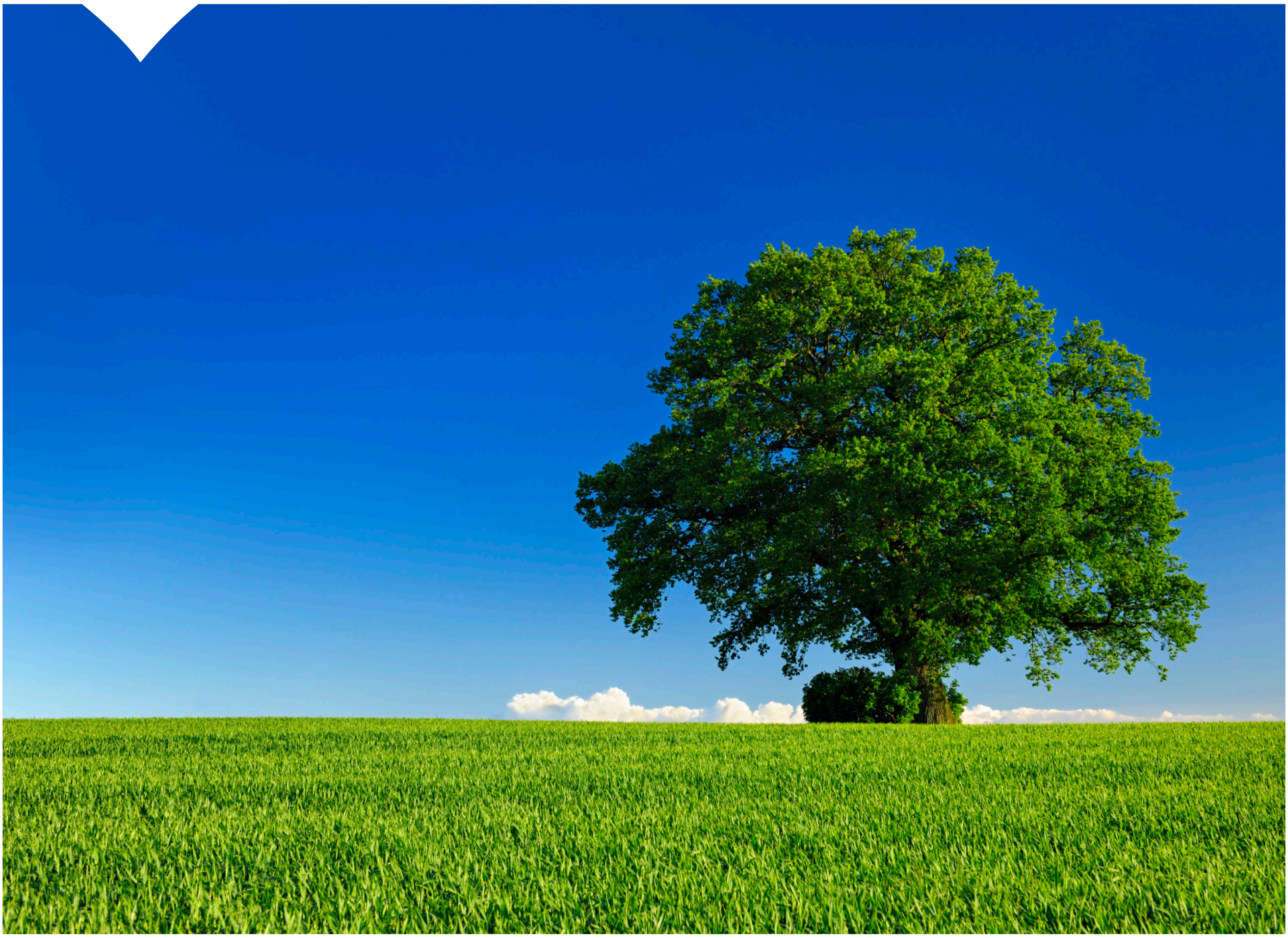
MAYER • BROWN

August 2017

Trustee Quarterly Review

Quarterly update for pension scheme trustees



Introduction

Welcome to the August 2017 edition of our Trustee Quarterly Review. The Review is published by the Mayer Brown Pensions Group each quarter, and looks at selected legal developments in the pensions industry over the previous quarter that we believe are of particular interest to trustees of occupational pension schemes. Each article summarises the relevant development and provides a short commentary on its likely implications for trustees. The Review also includes details of upcoming Pensions Group events at Mayer Brown, and a timeline of important dates and expected future developments.
Please speak to your usual contact in the Pensions Group if you have any questions on the issues covered in this edition of the Review.

