Pensions Minister announces PPF Compensation Cap uplift for long-serving members

The Pensions Minister has announced plans to increase the maximum compensation members of a pension scheme entering the Pension Protection Fund (PPF) can receive if they have more than 20 years’ service with an employer.

Typically this will result in schemes’ PPF valuations showing a slightly increased liability, and a small increase in future PPF levies is likely to cover the higher benefits. A more controversial consequence is to give these higher earning long-servers a greater share when an underfunded scheme winds up outside the PPF, potentially to the detriment of lower earners.

For further details see LCP’s News Alert.

Individual Protection – LCP’s analysis

We reported recently on the publication of proposed details of the operation of “Individual Protection” – the second of two protections intended for the statute book in response to next year’s £250,000 drop in the Lifetime Allowance (see Pensions Bulletin 2013/25).

A News Alert is now available that analyses the choices individuals might face, and the actions employers and trustees might want to take.

Pensions Ombudsman ruling – overpaid pension not recoverable where it has been spent

A member of a pension scheme has successfully rebuffed the Trustees’ attempts to reclaim incorrectly paid pension from her by stating that she had changed her financial position as a result of the overpayments.

The member in question, Mrs Wytch successfully relied on a legal principle, which although recognised, has proved hard to rely on in previous cases. When the case was brought before the Pensions Ombudsman Mrs Wytch was able to demonstrate that she had taken financial actions based on the overpayments she had received of just over £3,000 and that reclaiming the overpaid amount now would result in financial hardship as she had already spent it (even though the scheme had proposed recouping the overpaid...
amount over a period of 63 months at £50.52pm). The Ombudsman ruled that although the Trustees had a legal right to reclaim the overpayment, this was overridden by Mrs Wytch’s defence that her financial position had changed due to the overpayment.

Mrs Wytch also claimed compensation of £1,000 for the stress and inconvenience she had suffered during this episode – the Ombudsman consequently ordered the Trustees to pay her £300 to “compensate her for the disappointment of receiving a reduced income in future”.

**Government acts to fulfil promise to Equitable Life policyholders excluded from existing compensatory arrangements**

The Government has taken the first step to fulfil a Budget 2013 pledge to compensate Equitable Life with profits annuitants excluded from the Equitable Life Payments Scheme (see [Pensions Bulletin 2011/22](#)).

With profits annuitants who bought their policies from the Equitable Life before 1 September 1992 are excluded from the Payments Scheme as the Government had concluded that they did not suffer loss as a consequence of the government maladministration implicated in the failure of Equitable Life. In this year’s Budget, however, the Chancellor of the Exchequer recognised the particular financial pressures that this group of policyholders had suffered and announced that, as a consequence, ex-gratia payments would be made to them.

The [Transfer of Functions (Age-Related Payments) Order 2013](#) (SI 2013/1442) comes into force on 11 July 2013 and updates existing statute law to make provision for powers to make the regulations that will enable the Treasury to pay this ex gratia compensation.

**The Portability Directive is resurrected – but only to assist cross-border mobility**

When we last reported on this in [Pensions Bulletin 2008/04](#) we observed that “it remains to be seen whether a Directive will eventually result”. Five years down the line it appears that one indeed will. On 20 June the European Council of Employment, Social Policy, Health and Consumer Affairs agreed the European Commission’s proposal for a [Directive on improving the portability of supplementary pension rights](#).

But unlike the original which would have affected those moving jobs within Member States as well as those moving jobs between Member States, this Directive only affects
those who, within two years of leaving a job in one Member State in which they had accrued pension rights, become employed in another Member State.

The Directive requires EU Member States to implement minimum requirements for the acquisition and preservation of pension rights for such “outgoing workers”, but only in relation to periods of employment after the Directive comes into force in the Member State and only if, when the Directive comes into force, the scheme they are exiting from accepts new joiners.

The requirements themselves are straightforward and similar in many ways to the original Directive. They include a combined waiting and vesting period of no more than three years, a maximum age of 21 if vesting is to be dependent on age, non-vested leavers being entitled to a refund of member contributions and where the employee bears the investment risk (ie defined contribution schemes) “either the sum of the contributions made or the investment value arising from these contributions” and a requirement to treat vested rights equitably vis-à-vis the rights of active scheme members. Vested rights can also be paid directly to the outgoing worker if their value does not exceed a threshold established by the Member State.

