

Employment & Employee Benefits Group

Changing Pension Benefits

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Employees who are members of a defined benefit pension scheme may have a misapprehension that they are entitled to be and remain members of the scheme until retirement and that their pension benefits are in some way guaranteed. That is not the case.

Increasingly employers are proposing to amend the defined benefit scheme, perhaps by closing it to new members or varying the basis for accrual of benefits. In other cases a decision to cease funding and to trigger a wind up of the scheme is taken. The contractual rights of employees, in addition to industrial relations implications in the workplace, must be considered before any changes are introduced.

Stakeholders

In deciding to amend or vary a pension scheme there are a number of stakeholders who will have a role in implementing any changes to the pension scheme:

1. The sponsoring employer
2. The trustees
3. The union (if a union is recognised) and
4. The employees (whether on an individual or collective basis).

Each of these stakeholders has separate and distinct interests in the process. Even where the trustees include the employer's representatives, they must act as trustees in the best interests of all the beneficiaries of the scheme (active members, deferred members and pensioners).

Role of Employer and Trustees – under the Trust Deed and Rules

The respective roles and responsibility of the employer and trustees will be set out in the trust deed and rules establishing the pension scheme. In most cases, depending on the wording of the trust deed and rules of the scheme, an employer's proposal to amend a scheme will involve reaching agreement with the trustees. The employer should not treat this as a given. Conversely where an employer decides to cease funding a pension scheme, which would usually trigger a wind up of the scheme, this decision will usually be capable of being taken on a unilateral basis. This means that in some cases where agreement with trustees is not reached to vary the scheme the employer may consider serving a notice to cease contributions and therefore trigger a winding up of the scheme.

Employees

Contractual terms of employees are usually set out in a contract of employment or may arise by custom and practice. Where there is a pension scheme, there will also be an explanatory booklet which sets out in "Plain English" the terms of the scheme. In addition there may be an employee handbook or policy which sets out the agreed procedures to be followed where an employer wishes to change terms and conditions of employment.

Pension rights have been identified by the Supreme Court as a fundamental term of employment. But establishing the extent and limitations of the pension right is a matter to be determined having regard to the contractual arrangements in place by the employer and by reviewing any of the limitation clauses contained in the pensions explanatory booklet. The explanatory booklet will usually bring to the employee's attention the fact that the pension scheme may be wound up or amended. An issue which may arise, from a contractual perspective, is establishing that the explanatory booklet was communicated to employees and that they were aware of its terms.

Unions

Where there is a recognised trade union in the workplace there will usually be an agreement in place as to the negotiation procedures to be followed in the event of changes to the terms and conditions of employment. Where an employer has the legal right to change the terms of a pension scheme there would nonetheless usually be an expectation under any applicable collective agreement that the union would be consulted and negotiated with before any changes take effect. This type of dispute is often the subject of a referral to the Labour Relations Commission (LRC) and the Labour Court under the Industrial Relations legislation. While the Labour Court is not a legal court its recommendations on industrial relations matters are usually treated as binding from an industrial relations perspective.

Conclusion

Any employer who is evaluating the cost of its pension scheme, and the need to amend or curtail benefits under the scheme, should also consider the role of the trustees to the scheme, contractual commitments to employees and the need to consult with its unions prior to implementing any such changes.

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