RPI/CPI: AN UPDATE

Christopher Stiles
22 February 2018

GOWLING WLG

RPI/CPI: AGENDA

- Overview of the case law: key themes
- Unresolved issues

THE CASE LAW SO FAR

THREE CATEGORIES

Construction of scheme rules – is there a power to switch?

Does switching to CPI prejudice accrued rights?

Is switching (or not switching) a reasonable decision?

THREE CATEGORIES

Is there a power to switch?

Barnardo's v Buckinghamshire

Thales UK v Thales Pension Trustees

BT v BT Pension Scheme Trustees

Royal Mail Group v Evans

Arcadia Group v Arcadia Group Pension Trust

Does switching to CPI prejudice accrued rights?

Danks v QinetiQ

Arcardia Group v Arcadia Group Pension Trust

Barnardo's v Buckinghamshire

Is switching, or not switching, a reasonable decision?

FDA v Secretary of State for Work and Pensions

British Airways v Airways Pension Scheme Trustee

OMBUDSMAN DETERMINATIONS

- Mostly re communications.
- Ombudsman unsympathetic to members.

RULES THAT ALLOW A SWITCH TO CPI

- *"RPI or any other suitable cost-of-living index selected by the Trustees"*
- *"RPI or any similar index satisfactory for the purposes of the Inland Revenue"*

RULES THAT STILL MEAN RPI

- *“RPI or any replacement adopted by the Trustees”*
- *“If RPI is materially changed…”*
- *“If RPI ceases to be published or becomes inappropriate…”*

UNRESOLVED ISSUES

GOWLING WLG

THE SECTION 67 DEBATE

“the modification of a benefit under the scheme in the exercise of an express power in the scheme to make such a modification is self-evidently a modification of the scheme”

Aon v KPMG

GOWLING WLG

THE SECTION 67 DEBATE

"the members' rights to have their pensions in payment increased at RPI is not a benefit to which the members are entitled until the increase takes place on 1st April each year"

QinetiQ

THE SECTION 67 DEBATE

Aon v KPMG:

If an actuarial valuation reveals a deficiency, the Trustees and Company may make such adjustments to the benefits secured as are necessary to secure the continued solvency of the Fund.

QinetiQ:

Each pension shall be increased on 1 April each year in line with the Index. "Index" means the RPI or any other suitable cost-of-living index selected by the Trustees.

(paraphrased extracts from the scheme rules)

UNTESTED RULES

- *"increases as required by statute, i.e. in line with RPI subject to a maximum increase of 5% per annum"*
- *" 'Index' means the index of retail prices published by the Office for National Statistics … or any other index of retail prices in the UK adopted by the Principal Employer"*

PROPER USE OF POWER

- Use power for the purposes for which it was given
- Consider all relevant factors
- Consider no irrelevant factors
- Not make a decision so unreasonable that no reasonable body of Trustees could have made it

PROPER USE OF POWER

“*the purpose of such a provision is to protect the members to some extent at least from the effects of price inflation*”

Barnardo’s, first instance

PROPER USE OF POWER

- Use power for the purposes for which it was given
- Consider all relevant factors
- Consider no irrelevant factors
- Not make a decision so unreasonable that no reasonable body of Trustees could have made it

POINTS TO TAKE AWAY

CONCLUSIONS

- Many common rules can be interpreted with confidence in light of the emerging body of case law, but not all.
- Section 67 debate is not settled, but a clear direction of travel.
- Further case law about proper use of power is likely.

QUESTIONS?

GOWLING WLG