Legal Update for Actuaries

Keith Webster, 5 February 2016

Summary

This session will discuss a number of recent legal developments which actuaries should be aware of.

1. Documentation problems: update from the Courts

1.1 The pensions case of *Ellis v Cabinet Office*, together with some recent non pensions cases, considered the limits on how far the Courts will go when being asked to apply a "normal" interpretation to the wording of a document.

1.2 In two recent cases, *BCA Pension Trustees* and *Grolier International v Capital Cranfield*, the Courts have resolved documentation problems using alternative routes to a full contested hearing.

1.3 A recent Scottish case considered who is responsible for proving that the required formalities were followed when a document was executed. This could have implications where there is doubt that schemes have obtained the required Section 32 contracting-out confirmations.

2. New state pension: issues for schemes

2.1 With the new State pension coming into force in April, much of the focus to date has been on what employers will do in response to the end of contracting-out. However, there are other issues which schemes may face due to the changes in State pension, including issues on GMP increases and GMP revaluation and document interpretation problems for bridging pensions and level pension options.

3. Employer duty to provide information

3.1 Employers often worry whether they have a duty to help members understand pension changes. The principles are clearly set out in *Scally v Southern Health Board*, but some recent Ombudsman decisions show that employers can find themselves in trouble, which is particularly concerning as we face yet more Lifetime Allowance and Annual Allowance changes.

4. DC Code: what should DB schemes be doing?

4.1 The Regulator's draft new DC Code of Practice applies to AVCs in DB schemes. Some of the requirements in the new Code may therefore have implications for how the entire DB scheme will need to be run.

5. Data Protection

5.1 Last year the European Court struck down the Safe Harbor arrangements for sending data to the US. More recently, Europe has finalised a new Data Protection Regulation. This all has implications for pension scheme trustees and how they share data with their service providers.