Your World First

ACA/APL Joint Meeting 23 March 2017

Mark Atkinson, CMS and Julie Stothard, Capita

Some observations on the British Airways case

History and background

- BA is sponsor to two schemes: APS and NAPS
- CPI/RPI change
  - Ex-public sector, so expectation of RPI
  - Trustee resignations and re-election (2011)
  - “best financial interests”
- Rule amendment to give power
  - Unilateral amendment power for trustee
  - Unilateral increase power
  - Discretionary Increase Framework (“DIF”)
- Decision: 0.2% above CPI
  - Postponed for the period of the court case

History and background

- APS very mature – over 90% of liabilities for pensioners
- Undertaken a programme of de-risking
- Funding basis is gilts plus 0.4% p.a. post-retirement
- In 2012, funding provision included to move from CPI to RPI increases over a 10-year period
- Recovery plan in place with contributions of £55 million p.a.
- Additional £250m to be available in 2019 for APS or, if not needed by APS, NAPS
    - NAPS trustee interest
    - TPR interest

Framework of principles

- Covering discretionary increases
- Supported by actuarial analysis
- Three key objectives:
  - Benefit security
  - Granting increases in line with RPI
  - Any increase to be supportable in the long term

Legal challenges

- BA’s case: decision making improper
  - Improper purpose
    - Reversing the RPI to CPI move
    - Not a benevolent fund
  - Predetermination, so not proper exercise of a discretion
    - Strong views
    - Campaigning
  - Flawed decision making
    - Use of advisers (“feeling a bit bruised”; “nothing short of Arter’s head will satisfy me”)

Key questions

- Can a scheme in deficit grant discretionary increases?
- Is this affected by whether there are increases already provided under the Trust Deed and Rules?
- How should benefit security be assessed?
- How important is further de-risking compared with granting discretionary pension increases?

Points of interest

- Conflict on part of TPR
  - NAPS
  - PPF
- “Best financial interests”
- Purpose of power
  - Not benevolent fund
- Confidential information
  - Witnesses reported apparent flows to ABAP
- As always: everything you write may later be debated in court
  - “Retaliation”, cash sweep “manipulation”
  - What does this mean for negotiation?
- Expert actuarial advice in court
  - Successful appeal in 2015