World First

Leaders in Pensions

Legal Update for Actuaries

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A random collection

- Documentation problems: update from the Courts
- New state pension: issues for schemes
- Employer duty to provide information
- DC Code: what should DB schemes be doing?
- Data Protection – it's not getting easier

Documentation: it's not all black and white

- Ellis v Cabinet Office
  - meaning of: *"resigns or opts out of the scheme"*
  - TUPE transfer to private sector
  - PO: member did resign
  - High Court: not resigned in any normal meaning of the word
  - Court of Appeal:
    - *"black" can, if desired, be defined to mean or include "white"*
    - Did not think *"normal meaning of the word "resignation" provides any justification for ignoring the relatively clear words of the extended definition the draftsman has accorded to it"*
- M&S v BNP Paribas: must lack commercial or practical coherence
- Arnold v Britton: commercial common sense does not override natural meaning

Documentation: different ways to solve issues

- BCA Pension Trustees
  - S48 Administration of Justice Act 1985
  - Paragraph omitted from pension increase rule
  - Barrister opinion: unworkable without reading paragraph back in
  - Protects trustees, but does not bind members
  - Trustees instructed to tell members
- Grolier International v Capital Cranfield
  - Invalid execution of historic documents
  - Compromise approved by Court
  - Court accepted role of employer and trustee
- Briggs v Gleeds?

Formalities: prove or disprove?

- Alexander v Pattison: Scottish Solicitors Staff Pension Fund
  - 2009 Deed introduced contribution obligation for former employers
  - “triple lock” amendment procedure
  - Recital: “*duly observed and performed*”, but no documentary evidence
  - Presumption of regularity: not for trustees to prove validity
- Section 32 confirmation
  - How apply presumption of regularity?
  - What is impact of failure to provide confirmation?

New state pension

- Not related to earnings
- Transition takes contracting-out into account
- Old arrangements apply to existing pensioners

CMS Law . Tax

State pension changes: GMP issues

- GMP increases
  - State no longer provides any increase
  - Consider scheme rules
  - Discretionary increase arrangements
  - Implications for member communications: likely PO approach
- GMP revaluation
  - Fixed rate only from leaving pensionable service
  - Rules may require from leaving contracted-out service
  - Change revaluation basis?
  - Amend?
  - Underpin?

Other state pension issues

- Bridging pensions
  - Wording of rule
  - Finance Act requirements
- Level pension options
- Integrated benefit structures
- State pension statements

Employer duty to provide information

- Scally v Southern Health Board
  - Obligation to inform employees of contractual term
  - Option which employee could not reasonable have been aware of
- Lennon determination
  - Public Sector transfer club: 12 month window on joining
  - Member could not be aware other than it being drawn to her attention
- Cherry, Lott and Dodge determinations
  - Re-employment within 1 month: invalidates protected MPA
  - No obligation to advise on tax and pension liabilities
  - But this was obligation to provide information about impact on benefits
- Tax changes: "*make members aware*"

DC Code: DB schemes with AVCs

- – Trustee suitability
- – Procedure for appointment of chair
- – Knowledge of policies and precedent + regular review
- – Knowledge of service provider terms of appointment
- – Business continuity plan: review annually and test
- – Knowledge of FSCS and other protection
  - AVCs
  - DB assets

Data protection: more clouds on the horizon

- Schrems
  - 8th Principle requires adequate protection outside EEA
  - Safe Harbor principles agreed by Commission as adequate
  - CJEU: not adequate due to derogations
  - Other ways to ensure adequate protection: contractual terms
  - EU/US in discussions about new Safe Harbor
  - Await guidance from Information Commissioner
- New Data Protection Regulation
  - Huge fines and liability for data processors
  - Much greater emphasis on consent
  - 2 year implementation period

And finally…

- What is the right basis to calculate loss?
  - JS v RS divorce case
  - Pension sharing "deeply unattractive"
  - £7,100 reduction for wife → £5,300 increase for husband
  - Offsetting preferable

Value £5,300 annual pension payable from age 63

£210,000 or

£106,000 or

£60,000

Questions?