Pensions Regulator – Material detriment powers switched on

The ability of the Pensions Regulator to issue contribution notices to scheme sponsors and associated parties has been extended significantly with the switching on of the controversial “material detriment” powers.

These powers were commenced on 29th June 2009 (and backdated to acts occurring on or after 14th April 2008), following the approval by Parliament of the Pensions Regulator’s Code of Practice 12. The code sets out expectations as to which areas are of interest to the Pensions Regulator when applying the material detriment test (see Pensions Bulletin 2009/19).

On the same day the remaining legislative elements of the Pensions Act 2008 amendments to the moral hazard provisions that had not come into force were also switched on.

The Pensions Regulator has also announced:

- high-level guidance and illustrative examples of the new material detriment test;
- the re-issue of its clearance and abandonment guidance (see Pensions Bulletin 2009/01) to incorporate certain references to the material detriment provisions; and
- the publication of a new module to the Trustee toolkit – “Buy-ins and partial buy-outs”.

Comment

There is very little that is new in the documents that have been released. The fact that what guidance there is on the material detriment powers is, in the main, limited to summarising the legislation and is set out in existing documents detracts from the importance of these new powers. Perhaps unsurprisingly the examples of situations potentially caught along with those unlikely to be caught do not give a real insight into when the Regulator may exercise its new powers. For this we will have to await some real life situations.

Pension funds’ engagement with companies – NAPF research

The National Association of Pension Funds’ (NAPF) latest survey of shareholder engagement found that the economic crisis has acted as an additional catalyst to improved pension fund practice regarding corporate governance.

Of those surveyed, the NAPF found:

- 49% intend to spend more time scrutinising the actions of their fund managers on engagement issues;
- 70% consider their engagement policies have a tangible effect on corporate governance;
- 93% delegate some engagement tasks to their investment managers, but 44% have a policy of direct engagement with the companies in which they invest; and
51% have now incorporated the Institutional Shareholders’ Committee Statement of Principles (on the Responsibilities of Institutional Shareholders and their Agents) into their investment manager contracts (up from 33% in 2008).

**Pension Protection Fund – Directions**

Regulations have been laid before Parliament enabling the Pension Protection Fund (PPF) to stop trustees from making certain rule changes whilst the scheme is awaiting entry into the PPF.

The Pension Protection Fund (Entry Rules) (Amendment) Regulations 2009 (SI 2009/1552) come into force on 21st July 2009 (see also the explanatory memorandum).

The regulations enable the PPF to ensure the scheme’s protected liabilities are kept to a minimum by directing trustees on the amendment of scheme rules when the scheme is in an assessment period. It appears that they can be used to direct trustees to change scheme rules as well as preventing them from making changes detrimental to the PPF. They compliment the admissible rules provisions under which the PPF can strip out certain rule changes which took effect in the three years before the beginning of the assessment period or which were made in that period but took effect from an earlier time.

The PPF can already make directions for schemes in an assessment period in other areas – namely regarding the investment of the scheme’s assets, the incurring of expenditure and the instigation or conduct of legal proceedings.

**Comment** It is not immediately obvious why these regulations (on which there was no consultation) have been made. But with over 300 schemes currently in assessment it is quite possible that the PPF has discovered a few in which a loophole has been exploited, with the liabilities that will have to be shouldered by the PPF increasing as a result.

**Pension Protection Fund – Compensation Fund**

An Order has been laid before Parliament that enables the Pension Protection Fund to make payments from the Compensation Fund set up by the Pensions Act 1995 notwithstanding the fact that an application was made after 6th April 2006 – ie after the legislation governing this Fund was repealed.

The Compensation Fund was set up following the Maxwell scandal and was designed to deliver limited support where a scheme had suffered a reduction of assets due to fraud and the employer was insolvent.


**Pensions Advisory Service – Annual Report**

The Pensions Advisory Service has published the latest annual report of its activities which highlights that set against a difficult year for pension provision, more and more people approached the Service for help, guidance and sometimes even reassurance.
In the year to March 2009, the Service dealt with a total of 7,746 complaints – an increase of 10% on the previous year. Poor administration, with increases in both delays and mistakes, was the biggest contributor to the rise whilst most of the complaints concerned individual pension plans (complaints against occupational schemes fell by 2% compared to the previous year).

The number of general enquiries received from the public continued to rise – 75,000 calls were dealt with by the helpline on top of the 12,500 written enquiries received by email or post. There were just under 800,000 visits to the website seeking information and guidance about pension issues. A new web tool, Annuity Planner, was also introduced.

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.