

Leaders in Pensions

Legal Update for Actuaries

Keith Webster



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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

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?

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