

Corporate Department

The Impact of the Element Six Case for Pension Trustees

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The Impact of the Element Six Case¹ for Pension Trustees

Trustees every day are faced with difficult decisions and the recent Element Six Case offers practical guidelines on how trustees should conduct themselves and carry out their duties in their decision making.

The case arose after members of a pension scheme for an industrial diamond manufacturer took a case against the trustees of their scheme over the winding up of the fund.

Members of the scheme sued the trustees of the scheme (who were three management nominees and three worker nominees) claiming breach of trust and conflict of interest in accepting an offer in November, 2011 in aggregate of €37.1m from Element Six Limited, as the contributor of the pension fund, to close its liability to contribute to the fund from the end of 2011.

The members claimed that the trustees should instead have made a contribution demand for €129.2 million or more, to make up the funding deficit to the fund, and that their failure to do so was a wilful default. The trustees accepted the €37.1m offer in a 3-3 vote in which one of the management nominees exercised their casting vote.

The vote is alleged by the plaintiff beneficiaries to have been invalidated by conflict of interest, to have taken into account irrelevant matters, to have ignored relevant issues and to be a decision that no reasonable body of properly informed trustees could have taken. The claims were denied.

Outcome

Judge Peter Charleton ruled in February, 2014, that the trustees of the scheme had acted reasonably and in the interests of the members as a whole when they agreed to accept an offer to wind it up on the basis of a contribution of €37.1m from the company.

In giving his judgement he stated the following:-

- that the defendant trustees did their best.
- that they were not overwhelmed, crippled or influenced to any degree by any conflict of duty or interest.
- that their decision was solely made in the interests of the beneficiaries.
- that their decision was arrived at on a fair appraisal of the situation as they saw it after all reasonable enquiries and it was made honestly and in good faith. Their actions can only be judged according to the knowledge which they had at the time of their decision.
- that they did not take any irrelevant factor into account nor did they ignore any relevant factor.
- the weighting which the defendant trustees gave to particular factors didn't emerge as unreasonable.

¹ Greene & ors -v- Coady & ors (2014) IEHC 38

- given the entirety of the circumstances, the decision to decline to serve a contribution demand and to accept the company's offer of €37.1 million in winding up the pension scheme was not one with which any court could take issue.

He also stated that the trustees might be criticised had they not obtained the best possible advice; yet they had obtained advice from reliable and expert sources and they took all of that advice into consideration and, with prudence and fortitude, made the decision which they thought was in the best overall interests of the beneficiaries.

Points to note

The following points were also set out in the judgement and they provide an insight for trustees going forward:

- in making any decision as to the liability of trustees it is not for the court to be cleverer or better informed, more astute, more enquiring or better in its judgment, than the trustees.
- once trustees are shown to have acted honestly and in good faith, after having taken account of all relevant considerations and excluded all the irrelevant considerations, that only decisions which are properly to be characterised as being ones that no reasonable body of trustees could have made may in law be condemned.
- once a consideration is relevant, it is a matter for the trustees as to how factors are to be weighed in the balance in the exercise of their discretion.
- a trust deed may exempt from major conflicts of interest as well as minor ones and it may exempt from conflicts of duty as well. Where the governing document of a pension scheme allows a trustee to act despite a conflict of interest then, in the normal course, no decision of the trustees can be challenged on that ground.
- if, as a matter of fact, the conflicts of interest are such as to overcome or disable the ability of a trustee to act in good faith independently for the good of the beneficiaries, then a trustee decision cannot stand; since that duty is the irreducible minimum that beneficiaries and funders are entitled to expect of the operation of a trust.

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