There are also some information requirements designed to enable active members to establish how a termination of their employment would affect their pension rights – these necessarily have to apply to all active members; not just those who might become outgoing workers.

**Comment**

So far as we can work out this Directive will have little or no impact on UK pension schemes. The three year combined waiting and vesting period could prove to be troublesome if the Directive was in force today, given the ability under the auto-enrolment legislation for employers to defer membership of certain schemes until 1 October 2017. But given that it is likely to be a little while before the Directive passes into European Law and Member States then have a further three years to implement, this ought not to be a concern.

**Reckless bankers to lose pension rights?**

The wide-ranging report “Changing Banking for Good” published by the Parliamentary Commission on Banking Standards has attracted a lot of attention, partly because of its recommendation that a new criminal offence of “reckless misconduct” is created so that, ultimately, executives of a failed bank which needs a taxpayer bailout could be criminally prosecuted.

In addition, the Commission recommends that it should be possible to target the bonuses, share options and pension rights of such executives. For pensions, the
Commission recommends that under a new Remuneration Code regulators should have the power to enable “…any unvested pension rights and entitlements associated with loss of office, to be cancelled in any case in which a bank requires direct taxpayer support”.

Comment

The bosses of failed banks walking off with large pensions after taxpayer bailouts have caused a lot of well-publicised ire and so this recommendation is understandable. However, no detail is given. What does “unvested” mean for example? Bankers with large “normal” pension entitlements are “vested” after two years qualifying service like everyone else. Is some new pensions law suggested so that such entitlements become forfeit? If so, all sorts of legal difficulties could be imagined – for starters the Human Rights Act might work to prevent this. Or is the suggestion just that any special pension deals struck in the run-up to failure could be cancelled? We (and banks) will be awaiting the detail with interest.

Regulator sets out trustee prohibition policy

The Pensions Regulator has published a statement that explains what it is looking for if it needs to build a case for its Determinations Panel that a trustee is not a “fit and proper person”. The statement also explains the process that is followed if the Regulator concludes that the trustee should be removed.

The Regulator’s concerns are likely to be focussed in three areas – an individual’s honesty and integrity, competence and capability and financial soundness. In each area, the statement gives some insight into what it might take for the Regulator to have concerns.

The statement also explains the suspension option which might be used as a holding measure.

The Regulator has to date made 13 entries on its register of prohibited trustees, while there are more than four times that number on the register of disqualified trustees compiled by its predecessor, the Occupational Pensions Regulatory Authority. All the trustees on both these registers have been prohibited or disqualified from acting as trustees of all trust schemes.

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.
LCP Libera AG  
Zürich, Switzerland  
Tel: +41 (0)43 817 73 00  
info@libera.ch  

Lane Clark & Peacock UAE  
Abu Dhabi, UAE  
Tel: +971 (0)2 658 7671  
info@lcpgcc.com  

All rights to this document are reserved to Lane Clark & Peacock LLP (“LCP”). This document may be reproduced in whole or in part, provided prominent acknowledgement of the source is given. LCP is part of the Alexander Forbes Group, a leading independent provider of financial and risk services. Lane Clark & Peacock LLP is a limited liability partnership registered in England and Wales with registered number OC301436. LCP is a registered trademark in the UK (Reg'd. TM No 2315442) and in the EU (Reg'd. TM No 002935583). All partners are members of Lane Clark & Peacock LLP. A list of members' names is available for inspection at 30 Old Burlington Street W1S 3NN, the firm’s principal place of business and registered office. The firm is regulated by the Institute and Faculty of Actuaries in respect of a range of investment business activities. The firm is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are licensed by the Institute and Faculty of Actuaries. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. Lane Clark & Peacock UAE operates under legal name “Lane Clark & Peacock Belgium – Abu Dhabi, Foreign Branch of Belgium”. © Lane Clark & Peacock LLP.