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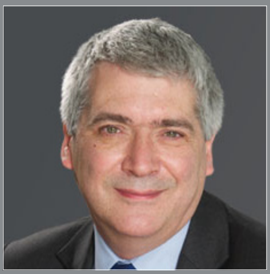

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Same sex spouses and civil partners – new requirements for survivors' pensions

The Supreme Court has ruled that paragraph 18 of Schedule 9 to the Equality Act 2010 ("**paragraph 18**") is incompatible with EU law and must be disapplied. Paragraph 18 provides that, where a member of an occupational pension scheme dies leaving a surviving same sex spouse or civil partner, the scheme is only required to provide a spouse's pension in respect of the member's service from 5 December 2005. Separate legislation (which was not considered in this case) requires that the surviving same sex spouse or civil partner also receive a widower's GMP in respect of the member's contracted-out service from 6 April 1988, and in the light of the Court's ruling, this legislation may have to be reviewed, at least for male members.

Background

An EU Directive adopted in 2000 (the **"Directive"**) requires member states to pass legislation that prevents discrimination in the employment context on the grounds of sexual orientation. The Equality Act 2010 implies a non-discrimination rule into UK occupational pension schemes. Amongst other things, this requires schemes to treat surviving same sex spouses and civil partners in the same way as opposite sex spouses, but only for service on and after 5 December 2005, the date when civil partnerships first became possible (this limitation is set out in paragraph 18). As noted above, separate legislation treats same sex spouses and civil partners similarly to opposite sex widowers for contracted-out service from April 1988, including giving same sex spouses and civil partners a right to a widower's GMP.

The key issue in the case in the Supreme Court was whether the carve-out in paragraph 18 for service before 5 December 2005 was consistent with the Directive, and whether the Court should effectively set it aside.

Mr Walker's case

Mr Walker joined his employer's pension scheme in 1980 and retired in 2003. He entered into a civil partnership in January 2006 and later married his civil partner. Mr Walker wanted to clarify what his husband would be paid from the pension scheme on his death.

An employment tribunal decided that the carve-out in paragraph 18 for pre-December 2005 service was contrary to EU law, and that Mr Walker's husband should get a full spouse's pension for all Mr Walker's service. But this was overturned by the Employment Appeal Tribunal which decided that, although the scheme rules treated Mr Walker's husband less favourably than an opposite sex spouse, this was not unlawful because all his pensionable service pre-dated 5 December 2005. It also found that the carve-out in paragraph 18 which permits this was compatible with the Directive, as the Directive did not expressly say it had retrospective effect. The Court of Appeal agreed and upheld the ruling of the Employment Appeal Tribunal. It said that "conduct which was lawful when it occurred [such as treating opposite sex partnerships more favourably than same sex partnerships in respect of service before December 2005] cannot retroactively become unlawful".

The Supreme Court's decision

The Supreme Court disagreed with the Court of Appeal and held that the carve-out in paragraph 18 was contrary to EU law and must be disapplied, with the effect that Mr Walker's husband is entitled on Mr Walker's death to a full spouse's pension, provided they remain married.

The Court noted that the Court of Justice of the European Union has drawn a distinction between the retroactive application of EU legislation to past situations (which is prohibited unless the legislation expressly provides for it) and the immediate application of EU legislation to continuing situations (which is generally permitted). In determining whether a legal situation is a past or continuing situation, the key question is whether the situation has become "permanently fixed". This may be difficult to establish in the context of an entitlement to a pension from an occupational pension scheme which accrues over years. The Court concluded that the Court of Appeal had been wrong to hold that entitlement to a survivor's pension is "permanently fixed" at the point of retirement – the entitlement should instead be assessed at the point of the member's death. Failure to treat a same sex spouse or civil partner in the same way as an opposite sex spouse at that point will amount to discrimination on the grounds of sexual orientation.

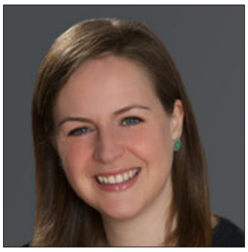
Comment

The government is currently considering its response to the Court's ruling. However, as a result of the ruling, schemes that do not currently provide the same spouse's pension to same sex spouses and civil partners as they do to opposite sex spouses should:

- ensure that, going forwards, an equal spouse's pension is paid in respect of any deceased member who is survived by a same sex spouse or civil partner (including in relation to members who have died recently, but in respect of whom survivors' benefits have not yet been put into payment);
- check their scheme rules and take legal advice on any amendments required to reflect the entitlement of same sex spouses and civil partners to an equal spouse's pension; and
- revisit any pensions already put into payment since December 2005 to same sex spouses or civil partners and adjust them as necessary to reflect that an equal spouse's pension should have been in payment.

