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# Book Review

## Pensions law handbook – Eighth edition

### The Nabarro Nathanson Pensions Team

Tottel Publishing, UK, 2008, ISBN 978 1 84766 171 5; xviii + 883pp; softback; £78

*Pensions* (2008) **13**, 255–257. doi:10.1057/pm.2008.26

The eighth edition of the Nabarro Nathanson's Pensions Law Handbook fell on my desk with a reassuring thud. This is a solid pensions law book in every sense of the word. Weighing in at 883 pages (including an extensive index), it is unlikely to be the sort of book people read from cover to cover (unless they go by way of the spine), but is rather a reference book which the reader will dip into to bone up on a particular topic.

The preface informs the reader that the overwhelming volume of pensions legislation that swamped the pensions world required two editions of this book, the seventh and now the eighth edition, and I feel sure most practitioners would sympathise with the editors' dilemma.

The book trots smartly through the major areas of pensions law, including the role of personnel in pensions, contracting out, insolvency and the PPF, preservation, employment issues (including TUPE), divorce, discrimination, investment funding (including deficits and surpluses), reconstruction and winding-up SSAs, PPs and stakeholder schemes, commercial transactions (sales of shares or assets), dispute resolution and taxation.

The information is clearly set out with a sensible use of font-differentiated headings, legal numbering and bullet points. In parts, the text rather dense and small, but this is a price that has to be paid for including such a feast of law in a single, bound volume. Occasionally information is set out in tables, which can be very useful in conveying information quickly. The newly drafted 'Discrimination' chapter has tables setting out the

legislation together with the main effects and cases, alongside the main issues decided, which certainly makes such an obfuscated area a little more transparent.

The prose is crisp and readable, although short on humour, unless one believes that the inclusion of the eternal words of the PA 2004:

*'for that purpose and also for the purpose of providing benefits to, or in respect of, other people, is established by, or by persons who include, a person to whom subsection (2) applies etc.'*

is meant as a joke. Whatever the motive, the editors then bravely allege that the words have a meaning and even tell you what that meaning is, whereas everyone knows the words were merely penned to keep the parliamentary draftsman out of mischief. Apparently the clause means that: an occupational pension scheme can be funded or unfunded; it can relate to an entire workforce, a specified group of employees or a single individual; it can be established and governed by a single clause in a contract of employment or by a complex trust deed. Wow, who would have thought it meant that.

Throughout the text, the law is set out very lucidly and the different sources are drawn together to make a comprehensible whole. EU directives, UK legislation, case law and government guides are stitched into a believable narrative. However, even the editors' deftness is sometimes defeated, and sad little comments, such as, in a discussion of *Lindorfer*, the rueful conclusion 'it is not clear at this stage what

impact this decision will have on the use of sex-based actuarial factors' (p. 338) or (on p. 358) 'it is not clear whether the trustees may use the justification defence'. Perhaps, most scarily, it points out that the *Age Regulations* may not comply with the EU Directive (it would have to be decided by the courts), and anything found to be outside the Directive will be struck down. Scant comfort to the struggling practitioner.

Most pensions professionals are used to information in electronic form, and so it is useful, when dealing with paper texts, to have a date specified at which the law is correct. Here the preface says it is the end of September 2007 'although we have tried to take into account later developments'. It is questionable whether such fuzziness is actually beneficial, and a single date is easier to work around. Being unable to search the text electronically, it is especially important that the aids to manual searching, the contents, tables of statutes, statutory instruments and cases, and, above all, the index, are comprehensive and accurate. On the whole they are quite usable, although some terms that were searched could not be found. There were also one or two small inaccuracies spotted both within the tables and in the references in the text, for instance (p. 364) *Hampson v Dept. of Education* was given the reference (1999) whereas it is (1989), and when the table of cases were checked, it did not appear. The book has a handy list of abbreviations and references, but, presumably to reduce the size of the volume, no glossary.

Although a statement about the jurisdictions to which the work applied could not be found, it is presumed that it mostly concerns England and Wales. There is no reference in the Index to Scotland, and Scottish legislation, such as the Trusts (Scotland) Act 1921, does not appear alongside its English counterpart in the Table of Statutes.

As this book is now an industry standard, it is useful to compare it with the seventh edition to see how much has been added, in the intervening two years. The seventh edition was already a substantial 832 pages long, but along with adding bulk, the eighth edition has also pruned back the earlier texts. The first thing that strikes one is that

the Table of Cases has been lightened — each case now only has one reference, unlike the table in the seventh edition which gave a selection of references. Some may prefer the more fulsome references, as readers may have limited access to resources and may find the now-deleted sources are all they have. In restructuring the Table of Cases the editors took the opportunity to correct some spelling inaccuracies, add cases which had been in the text but missed the previous table and, bizarrely, to introduce some new spelling errors, suggesting the whole thing was typed from scratch, such as *Daniels v Commissioner of Police*.

The preface tells you that Chapters 7 and 9 have been restructured. Chapter 9 is now 'Discrimination', but the bulk of it is actually nearly identical to the former 'Sex Equality' chapter. This has been extended and updated including the addition of such cases as *Betafence v Veys* and *Hodgson v Toray*. The Discrimination chapter now also covers age discrimination, extensively, including recent cases such as *Palacios de la Villa v Cortefiel*. *Bloxham v Freshfields* is set out at unnecessary length, when it is not very relevant to pensions. The chapter also touches on same-sex partnerships, gender recognition and very briefly, on religion or belief and race discrimination. This last is dismissed with the comment, 'In a pensions context, there are no obvious areas where discrimination on the grounds of race should be an issue', although the Gurkha pension problem might be considered as one such issue.

Chapters 5 and 17 have been swapped round, although they do not seem to be wildly different, and the 'Insolvency and PPF' chapter now appears behind 'Contracting out' rather than after 'Disputes and litigation', where it would seem more properly to belong.

Generally the text has been updated throughout. Old references to such things as approval, the Taxes Management Act and Stamp Act have been removed. New legislation has been incorporated, such as the Companies Act 2006, Equality Act 2006 and the 2007 Finance Act. Approximately, 20 new cases were identified as well as some old ones, such as *Harvest Town Circle*

*v Rutherford*, dealing with retirement ages under the old regime, which have been removed.

Sometimes the text is a little too general to be useful. In 9.48, for instance, describing the effect of a non-discrimination rule, the book says that trustees have power, 'subject in some circumstances to employer consent', to modify the scheme. The reader, facing an age discrimination query, may not be sure how to establish when consent is needed, and having no reference in the text to the regulation, he would feel left all at sea. Similarly, 'it is generally thought' that less favoured

groups would have to be levelled up, without explaining the thinking behind could be frustrating. It does, however, make for clean prose, and gives the reader an inkling that the matter needs more research.

On the whole, however, its few shortcomings are well outweighed by its undoubted thoroughness and readability. Coming in at £78 it is also quite modestly priced for a law book.

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