



THE CHEVIOT TRUST

Pensions for the legal sector

PENSIONS UPDATE - AUGUST 2010

1. Recent Cases

Two recent cases, *Stena Line Limited v Merchant Navy Ratings Pension Fund* and the *PNPF Trust Company Ltd v Taylor and others (Pilots case)* have both provided practical and important guidance to trustees and employers as to who can be made liable to contribute to pension schemes and when employers will have bought their liabilities to an end.

Cheviot comment - these cases may be particularly relevant to those employers who have participated in the With Profits Section of the Money Purchase Scheme. However, both cases are likely to be appealed and so it is too early to reach any firm conclusions about the impact on the Cheviot arrangements.

2. The Pensions Regulator publishes statement on proposed indexation change

The Pensions Regulator has issued a statement aimed at assisting trustees and employers in managing the proposed change from the Retail Price Index to the Consumer Price Index.

Cheviot comment - this proposal has received a lot of press coverage. It is too early to say what the impact will be on scheme funding arrangements. The Pensions Regulator is making it very clear that it does not expect it to reduce levels of contributions which will disappoint many employers.

3. Government launches consultation on phasing out the default retirement age

The Department for Business Innovation and Skills (**BIS**) has published a consultation paper which proposes a six-month transitional period ending with the abolition of the default retirement age (**DRA**) on 1 October 2011. The closing date for responses is **21 October 2010**.

The Government's decision to abolish the DRA is not without its critics, as employers say it will make it more difficult for managers to dismiss underperforming staff. Without a DRA, employers will be forced to sack their older employees, and will then have to prove in the employment tribunal that the worker was no longer capable of performing his job satisfactorily. However, supporters of the measure, such as the Age and Employment Network, have embraced the announcement as "great news" for those who wish to continue working after age 65, as well as the economy generally, with the continued generation of tax revenue.

Confusingly, the Court of Appeal (the **CA**) in *Seldon v Clarkson Wright & Jakes (a partnership) and Secretary of State for Business Innovation and Skills* [2010] has recently upheld an employment tribunal's decision that a rule requiring partners in a law firm to retire at 65 was a proportionate means of achieving the legitimate aims of workforce planning and providing associates with a chance of promotion. The CA held that the fact that a retirement age of 66 would have been less discriminatory to some did not mean that 65 was unlawful. There was no evidence that the choice of a different retirement age would have made a difference to the recruitment or retention of staff.

Cheviot comment - it is too early to comment until the final details are available but this could be a difficult area for employers in future. We will keep a watching brief.

DISCLAIMER: We hope that you will find this note contains useful general information. The pensions arena is constantly changing. Please note that any item in the note cannot be relied upon as a substitute for obtaining specific legal or actuarial advice.

4. The Additional Paternity Leave - new entitlement for fathers to take additional paternity leave and receive additional statutory paternity pay.

The Additional Paternity Leave Regulations 2010 implement powers to introduce a new entitlement for employees who are fathers, or partners of mothers, or adopters to take additional paternity leave (APL) in the first year of their child's life or the first year after the child's placement for adoption. Further regulations introduce a new entitlement for fathers to receive a statutory payment of additional statutory paternity pay.

The new entitlements came into force on **6 April 2010**, and will apply to parents of children due on or after **3 April 2011**, or to adoptive parents notified of having been matched on or after that date.

Cheviot comment - employers will need to ensure that their procedures are changed to reflect the new requirements.

5. Government consults on removing the requirement to purchase an annuity at age 75.

The consultation period ends on **10 September 2010**.

Cheviot comment – some members will welcome the flexibility to further delay purchasing an annuity.

6. The Agency Workers Regulations 2010 (S.I. 2010/93)

The above Regulations have been laid before Parliament and are due to come into force on **1 October 2011**. These implement the temporary agency work directive and give agency workers, who have been continuously employed by the same hirer for more than 12 weeks, the same basic working and employment conditions they would have had if recruited directly by the hirer.

The Regulations specify that it is the terms and conditions relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave that are relevant. However, any payment by way of a pension, allowance or gratuity in connection with the agency worker's retirement is **excluded**.

Cheviot comment - you can view the [Regulations and Explanatory Memorandum](http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf) here. (http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf)

7. TPR publishes consultation paper on revised guidance on transfer incentives in respect of defined benefits

Transfer incentives are where employers encourage members to transfer their defined benefits to another arrangement through either a cash incentive or uplift to the transfer value. TPR has published updated guidance on transfer incentives for consultation, clarifying the role of the employer and trustee. The consultation period ends on **5 October 2010**.

Cheviot comment - the Regulator continues to make it clear that trustees should approach such exercises from the perspective that it will not be in the members' interest to accept such offers. Cheviot adopted this approach some time ago.

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8. HM Treasury publishes discussion document on alternative approach to restriction of pension tax relief

HM Treasury is seeking views on how to implement the restriction of pensions tax relief, as the Government has reservations about the approach adopted in the Finance Act 2010 in April. It believes that this could have unwelcome consequences for pension saving, bring significant complexity to the tax system, and damage UK business and competitiveness. The Government is considering an alternative approach involving the reform of existing allowances, including a significantly reduced annual allowance to replace the Labour government's proposals to taper down higher-rate pensions tax relief for high earners.

Cheviot comment – it is too early to comment until the final details are available. We will keep a watching brief.

9. Abolition announced of defined contribution contracting-out and protected rights

Contracting-out is the mechanism by which employees could opt out of the second tier State Pension and invest those contributions in a different arrangement. In March 2010, it was announced that contracting-out for defined contribution (money purchase) schemes is to be abolished from **6 April 2012**. From April 2012, individuals who are contracted-out via a defined contribution scheme will automatically be brought back into the additional state pension arrangements. Members contracted-out on a defined benefit (final salary) basis are unaffected. The DWP has published a fact sheet for employers which can be found at the following link. View the [DWP's fact sheet](http://www.dwp.gov.uk/docs/emp-contracting-out-factsheet.pdf) (<http://www.dwp.gov.uk/docs/emp-contracting-out-factsheet.pdf>).

Cheviot comment – members will welcome the increased flexibility in respect of any contracted-out benefits they have. The changes will require amendments to our rules and member communications in future.

If you require any further information or assistance please contact Samantha Chandler, Pensions Administration Manager at penadmin@cheviottrust.com

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