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Pensions Legal Update

Legal Update Contents

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Regulated apportionment arrangements

Summary. The Pensions Regulator (the Regulator) has issued a statement on regulated apportionment arrangements (RAA) and employer insolvency (the statement).

Background. A section 75 debt may be triggered against employers participating in a pension scheme where the employers suffer an insolvency event (*section 75, Pensions Act 1995*). Unless an alternative arrangement recognised by legislation is agreed, the amount of the section 75 debt is a prescribed share of the scheme's buy-out deficit. The insolvency event of the employers may also trigger an assessment period (assessment period) for the purposes of the Pension Protection Fund (PPF).

An RAA may only apply where an assessment period commences or is reasonably likely to commence in the next 12 months. Under the RAA, the amount of the section 75 debt payable by an employer can be reduced or increased with a corresponding increase or reduction for other employers. An RAA requires the approval of the Regulator, and the Board of the PPF must not object to it.

Facts. The statement's key points are that:

- An RAA will be rare. The Regulator's decision is highly unlikely to have an impact on the level of members' benefits.
- Where there is a serious risk of insolvency, employers, trustees and advisers should engage in discussions at an early stage. Trustees and advisers should consider alternatives to an RAA and whether insolvency is inevitable. The independent financial advice the trustees receive will be fundamental.
- Engagement with the Regulator should also happen at an early stage. An application to the Regulator for an RAA must be accompanied by a clearance application.
- The Regulator may take some time to carry out its due diligence to assess whether an RAA is appropriate and will work closely with the PPF. The Regulator will consider: whether insolvency of the employer would otherwise be inevitable without the RAA; whether the scheme might receive more from an insolvency than it would from the PPF; whether a better result might be obtained through the use of the Regulator's powers; the position of the rest of the employer's group; and the outcome of the proposals for other creditors.
- The Regulator will first decide whether an RAA might be appropriate and reasonable, and then whether the proposed level of mitigation is appropriate. An approval notice cannot be issued until 28 days after the Regulator determines to approve an RAA.

Comment. This is useful guidance as to where an RAA may become relevant.

Source: The Regulator: regulated apportionment arrangements and employer insolvency, 12 August 2010, www.thepensionsregulator.gov.uk/docs/regulated-apportionment-arrangements-statement-august-2010.pdf.

Equitable Life

Summary. Sir John Chadwick has issued his report on a compensation scheme for Equitable Life policyholders.

Background. The Equitable Life Assurance Society closed to new business in 2000, and by 2002 had reduced policy values on all with-profit policies including with-profit annuities (WPA). In 2008 the Parliamentary and Health Service Ombudsman issued a report on the prudential regulation of Equitable Life by public regulators. She made findings of ten findings of maladministration against the regulators, which led to four findings of injustice suffered by policyholders. Following this report, the Government asked Sir John Chadwick for his advice on five issues:

1) the extent of relative losses suffered by Equitable Life policyholders;
2) what proportion of those losses can be attributed to: (a) the maladministration accepted by the Government; and (b) the actions of Equitable Life and other parties;
3) which classes of policyholder have suffered the greatest impact;
4) what factors arising from this work the Government might wish to take into account when reaching a final view on determining whether disproportionate impact has been suffered; and
5) if the accepted maladministration had not occurred, what difference would it have made to the performance of Equitable Life?

Facts. With regards to the five issues:

1) WPA holders suffered a relative loss of 25% and all other policies a loss of 20%. Chadwick bases these figures on his contention that without the maladministration, new investments in Equitable Life would have dropped by between a sixth and a quarter.
2) As the Government accepted the findings of maladministration, these losses could not appropriately be apportioned between Equitable and other parties.
3) The greatest sufferers were WPA policyholders.
4) The Government should take into account three factors. Firstly, any policyholders who suffered "real loss", by receiving less from the policy than they paid in premiums. Secondly, any ability policy holders had to mitigate the results of maladministration. WPA policyholders had the most limited ability to mitigate. Thirdly, Chadwick argues that some policyholders (such as those with guaranteed annuity rates) in fact benefited from maladministration.
5) With no maladministration, Equitable Life would still have closed to new business in 2000. It would have declared lower bonuses at some points in the 1990s and a slightly weaker solvency position to regulators, but would have declared a better solvency position in 2000.

Comment. This report will be taken into account by the Government in developing the compensation scheme for Equitable Life policyholders.

Source: Advice to Government in relation to the Equitable life Payment Scheme published by Sir John Chadwick in July 2010

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