

Pension Monthly Update - Keeping you on track

September 2011

HIGHLIGHTS

Hogan Lovells pension group is delighted to send you our news **Alert**er for September, setting out developments over the past month.

Our Pension Planner gives a comprehensive overview of legal developments in the previous 12 months and expected future changes. For the August issue, please click on the link in the email alerter.

Dates for your diary

29 September 2011 - Investment and pensions

A breakfast seminar aimed at trustees and employers interested in the legal aspects of the investment of pension scheme assets. Speakers from our pension group will be joined by the Hogan Lovells financial institutions team to help trustees understand the legal issues to be considered before entering into investments. For an invitation or to pre-book a place, please click on the links in the email alerter.

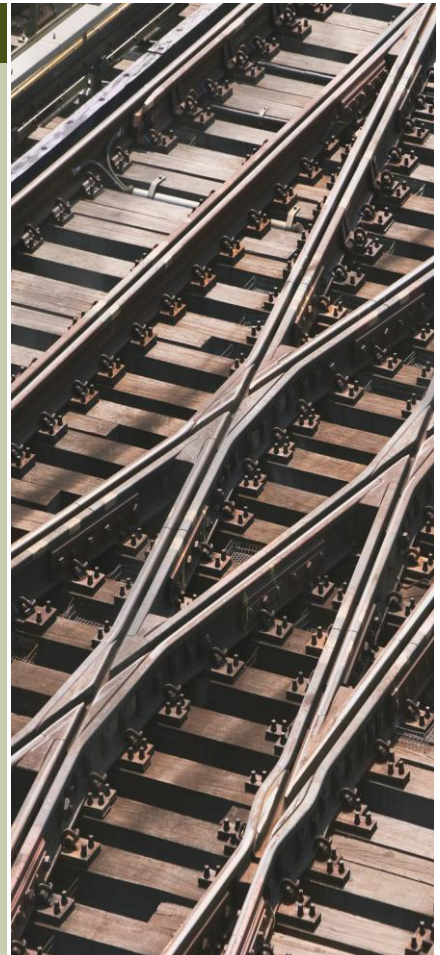
12 October 2011 - Pensions and auto-enrolment

In this breakfast seminar, members of our pensions and employment teams will look in detail at the auto-enrolment obligations that will start to apply to employers from October 2012. They will examine what needs to be done to make existing pension arrangements meet the quality requirements for use as auto-enrolment schemes. To book a place, please click on the link on the email alerter.

8 November 2011 - Recent developments in pensions

Our regular breakfast update seminar aimed at trustees and sponsors of occupational pension schemes and their advisers. Speakers from the Hogan Lovells pension team will review legal developments over the past few months and will explain the practical implications for pension schemes. To pre book a place please click on the link on the email alerter.

For training events later in the year, please see our training programme attached to the email alerter.



CONTRACTING-OUT

Abolition of DC contracting-out

Draft regulations have been issued which will enable trustees to amend scheme rules by resolution to remove protected rights provisions that will no longer be necessary following the abolition of DC contracting-out and the removal of the protected rights requirements. The power to amend will apply for a three-year transitional period from 6 April 2012 and may be helpful where a scheme's own amendment power is restrictive. The consultation paper states that the power is not intended to enable changes to be made to rules governing rights which were not formerly protected rights, even if those rules were initially adopted to meet the requirements of protected rights legislation.

HMRC has issued a further bulletin, intended to be useful for administrators dealing with the abolition of DC contracting-out. The bulletin points out that schemes currently contracted-out on the DC basis but which would satisfy the reference scheme requirements may switch to DB contracting-out by making a new election following the procedures in the CA14C guidance.

Revaluation of GMPs

Draft regulations have been issued which will increase the revaluation rate for guaranteed minimum pensions from 4% to 4.75% pa for members whose pensionable service ends on or after 6 April 2012.

FROM THE TAXMAN

Disguised remuneration

HMRC has issued draft guidance on the disguised remuneration provisions in the Finance Act 2011. The guidance covers employment, income tax but not National Insurance contributions or tax deductions for employers. Final guidance is expected in Autumn 2011.

Draft regulations have been issued which will impose National Insurance contributions on amounts taxable under the disguised remuneration provisions.

Newsletter 48

Topics covered in Newsletter 48 include:

- guidance associated with the tax changes. An updated version of the Registered Pension Schemes Manual is expected about late September;

- how to apply for fixed protection from the reduced lifetime allowance from 6 April 2012;
- reporting requirements for flexible drawdown payments, the new tax rate for the special lump sum death benefits charge (for deaths after 5 April 2011) and the new serious ill health lump sum charge on serious ill health commutation lump sums payable to a member aged 75 or over.

Reduction in annual allowance

HMRC has updated its draft guidance to cover the introduction of the "scheme pays" option, available from 11 August 2011

FROM THE PENSION PROTECTION FUND

2011/2012 levy

The Pension Protection Fund has issued a guide to the pension protection levy for 2011/12 and updated frequently-asked questions. Key changes in relation to the risk-based levy include:

- businesses with three or more branches in different UK regions will be treated as national employers;
- Dun & Bradstreet will no longer treat PPF-compliant contingent assets as charges on company assets when assessing an employer's insolvency risk;
- a parent company's failure score will override a subsidiary's score where the parent has a substantial risk of insolvency.