The requirement to pay equal spouses' pensions to same sex spouses and civil partners may have an impact on the scheme's funding position (although we do not believe that the impact is likely to be significant). Schemes may wish to ask their actuary for advice in this respect.

Walker v Innospec Limited and others [2017] UKSC 47



Katherine Carter

DC schemes – new charging restrictions

On 31 March 2017, the Financial Conduct Authority introduced a cap on early exit charges in contract-based pension schemes. Regulations introducing an equivalent cap for trust-based schemes, and extending the ban on member-borne commission charges, have now been laid before Parliament (the "**regulations**"). The regulations will come into force on 1 October 2017.

Early exit charges cap

The regulations introduce an early exit charges cap applicable to money purchase benefits in trust-based pension schemes. The cap will apply where members:

- have reached "normal minimum pension age" for tax purposes (at present, age 55 in most cases);
- have not yet reached the scheme's normal retirement age; and
- are taking, converting or transferring their money purchase benefits.

For members who joined the scheme before 1 October 2017, the cap will be the lower of:

- 1% of the value of the benefits being taken, converted or transferred; or
- the amount provided under the scheme's rules on 1 October 2017. (Trustees will not be able to introduce, vary or increase an early exit charge which was not in the scheme's rules on 1 October 2017.)

For members who join the scheme on or after 1 October 2017, early exit charges on taking, converting or transferring benefits will be banned. The government has published guidance on the cap and this confirms that market value adjustments and terminal bonuses are not caught by the cap. However, any other exit charges derived from occupational pension scheme investments in "with profit" funds are caught.

If a member's benefits are already subject to the 0.75% cap on charges imposed on default arrangements in schemes providing money purchase benefits which are being used for automatic enrolment, that cap will take precedence – the regulations do not allow that cap to be increased to 1%.

The requirement to secure compliance with the early exit charges cap rests with the person who imposes the charge (or who, but for the regulations, would impose the charge). This is likely to be a service provider (such as the scheme's administrators or fund managers) rather than the trustees.

A service provider must provide written confirmation to the trustees within one month of 1 October 2017 (or, if later, within one month of becoming a service provider to the scheme) that it is complying with the cap. The service provider must also notify the trustees as soon as practicable (and in any event within one month) if that written confirmation ceases to be accurate.

If the trustees have a contract with a service provider which provides for early exit charges, the regulations will override any term in the contract which would otherwise allow an early exit charge to be levied.

Member-borne commission charges

Since 6 April 2016, a ban has been in place on arrangements under which service providers in pension schemes being used for automatic enrolment impose charges on members to recover the cost of commission paid to advisers. However, this ban currently only applies to new arrangements entered into on or after 6 April 2016, or to existing arrangements that are varied or renewed on or after that date.

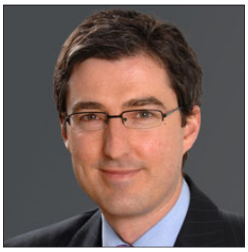
The regulations implement the next phase of the ban, by extending it to cover arrangements entered into before 6 April 2016. Payments made before the regulations come into force on 1 October 2017 will not be affected. In addition, it is still only pension schemes being used for automatic enrolment which are covered by the ban.

The existing exchange of information provisions (between trustees and service providers) have been updated by the regulations to reflect the extension of the ban. Service providers will generally be required to send trustees written confirmation that they are complying with the extended ban by 31 March 2018.

Comment

Trustees of schemes providing money purchase benefits should consider whether any fees are imposed which will be caught by the early exit charges cap. They should also check that, where relevant, they receive the necessary written confirmation of compliance with the cap from their service provider(s).

Trustees of schemes being used for automatic enrolment should already have considered whether the existing ban on member-borne commission charges impacts their scheme. They should turn their attention now to the impact of the extended ban. In particular, they should check that they have received written confirmation of compliance with the extended ban from their service provider(s) by 31 March 2018.



Giles Bywater

Money laundering – new pension scheme trustee obligations

New regulations on money laundering and terrorist financing came into force at the end of June which impose new record-keeping and provision of information requirements on trustees of occupational pension schemes.

