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# DISPUTE RESOLUTION PROCEDURES

## Summary.

The Department for Work and Pensions (DWP) is consulting on changes to occupational pension scheme dispute resolution procedures.

## Background.

Section 50 of the Pensions Act 1995 requires a two stage internal dispute resolution procedure (IDRP) with a strict time-table for actions and decisions.

## Facts.

The DWP is proposing to simplify the statutory IDRP required for occupational pension schemes with effect from April 2008. The new IDRP regime will be governed by the revisions made to section 50 of the Pensions Act 1995 (amended by Section 273 of the Pensions Act 2004) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments (Draft Regulations)). Trustees will be able to choose whether to keep their current two stage IDRP or move to a new simpler single stage process.

The key changes proposed in the Draft Regulations are that:

- Trustees will be required to issue decisions within a reasonable time under the IDRP. The Pensions Regulator will issue a code of practice on what is considered to be reasonable.
- Where a sole trustee of a scheme is a company and all the members are directors of the company, the scheme will be exempt from the requirement to have an IDRP.
- When notifying complainants of decisions, trustees must include details of The Pensions Advisory Service (“TPAS”) and the Pensions Ombudsman.
- There are transitional provisions which provide that any dispute that was ongoing before 6 April 2008, shall continue to be dealt with under the IDRP procedure that existed when the complaint was made.
- The DWP is also seeking views on whether schemes should be legally obliged to tell internal dispute resolution applicants about TPAS or whether there are other ways of making individuals aware of TPAS.

*Source : Consultation on Draft Regulations – the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008, available at [www.dwp.gov.uk/publications/dwp/2007/occ-pen-consult/ops-idrpcma-regs08.pdf](http://www.dwp.gov.uk/publications/dwp/2007/occ-pen-consult/ops-idrpcma-regs08.pdf). Consultation ends on 18 December 2007.*

Trustees will be able to choose whether to keep their current two stage IDRP or move to a new simpler single stage process.

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# AGE DISCRIMINATION CASE

## Summary.

The Employment Tribunal have confirmed that changes to partnership pension arrangements did not breach age discrimination legislation.

## Background.

The Employment Equality (Age) Regulations 2006 (**Regulations**) prohibit discrimination on the grounds of age unless it can be shown that a practice is a proportionate means of achieving a legitimate aim (**justification test**).

## Facts.

B was a partner in a law firm. Pension benefits were provided for partners in retirement based on a share of the firm's profits. In May 2006 the firm changed arrangements so that future provision would be less generous. However, transitional arrangements were in place for partners such as B close to age 55.

B's complaint was that the 20% discount applied under the transitional arrangements, for drawing a pension at age 54, constituted age discrimination by the firm.

## Decision.

The Tribunal considered that B had been treated less favourably on the grounds of age. If B had been 55 at the relevant time, no discount would have applied. However, B's claim failed as the Tribunal found that the justification test was passed "comfortably".

The aim of the changes, including the transitional arrangements, were found to be legitimate. The aim was to make pension arrangements more sustainable and to reduce the "intergenerational unfairness" whereby younger partners would contribute more as active partners but would themselves receive a smaller pension in retirement. The transitional arrangements ameliorated the impact of the changes on older partners yet to retire.

The decision by the partnership not to attempt to reduce the pensions of partners over age 55, or further improve the position of partners affected by the transitional arrangements, was also found to be legitimate.

On the question of proportionality, the Tribunal considered the context of the changes. An extensive consultation process had been carried out by the firm, and the proposals received a majority vote of 2/3rds of partners. During both the consultation process and the Tribunal hearing no less discriminatory alternative was put forward.

Finally, the pension-related provisions of the Regulations were not relevant as B's claim was brought prior to the later coming into force of such provisions on 1 December 2006.

## Comment.

This case is a useful example of the application of the of the justification test.

*Case: Mr P J Bloxham v Freshfields Bruckhaus Deringer, Employment Tribunal case number 2205086/2006.*

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# LINDORFER – DIFFERENT ACTUARIAL FACTORS FOR MEN AND WOMEN MAY BE UNLAWFUL SEX DISCRIMINATION

## Summary.

The European Court of Justice (ECJ) has held that the use of different actuarial factors for men and women when calculating transfer credits may be unlawful sex discrimination.

## Background.

On the basis that statistically women live longer than men, “sex based” as opposed to “unisex” actuarial factors are often used in the calculation of transfer credits.

## Facts.

An Austrian national employed by the Council of the European Union (the “**Council**”) applied to transfer her occupational pension into the Council’s pension scheme. Under the applicable rules the Council determined the number of years of pensionable service to be credited under the Council’s scheme in respect of former service.

Ms Lindorfer challenged the number of years of pensionable service stated in the calculation on the grounds that the method of calculation used by the Council was discriminatory and not transparent.

The Court of First Instance (the “**Court**”) did not consider it discriminatory that, as life expectancies are higher for women, they receive fewer years of pensionable service than men on the transfer of pension rights into the Council’s scheme. The Court held that the use of factors which vary according to sex and age in order to calculate the number of additional years of pensionable service was objectively justified by the need to ensure sound financial management of the Council’s pension scheme.

The Court therefore dismissed Ms Lindorfer’s action and she appealed to the ECJ. On appeal Ms Lindorfer argued that using actuarial factors which take account of women’s longer life expectancy was not necessary to ensure the financial equilibrium of the scheme as neither contributions nor the age required to obtain a retirement pension were determined by reference to sex.

## Decision.

The ECJ held that the rules applicable to transfer credits from national schemes to the Council’s scheme must comply with the principle of equal treatment. Consequently, any differences in treatment need to be justified in view of the particular characteristics of the scheme.

The European Court of Justice (ECJ) has held that the use of different actuarial factors for men and women when calculating transfer credits may be unlawful sex discrimination

The ECJ noted that the Court had not explained on what criteria, other than that of sex, it intended to base a distinction between the treatment of men and women transferring their pension rights to the Council's scheme and the fact that no such difference applied as regards contributions to the scheme.

The judgment therefore probably does not apply to funded schemes complying with the EU Directive against sex discrimination (which contains an exemption for sex-based factors).

The European Court of Justice (ECJ) has held that the use of different actuarial factors for men and women when calculating transfer credits may be unlawful sex discrimination. The ECJ rejected the Court's justification for differences in the treatment of men and women in respect of the need for sound financial management of the Council's scheme. The ECJ concluded that the justification did not support the need for higher actuarial values for women and that equal treatment should be attained with unisex factors.

**Comment.**

Whilst the judgment appears to cast doubt on the use of sex-based actuarial factors, the Council's scheme is an unfunded scheme with an express requirement for equal treatment of men and women in its rules. The judgment therefore probably does not apply to funded schemes complying with the EU Directive against sex discrimination (which contains an exemption for sex-based factors).

*Source: Lindorfer v Council of the European Union C-277/04P.*

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