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17 March 2008

Dear Sir,

**Draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008**

I am writing to you to highlight an issue which could result in possibly unintended losses to a number of individuals.

In section 5, the draft regulations define the “normal retirement age” (NRA) as “the age specified in the rules of that scheme at which that member will normally retire” and then lays down that payments under the Financial Assistance Scheme should begin at the NRA.

Many schemes provide an option for members to retire at a younger age on a reduced pension (to allow for the increased length of time that the pension is likely to be in payment). Some schemes however permitted earlier retirement without penalty. Using my own scheme (Scotia Pension Scheme) as an example, the NRA was defined in the scheme documents as 65, but members were allowed to retire from age 62 without incurring an “early retirement reduction factor”. It is clear that, in these cases, the term “normal retirement age” is ambiguous and has two distinct meanings:

1. The age at which most people would elect to retire (62 in my scheme); and
2. The age at which members **had** to retire (unless invited to work on by the employer) namely 65.

From discussions with members of the FAS team, it is clear that their interpretation of the regulations is that the NRA is as defined in the scheme documents, regardless of actual practice. This is unfair, because the employer and the trustees will have made financial provision for members to retire at the earlier date, and the scheme benefits will have been calculated on that basis, resulting in a lower overall pension than could have been offered if the same assets had been directed towards payment from 65. Thus, if this provision is ignored, members of such schemes will be disadvantaged relative to those without such a provision.

I am enclosing two documents from my own scheme which show clearly that both the company and the trustees were consciously applying additional resources in order to provide the benefit of earlier retirement, and that it was their intention to allow employees to retire at any time of their choosing between the ages of 62 and 65 without penalty.

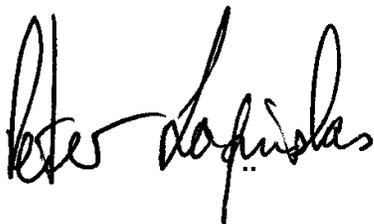
There are four different categories of schemes which permitted early retirement without penalty, namely:

1. Where members had an absolute right to retire earlier than the NRA;
2. Where members required the consent of the trustees;
3. Or of the employer;
4. Or both.

It might be thought that members in category (1) above would have the strongest argument for FAS payments to commence at the lowest age at which they could choose to retire without penalty. However, if it can be shown that the employer and trustees made financial provision for such earlier retirement (as in my case), then it was clearly not the intention of either that such consent should be unreasonably withheld, and it is also clear that, had those resources instead been applied to the pensions themselves (for instance by moving from 1/60ths to 1/50ths), then a higher pension could have been offered (up to 12% higher in my scheme). In that case, I believe that all four categories would have an equal claim to payments earlier than the NRA, as defined by the scheme. Parenthetically, it seems likely that the primary reason for a company to have retained the right to give consent in these circumstances would be operational, so as to avoid the loss of a key worker before a suitable replacement was in position.

It might be said that recognising such 'discretionary' early retirement options would add complexity to the FAS scheme and increase the operational workload, but this should not be the case. The FAS will, in all cases, have to determine the NRA as defined by the scheme documents. If the members or trustees are able to demonstrate that a no-penalty early retirement option was in place, then the FAS could then simply use this lower age in its records. Given the ambiguity in the draft legislation, this could perhaps be achieved as a policy decision, without amending the regulations, but it would be better if the NRA can be defined unambiguously in the draft so as to remove the possibility that the policy might be reversed at some future date without Parliamentary scrutiny.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Lapinskas', written in a cursive style.

Peter Lapinskas (Dr)

Enc: Memo from Company Secretary, Scotia Holdings, dated 25 February 1997  
Announcement by Trustees of Scotia Pension Scheme, dated February 1997

Cc: Samantha Anthony (FAS)  
Andrew Maggs (FAS)  
Chris Grayling MP  
Terry Monk (PAG)