Record-keeping and provision of information requirements

Under the regulations, trustees are required to hold information on the scheme's "beneficial owners" and, where the scheme pays certain taxes including stamp duty reserve tax and stamp duty land tax, to provide this information to HM Revenue & Customs ("**HMRC**") by 31 January 2018. For these purposes, a scheme's beneficial owners are defined as including the members, other potential beneficiaries such as members' spouses and dependants, the trustees, and the employer that originally established the scheme. The precise details that must be held by trustees and disclosed to HMRC are unclear, but the pensions industry is liaising with HM Treasury and HMRC on this issue, and guidance from HMRC is expected.

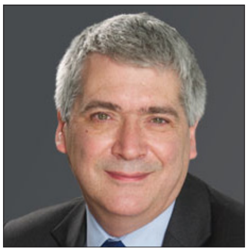
There is some debate within the pensions industry as to whether pension scheme trustees are potentially outside the scope of the regulations. However, we believe that the better view is that pension scheme trustees are within their scope. This appears to be the government's view.

Registration and client due diligence – professional trustees

The regulations also replace previous money laundering regulations which came into force in 2007. Like those regulations, the 2017 regulations impose obligations on individuals and companies who provide trustee services by way of business ("professional trustees") to register with HMRC and to carry out client due diligence when taking on new clients. In 2007, HMRC published guidance which confirmed that where a professional trustee's business activities only involved occupational pension schemes, the professional trustee was not required to register with HMRC and could carry out a simplified form of client due diligence. HMRC has updated its guidance to confirm that this remains the position now that the 2017 regulations are in force.

Comment

We think it is likely that most schemes will be able to comply with their provision of information duties as regards members and other beneficiaries by providing a description of the class of persons who are beneficiaries or potential beneficiaries, without having to list them all by name. We would advise trustees to hold off taking any action in respect of the new obligations until HMRC has published its guidance.



Jonathan Moody

Transfers of safeguarded benefits – valuation and risk warnings

The DWP has published two sets of regulations affecting the advice and information requirements that apply when members with "safeguarded benefits" wish to transfer them to a "flexible benefits" arrangement, convert them into flexible benefits, or draw them as cash in the form of an uncrystallised funds pension lump sum (**"UFPLS"**).

One set of regulations (the **"Valuation Regulations"**) makes minor changes to how to assess whether safeguarded benefits are worth more than £30,000 (above which point the member must take financial advice before transferring or converting them or taking them as an UFPLS).

The second set (the **"Risk Warning Regulations"**) will apply only where the rights that the member is thinking of transferring or converting or taking as an UFPLS are so-called "safeguarded-flexible benefits" – in other words, where the member has accrued a "pot" of money to spend on benefits at retirement and the pension scheme rules promise to convert that pot into an annuity at a pre-defined conversion rate (e.g. £1 of pension for each £20 in the pot). These new regulations will require trustees to give members a special risk warning when they become aware that a member with safeguarded-flexible benefits is considering a transfer/conversion/UFPLS option.

Both sets of regulations will come into force on 6 April 2018.

Background

By way of a refresher, since April 2015, schemes can offer individuals aged 55 and above a wider range of choices about how they can access "flexible benefits" (i.e. money purchase benefits and other benefits where the member is promised, not a defined rate of pension, but a pot of cash which he or she can then convert into retirement benefits). These new options – sometimes called pensions freedoms – now include new drawdown options and drawing part or all of their flexible benefits in cash as an UFPLS.

Subject to one exception mentioned below, the pensions freedoms do not apply to "safeguarded benefits" – for example, standard DB pensions or career average pensions. The only way members can access such benefits in the ways that the new pensions freedoms permit is by first transferring them into a flexible benefits arrangement (or otherwise converting them into flexible benefits). Concern that members would be too easily tempted to do this led to the requirement for holders of over £30,000 of safeguarded benefits to take appropriate independent financial advice before they make any such transfer or conversion.

Strangely, one rare type of benefit is simultaneously a flexible benefit and a safeguarded benefit. This is a "safeguarded-flexible benefit" as described earlier, where the member is promised a money purchase or other cash balance "pot" at retirement, which the scheme's rules promise to convert into a pension at a pre-defined rate. In principle, the new pensions freedoms apply to safeguarded-flexible benefits because they are flexible benefits, but the requirement to take financial advice on a transfer or conversion if they are worth more than £30,000 also applies because they are safeguarded benefits too. (If the £30,000 limit has been passed, members must also take financial advice before drawing a safeguarded-flexible benefit as a UFPLS.)

