

LGSS Law Ltd**Attendance Note**

Matter Number : LGS007/140
Client : LGSS Employee Services Pension
Matter Description : IDRP - Advice re Death Benefit Nomination Form
Date & Time of Attendance : 22 August 2017 at
Duration of Attendance : 20 minutes
Other Parties : Lydia Seymour, Outer Temple Chambers

Details:

Telephone call from Counsel. The solution currently is simple. While the Supreme Court may well rule that the nomination requirement in previous regulations is incompatible with a convention right that does not in itself mean that the provision requiring a nomination form is invalid – that is Section 6(2)(b). Section 6(1) and (2) reads

6 Acts of public authorities

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if--
 - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

It follows then that, while the Administering Authority has sympathy for the Appellant it cannot make any payment to them under the legislation as it stood at the time. The Administering Authority is however awaiting guidance from HM Treasury and is prepared to review the matter again depending of course upon what it says.

The wording of Section 6(2)(b) gives CCC a defence against any claim brought because there is no breach of statutory duty and no unlawful act which would be the subject of any claim for judicial review (which would be out of time anyway – such claims need to be brought promptly and certainly no later than 3 months from the act complained of)

Counsel went on to consider what would happen if HM Treasury decide to do something to help claimants for whom there was no nomination form. She said it will depend upon how they do it: -

1. The creation of ex gratia set of rights; or
2. Retrospectively rewriting the regulations. The latter is complicated for public sector pensions and will need the consent of affected persons under Public sector Pensions Act 2005 section 23.

As to claiming against bereaved beneficiaries for overpaid pension counsel described it as expensive, difficult unmeritous and unpalatable. An actuary should take a view on the prospects of that course.

Initials: RGM Date: 22 August 2017