FROM THE PENSIONS REGULATOR

The Pensions Regulator has updated its guidance on auto-enrolment (originally issued in May 2011). The updated guidance includes minor corrections and reflects two key changes proposed to the regulations:

- the removal of "Process 2" for assessing whether workers fall within the auto-enrolment requirements;
- revising the staging dates for employers that are part of a larger PAYE scheme.

FROM THE COURTS

Ill health retirement: appeal dismissed

The High Court has dismissed a complaint against a decision of the Deputy Pensions Ombudsman rejecting Mr Batt's complaint that he should have been awarded an ill health pension. Although there had been some procedural irregularities at an early stage in the ill health retirement process, these were of little consequence unless in some way they had undermined the reliability of the independent medical board's opinion. It was apparent that Mr Batt had been interviewed or examined, or his case papers considered, and had been reported on by no less than nine doctors. In none of their reports was there any evidence that would have justified concluding that Mr Batt met the incapacity test under the scheme rules. (*Batt v Royal Mail*)

Lifetime allowance charge: ignorance of the law had no rational basis

The First-tier Tribunal has dismissed an appeal against an assessment for a lifetime allowance charge of 65% on lump sum benefits. Although the regulations allowed HMRC to accept late registrations for enhanced or primary protection after the deadline of 5 April 2009 if an individual had "reasonable excuse", in this case the member's ignorance of the legal provisions dealing with protection of pension

benefits had no rational basis and did not constitute a reasonable excuse. (*Scurfield v HMRC Commissioner*)

Application of VAT to occupational pension schemes: referral to ECJ

The First-tier Tribunal (Tax Chamber) has referred various issues concerning the application of VAT to investment services provided to occupational pension schemes (or a common investment fund investing the assets of several schemes) to the European Court of Justice. (*Wheels Common Investment Fund Trustees Limited and others v HMRC (Wheels/NAPF case)*)

FROM THE PENSIONS OMBUDSMAN

Ill-health retirement: location as a factor in deciding appropriate alternative employment

The Pensions Ombudsman has found the employer guilty of maladministration for failing to take location into account when offering "appropriate alternative employment" to an applicant for an ill-health pension. Two years after Mrs Green ceased working on ill-health grounds, the employer prepared guidance requiring consideration to be given to location when deciding whether alternative employment was appropriate. As the scheme rules had not changed between the relevant dates for Mrs Green and the introduction of the guidance, location must have been a relevant factor in her case too. The trustees were also guilty of maladministration for failing to ensure that appropriate alternative employment had been offered as part of their role in checking the rules had been applied properly. (*Green*)

Five working days was sufficient time to pay a transfer value

The Deputy Pensions Ombudsman has upheld a complaint by the widow of a deferred member about a delay in transferring out her husband's benefits. It should not take more than five working days to raise and issue a transfer value cheque and, had this been done, the transfer would have proceeded before Mrs Jones' husband's death. The administrator was directed to pay Mrs Jones the difference between the value of personal pension benefits that would have been available had the transfer been made and the capital value of the death in deferment benefits she was receiving. (*Jones*)

Finance advisor was "administrator"

The Deputy Pensions Ombudsman has partially upheld a complaint against a financial adviser concerning delays and errors in relation to a transfer. The DPO rejected the adviser's contention that it had been appointed solely as an adviser and not as an administrator. It had clearly taken on duties to assist Mr Middleton in all aspects of the transfer including, in particular, the administration. That the adviser did not receive any remuneration to undertake the tasks and that, in its opinion, it would have breached FSA rules if it offered to handle the transfer did not excuse it from the obligation to carry out the administrative tasks efficiently and on a timely basis. (*Middleton*)

Ill-health retirement: decision maker should have sought clarification

The Deputy Pensions Ombudsman has directed NHS Pensions to reconsider Mr Middleton's application for an ill-health pension. It had been maladministration for NHS Pensions to fail to seek clarification about Mr Middleton's depression and "blackouts" and whether either would cause him to be permanently incapable of efficiently carrying out his duties. (*Middleton*)

Scheme manager liable for foreseeable consequences of incorrect statement

The Pensions Ombudsmen has upheld a complaint about the provision by the scheme manager of a statement that the member would be entitled to an immediate unreduced pension on redundancy, failing to take account of the increase in minimum pension age to 55 and that the member was aged 51. Mr Wilson had relied on this statement and had foregone the opportunity to apply for another position for which he was well-qualified and which was open to only one other candidate. The manager was directed to pay Mr Wilson instalments equivalent to the redundancy pension he would have received, to his 65th birthday. (*Wilson*)

FROM THE PPF OMBUDSMAN

Refusal to review PPF risk-based levy

The Deputy PPF Ombudsman has upheld a decision of the PPF Reconsideration Committee that the calculation of a scheme's PPF risk-based levy should not be reviewed. While the asset value used to calculate the levy was incorrect in a material respect, the error was the consequence of actions by the scheme actuary not the PPF and it was difficult to distinguish this case from others where trustees or other advisors had made errors in submitting information. (*Trustees of the DK Moriarty Limited Pension Scheme*)

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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