Current legislation has not been entirely clear about how some types of safeguarded benefit should be valued against the £30,000 limit. There has also been concern that many members with safeguarded-flexible benefits do not realise how valuable the promise of guaranteed annuity conversion terms really are.

The new valuation approach

Under the Valuation Regulations, all types of safeguarded benefits – including pension credit benefits granted after a pension sharing order, and benefits that a member has no statutory right to transfer – will be valued on the standard best estimate cash equivalent basis, without any reduction to reflect any scheme underfunding and without any uplift to reflect a trustee decision to pay transfer values that exceed the best estimate calculation. (The current legislation does not expressly cover pension credit benefits; it also suggests that if trustees pay a transfer value in excess of the best estimate, that higher value must be taken into account in applying the £30,000 test – which will not be the case going forwards.)

Transitional rules will apply where members have been told between 1 October 2017 and 5 April 2018 that the advice requirement applies to them, but it will stop applying to them from 6 April 2018 because of the changes made by the Valuation Regulations. Broadly, the trustees must either tell the members concerned before 6 April 2018 that the advice requirement will stop applying to them, or tell them between 6 and 26 April 2018 that the advice requirement has ceased to apply.

Tailored risk warnings

Under the Risk Warning Regulations, from April 2018 schemes will be required to provide tailored risk warnings to members with safeguarded-flexible benefits before any transfer or conversion of those benefits or payment of those benefits as an UFPLS, irrespective of the member's age, irrespective of whether the member's safeguarded benefits are worth more than £30,000, and – usually – irrespective of whether the member is proposing to transfer into a flexible benefits arrangement. The triggers for providing a risk warning will include the member writing to the trustees to ask for information about how to apply for a statement of entitlement or to request a valuation of his or her safeguarded benefits.

The risk warning will (amongst other things) need to explain to the member that safeguarded-flexible benefits have valuable guarantees, and it must include illustrations of the rate of secure pension income that the member would receive on exercising those guarantees compared with what the same size pot could buy on the open market. There are additional new requirements for Pension Wise to be signposted within the risk warning, and for the risk warning to be sent at least two weeks before the relevant transaction is carried out.

Note that the risk warning requirements will apply only where the guaranteed conversion rate is promised by the scheme rules. In our view (and in the DWP's view), the requirements will not apply where the guarantee is offered only as an in-built feature of a policy that the scheme lets the member invest in (i.e. where the guarantee is given only by the insurer, and the scheme merely promises the member whatever benefits the insurer actually pays out). This may not be an easy distinction to make. Trustees whose schemes offer "pot-based" benefits with guaranteed conversion terms may need to seek advice on whether or not the risk warning requirements will apply to them, although some trustees may want to issue risk warnings as a matter of good practice even if not required to do so.

Comment

We suggest that schemes, particularly those that provide safeguarded-flexible benefits, should start preparing for compliance with the new duties as soon as possible.

Liam Kellett

Changing benefits and members' "reasonable expectations" – employer duties

The Court of Appeal has overturned a High Court ruling that changes made by IBM to its DB pension schemes breached IBM's duty of good faith to its employees.

Background

Employers and employees owe each other an implied contractual duty not to act in a way that will, or is likely to, destroy or seriously damage their mutual relationship of trust and confidence. This duty requires an employer to act in good faith when exercising its powers and discretions in relation to a pension scheme (often referred to as the *Imperial* duty).

IBM operated two DB pension schemes. In 2005 and 2006 it undertook two cost-control projects (known as Projects Ocean and Soto) which made a range of changes to the schemes, including increasing member contributions and capping pensionable pay increases. In return for the trustees' and members' consent to the changes, IBM increased its contributions to the schemes and obtained a guarantee from its US parent company. Both projects involved member communications containing statements to the effect that the changes would put the schemes in a position that was described as "secure", "sustainable", "firm" and "long term". The trustee chairman was also told that the US parent company's global head of HR would "push back" on any further proposals for change to the schemes if the trustees supported Project Soto.

In 2009, IBM proposed a further package of changes to the schemes (known as Project Waltz) which included:

- closing both schemes to future accrual from 6 April 2011;
- imposing new early retirement terms from 6 April 2010; and
- withholding pay rises for scheme members unless they signed contracts agreeing that future pay rises would be non-pensionable.

IBM's grounds for proposing Project Waltz were to reduce pensions-related costs so that the global group could meet its earnings per share (**"EPS"**) targets, and to make the UK business more competitive and profitable.

