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Could PPF levies be on the rise?

The CJEU's decision in the case of *Pensions-Sicherungs-Verein VVaG v Gunther Bauer*

The Pension Protection Fund (**PPF**) has recently had to re-think the level of benefits it provides members following the Court of Justice of the European Union (**CJEU**) decision of *Hampshire*. The more recent *Bauer* decision has now suggested that the PPF must, in fact, protect benefits at a level higher than *Hampshire* had provided. This is likely to add an additional administrative and cost burden to the PPF, which could be reflected in increases to PPF levy charges.

Background to PPF compensation

The PPF assumes responsibility for defined benefit pension schemes where the sponsors of those schemes become insolvent and the assets in the schemes would provide benefits to members at a level lower than the statutory PPF compensation levels.

The PPF then ensures that members receive benefits at the statutory PPF compensation levels. This does not, however, mean that all members will receive their benefits in full. For example, generally members who are below their Normal Pension Age when the scheme enters the PPF assessment period are entitled to 90% of their benefits, subject to a compensation cap.

As a result of the compensation cap, it is possible that certain members could receive less than 50% of their original benefit entitlement. This was challenged in the case of *Hampshire v PPF* and, as a result, the CJEU confirmed that Article 8 of the EU Insolvency Directive requires individual members of occupational pension schemes to be provided with an entitlement of at least 50% of the total value of their accrued rights on an employer's insolvency. Since this decision, the PPF and DWP have been grappling with bringing about changes to ensure PPF compensation payments are in line with the judgment.

The *Bauer* case

In a case referred to the CJEU from the German Courts, the level of protection pension scheme members are entitled to pursuant to Article 8 of the EU Insolvency Directive was once again considered. In the Advocate General's opinion "Article 8 imposes an obligation on Member States to protect *all* of the old-age benefits affected by an employer's insolvency and not just part or a designated percentage of these benefits". Whilst this case was a reference from the German courts, this would also have had a substantial impact on the level of benefits members could be entitled to receive from the PPF and suggested the 50% level in *Hampshire* did not go far enough.

The CJEU has subsequently issued its opinion on the matter and, in what must be a relief to the PPF, has not followed the opinion of the Advocate General. The CJEU noted that Member States have considerable latitude in determining the level of protection of employees' pension entitlements and are not required to guarantee those entitlements in full. However, there is an obligation to provide a minimum degree of protection. Whilst not all losses have to be covered, the losses suffered cannot be "*manifestly disproportionate*". The CJEU went on to state that:

"…a reduction in a former employee's old-age benefits must be regarded as manifestly disproportionate where…a former employee who, as a result of the reduction, is living, or would have to live, below the at-risk-of-poverty threshold determined by Eurostat for the Member State concerned".

What does this mean?

In essence, the case law of the CJEU makes clear that the PPF will have to provide benefits along the following lines:

- Members must be provided with at least half of their accrued pension benefits.
- In addition, any reduction to benefits cannot be "*manifestly disproportionate".*
- Any such reduction will be considered manifestly disproportionate if it results in the member having to live below the at-risk-of-poverty threshold determined by Eurostat for the Member State concerned.

Comment

Whilst the PPF have acknowledged they will need to work through the details of the judgment with the DWP, there must be a sigh of relief that the CJEU did not follow the view of the Advocate General that members are entitled to full protection of their benefits. Nevertheless, the judgment is likely to increase costs to the PPF to some extent given that it is now not sufficient for the PPF to just provide at least half a member's original entitlement.

Time will tell how the PPF will implement this in practice and whether Brexit will have any impact. This is likely to result in a considerable administrative burden for the PPF and increased costs may also mean higher PPF levies in the future.

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