Heyday – European Court follows Advocate General’s Opinion

The European Court of Justice (ECJ) has handed down its ruling in the case of Age Concern (England) v Secretary of State for Business, Enterprise and Regulatory Reform (widely known as the Heyday case). The ruling, which largely upholds the Opinion of the Advocate General delivered last September (see Pensions Bulletin 2008/40), says that:

- the national default retirement age of 65 falls within the scope of the Equality Directive;
- while Member States are not required to draw up a precise list of legitimate aims justifying derogation from the principle prohibiting discrimination on the grounds of age, the option to derogate is limited to measures justified by legitimate social policy objectives (such as those related to employment policy, the labour market or vocational training); and
- the tests for direct and indirect discrimination should be the same.

The case has now been referred back to the English High Court to consider whether the national default retirement age of 65 is justified by a legitimate social policy objective.

**Comment**  *On the face of it this confirms the victory for the Government expected since the Advocate General’s Opinion. However there could be a sting in the tail. The Government still has to make the case that the default retirement age is justified by a legitimate social policy objective.*

Trustee guidance – Financial Assistance Scheme

The Pension Protection Fund (PPF) has published a guide for trustees of pension schemes that have qualified for the Financial Assistance Scheme (FAS) to assist them in the winding-up process.

Regulations finalised last year (see Pensions Bulletin 2008/32) made the PPF responsible for managing the transfer of residual assets of FAS qualifying schemes to Government coffers. Regulations currently in draft (see Pensions Bulletin 2009/07) extend the PPF’s powers so that it will be responsible for the operation of the FAS.

The guide, which applies to all FAS qualifying schemes aims to help trustees understand:

- their roles and responsibilities during the wind-up of a FAS qualifying scheme;
- the roles and responsibilities of the PPF’s designated caseworker, who will help trustees through the process; and
- the PPF’s reporting requirements,

in order that the necessary processes can be completed as quickly as possible.
Financial Assistance Scheme – Appeal over notional annuity factors

The Deputy Pension Protection Fund Ombudsman has ruled in the case of Mr Martin vs the Financial Assistance Scheme (FAS) that it is permitted by legislation, and appropriate, for the FAS to use notional annuity factors when determining the level of assistance paid to members rather than by reference to commercial annuity rates that may have been available at the time. When making his ruling, the Ombudsman (who has jurisdiction over appeals about the FAS as well as the Pension Protection Fund) stated that “the aim of the FAS is to take into account the typical annuity which would have been purchased by the trustees of a scheme that was winding up under funded.”

Comment  The use of notional annuity factors in situations like this will always result in some “winners” and some “losers”. The relevant legislation permits this and the Ombudsman has acknowledged this pragmatic view in his judgment.

Pensions tax factsheets – Update

HM Revenue & Customs has updated four “factsheets” that summarise the pensions tax regime (see Pensions Bulletin 2005/51 and Pensions Bulletin 2007/15). The “factsheets” are aimed at individuals, those with international interests, employers and those wanting information on the role of scheme administrators.

Comment  Well-informed parties will already be familiar with the information that these factsheets contain. However, they do serve as an introduction to pension tax issues for those new to the scene.

This Pensions Bulletin should not be relied upon for detailed advice or taken as an authoritative statement of the law. For further help, please contact David Everett at our London office or the partner who normally advises you.