The trustees were concerned that Project Waltz breached IBM's duty of good faith. IBM applied to the High Court for declarations on this issue.

The High Court's decision

The High Court decided that Project Waltz amounted to a breach of IBM's duty of good faith. The member communications and statements to the trustees at the time of Projects Ocean and Soto had created "reasonable expectations" among the members that the schemes would remain open to accrual in the long term unless there was a significant change in economic and financial circumstances. IBM's reasons for Project Waltz were insufficient to justify it acting against those expectations.

The judge was clear that employers are entitled to take account of their own financial interests when exercising a power or discretion in relation to a pension scheme. However, an employer could only place its own financial interests above the reasonable expectations of members if it was not irrational or perverse to do so. The judge held that IBM had not shown that its business case justified it acting against the members' reasonable expectations. Its parent company's need to meet the EPS targets did not amount to sufficient justification since this did not in itself mean that the required savings had to come from the pension schemes. Nor did IBM's desire to make the UK business more competitive and profitable justify Project Waltz, as less far-reaching changes could have been proposed.

The judge also held that IBM had breached its contractual duty of trust and confidence by consulting employees about Project Waltz in a way that was not "open and transparent", and by providing misleading information.

IBM appealed the High Court's decision that it had breached its duty of good faith.

The Court of Appeal's decision

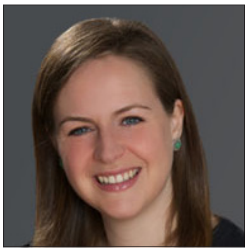
The Court of Appeal held that IBM's actions did not breach its duty of good faith. The High Court judge had erred in deciding that, where reasonable expectations had been engendered, those expectations could not be overridden unless there was no other reasonably possible course open to IBM. The correct test that should have been applied was one of irrationality – in other words, whether IBM's decision to proceed with Project Waltz was one that no rational decision-maker could have reached. Although the statements made by IBM in connection with Projects Ocean and Soto may have created reasonable expectations among the members as to the scope of future changes to the schemes, those expectations were just one of the factors that IBM had to take into account (which it did) in its decision-making process. The weight to be given to those factors was a matter for the decision-maker and not the Court.

IBM did not appeal the High Court's ruling that it had breached its contractual duty of trust and confidence in the way it consulted employees about Project Waltz. However, the Court decided that it would be wrong to require IBM to undertake a new consultation process as to do so "would change the position of IBM and of the members ... far too radically by requiring Project Waltz (which on this basis is not legally objectionable in itself) to be unravelled and cancelled, and by putting IBM in the position of having to consider and formulate what would be entirely new proposals ... It would not be a case of consulting again, in a proper manner on the original proposals". The members were nonetheless entitled to claim damages from IBM for its breach of the contractual duty.

Comment

This case is the first time that an employer's *Imperial* duty of good faith has been considered in detail by an appellate court, and the Court of Appeal's judgment offers useful guidance on the scope of the duty. In particular, the judgment provides clarification that members' expectations (whether reasonable or otherwise) are just one of the relevant factors to be taken into account by employers when making decisions affecting a pension scheme, rather than a factor to be awarded overriding significance.

IBM United Kingdom Holdings Limited and another v Dalgleish and others [2017] EWCA Civ 1212



Katherine Carter

In other news...

Finance Bill – delayed measures including money purchase annual allowance reduction

The government has confirmed that the reduction of the money purchase annual allowance from £10,000 to £4,000 will be included in the Finance (No 2) Bill 2017 (now expected to be laid before Parliament in the autumn) and will have retrospective effect from 6 April 2017.

The replacement of the current income tax and NICs exemption for employer-funded pensions advice with a new £500 exemption that also covers advice on general financial and tax issues relating to pensions will also be introduced with retrospective effect from 6 April 2017.

Pensions guidance – replacement of TPAS and Pension Wise

The Financial Claims and Guidance Bill has been laid before Parliament. It creates a single public financial guidance body which will replace TPAS, Pension Wise and the Money Advice Service. It will be funded from existing levies on occupational pension schemes and financial services providers.

DB security and sustainability – White Paper

The government has announced that, following its Green Paper on security and sustainability in DB schemes, it will publish a White Paper later this year which will:

- set out proposed next steps on what reform is needed to support the sector;
- address the commitments in the government's election manifesto in relation to the regulation of DB schemes in the private sector;
- consider innovative delivery structures, such as consolidation and measures to drive efficiency within the sector; and
- consider the need to evolve and adapt the regulatory regime to improve security for members.

European Market Infrastructure Regulation (EMIR) – proposed reforms

The European Commission has announced a package of proposed amendments to EMIR, including a further three year exemption for pension schemes from EMIR's central clearing requirements. (The current exemption is due to expire on 16 August 2018.)

GMP equalisation – Court proceedings

The trustee of three Lloyds Banking Group pension schemes has issued High Court proceedings to determine whether the trustee is required to equalise GMPs and, if so, how equalisation should be effected. The hearing is unlikely to be held before the second half of 2018.

Pensionable pay caps – Court guidance

The Court of Appeal has held that a cap on pensionable pay that had been achieved by the employer determining what pay increases would count towards pensionable pay was valid. The Court also held that the cap did not breach:

- s91 Pensions Act 1995 which prohibits an individual from surrendering his or her entitlement to a pension or right to a future pension under an occupational pension scheme; or
- the employer's implied duty of good faith as, among other things, the employer had a sound justification for imposing the cap, and employees were offered a choice of whether or not to accept the cap (even if the alternative to accepting the cap was to not recieve a pay increase).

Bradbury v British Broadcasting Corporation [2017] EWCA Civ 1144

Discretionary pension increases and trustee duties – Court guidance

The High Court has rejected BA's claim that the trustee of the Airways Pension Scheme invalidly exercised the scheme's amendment power to introduce a trustee power to pay discretionary increases, and that the trustee's subsequent exercise of the power to award a 0.2% discretionary increase in 2013 was invalid.

BA has been granted leave to appeal the decision, and the High Court has granted an injunction preventing the trustee from paying out the 0.2% increase until the appeal has been decided. The Court of Appeal hearing is likely to take place in mid-2018.

British Airways plc v Airways Pension Scheme Trustee Limited [2017] EWHC 1191 (Ch)

Ill-health early retirement pension – calculation based on part-time salary was not discrimination

The Court of Appeal has held that a member was not treated unfavourably as a consequence of his disability where, in accordance with the scheme rules, his ill-health early retirement pension was calculated by reference to the part-time salary he was earning when he retired rather than a full-time equivalent salary. (The member had previously moved from full-time employment to part-time employment due to his disability.) The Court held that a provision which treats a disabled person more advantageously as a consequence of his or her disability, but less advantageously than would be the case had the disability arisen more suddenly (with the result that the disabled person retired from full-time employment), does not amount to unfavourable treatment.

Williams v Trustees of Swansea University Pension & Assurance Scheme and another [2017] EWCA Civ 1008

Ill-health reviews – applying the correct test

The Deputy Pensions Ombudsman has decided that trustees applied an incorrect test when reviewing and deciding to suspend a member's ill-health pension. The Deputy Ombudsman held that there is an underlying principle that, once a pension has been put into payment, it is payable for life unless, where an ill-health pension is concerned, the payment of that pension is no longer justified by reason of an improvement in the member's condition. As such, when applying a discretion under scheme rules to vary, reduce or suspend a member's ill-health pension, trustees must be able to point to a change of circumstances in relation to the member's ill-health to support exercise of that discretion. In this case, the trustees had simply considered whether the member still met the ill-health test, rather than considering whether his circumstances had changed since the ill-health pension was originally awarded.

Mr N (PO-11695)

State pension age – increase to 68

The government has announced state pension age will increase to 68 between 2037 – 2039, seven years earlier than originally planned.

Pensions Regulator – trustee penalties for reporting failures

The Pensions Regulator has published a press release warning trustees of the potential penalties they face if they fail to submit their scheme return or (in the case of schemes with DC benefits) to prepare their chair's annual governance statement by the relevant deadline. The Regulator issued 173 fines in 2016 in connection with such failures.

Asset management – Financial Conduct Authority (FCA) market study

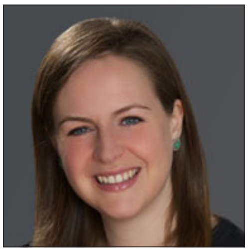
The FCA has published the final report of its asset management market study. The report identifies a number of concerns, including that price competition is weak in a number of areas of the industry; investors are not always clear what the objectives of funds are; fund performance is not always reported against an appropriate benchmark; and concerns about the way the investment consultant market operates. The report also includes details of the remedies that the FCA proposes to address these concerns. These include:

- strengthening the duty on fund managers to act in the best interests of investors;
- supporting the disclosure of a single, all-in-fee to investors, and the consistent and standardised disclosure of costs and charges to institutional investors;
- recommending that the government remove barriers to pension scheme consolidation and pooling; and
- recommending that the government considers bringing investment consultants into the FCA's regulatory perimeter.

Social investment – Law Commission report

The Law Commission has published a report on pension schemes and social investment. The report notes that investment in property and infrastructure has the potential to provide financial returns for schemes and to address social concerns at the same time. However, unlike in other countries, in the UK, DC schemes are not investing in social investments. While there are no legal or regulatory barriers to social investment by schemes, the report identifies a number of structural and behavioural barriers, and makes various recommendations, including that:

- the law should be amended to require pension schemes to report on their policies on evaluating social impact, considering members' ethical concerns, and exercising stewardship powers;
- the Pensions Regulator and the FCA should consider providing further guidance on how pension schemes can manage illiquid investments, such as investments in infrastructure; and
- the government should consider taking steps to address barriers to consolidation of DC pension schemes so they are more able to invest in illiquid assets.



Katherine Carter

Upcoming Pensions Group events at Mayer Brown

If you are interested in attending any of our events, please contact Katherine Carter (kcarter@mayerbrown.com) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Data Privacy Bootcamp – the GDPR and pension schemes**
  6 September 2017

Mayer Brown partners Mark Prinsley, Oliver Yaros and Jay Doraisamy will explore the new requirements under the European General Data Protection Regulation and provide a detailed assessment of the ten steps that pension schemes need to take to get ready to comply with it by 25 May 2018.

- **Trustee Foundation Course**
  12 September 2017
  5 December 2017

Our Foundation Course aims to take trustees through the pensions landscape and the key legal principles relating to DB funding and investment matters, as well as some of the specific issues relating to DC schemes, in a practical and interactive way.

- **Trustee Building Blocks Classes**
  14 November 2017 – topic to be confirmed

Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management.

Annual Pensions Conference
3 October 2017

Our Annual Pensions Conference will look at some of the challenges facing employers and trustees of occupational pension schemes in the current economic and regulatory environment.

- **Pensions Group Drinks Party**
  2 November 2017

Our drinks party for clients and other industry contacts will be held at the Tower of London and will include a tour of the Crown Jewels.

The View from Mayer Brown – Pensions Podcasts

Every month Richard Goldstein, a partner in our Pensions Group in London, places a spotlight on key developments that could affect your scheme in a podcast. Just 10-15 minutes long and available on iTunes, the podcasts provide a quick and easy way to stay on top of the current issues in pensions law.

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A Global Guide to Retirement Plans & Schemes

We have recently launched the latest in our series of global guides, *A Global Guide to Retirement Plans & Schemes*.

The Guide provides an overview of the laws relating to the regulation of retirement plans and schemes in 50 key countries. Each chapter provides a general outline of the country's social security system and the main rules governing employer-sponsored retirement plans/schemes.

The Guide draws on the input of lawyers from across our global Employment & Benefits Group, as well as our network of best friend law firms. It is available via the Mayer Brown website as an eBook/web reader and as an interactive PDF.

Dates and deadlines

2017
Government review of automatic enrolment, including review of level and scope of DC charges cap

30 September 2017
Automatic enrolment – end of transitional period for DB and hybrid schemes

1 October 2017
- Introduction of cap on early exit charges in DC occupational pension schemes and extension of ban on member-borne commission arrangements in qualifying schemes
- Proposed new deferral option for section 75 debts in multi-employer schemes expected to come into force

31 December 2017
End of transitional period during which 70%/30% split of combined investment and administration invoices can continue to be applied for VAT purposes

5 April 2018
Deadline for making resolution under s68, Pensions Act 1995 to remove protected rights provisions from scheme rules

6 April 2018
- Automatic enrolment - 2% employer contributions required for DC schemes
- CPI indexation of lifetime allowance to be introduced
- Introduction of new valuation requirements for transfers/conversions of safeguarded benefits and new risk warning requirements for transfers/conversions and lump sum payments of safeguarded-flexible benefits

21 May 2018
Deadline for implementation of Portability Directive into UK law

25 May 2018
EU Data Protection Regulation comes into force

October 2018
New authorisation and supervision regime for master trusts expected to come into force

13 January 2019
Deadline for implementation of IORP II Directive into UK law

6 April 2019
Automatic enrolment - 3% employer contributions required for DC schemes

5 April 2021
Deadline for employers to exercise statutory power to amend their schemes to reflect increase in employer NICs resulting from abolition of contracting-out

Key:

Important dates to note

For information

About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia, Europe and the Middle East. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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