

Increased focus on RPI/CPI increases

▶ **Matthew Swynnerton looks at some of the recent High Court cases in relation to pension increases**

Since 1997, occupational pension schemes have been required to increase pensions in payment to account for the effects of inflation. Back then, the approach was relatively simple: under statutory revaluation orders, pensions were increased in line with the retail prices index (RPI) subject to a cap. However, in 2011, the measure of inflation under those revaluation orders switched from RPI to the consumer prices index (CPI) and, ever since, employers have been keen for their pension schemes to follow suit. Whether or not this is possible depends on the wording of a scheme's rules. The interpretation of those rules has been the focus of a slew of court challenges in recent years and with three High Court judgments handed down already in 2020, this year looks to be no different. In this article, we consider these judgments, as well as the government consultation on RPI.

The Atos case

In a High Court judgment in relation to the Atos pension scheme, the employers sought declarations as to the true construction of the pension increase rules. The judge was of the view that (i) the expression in the rules, "the general index of retail prices (all items) published by the Office for National Statistics" did indeed mean RPI and not some other index; and (ii) the words "or where that index is not published" meant where that index is not published for any purpose. Since RPI was still published by the UK Statistics Authority, the trigger condition

that would enable a switch to the use of an alternative index had not been met.

The Thales case

This High Court judgment, relating to the Thales UK Pension Scheme, concerns whether the calculation of pension increases had automatically switched from RPI to CPI in 2011. The relevant rule provided that annual pensions must be increased at:

[Limb 1]... the percentage increase in the retail prices index over the year ending 30 September in the calendar year prior to that in which the increase is due to take place subject to a maximum of 5 per cent [Limb 2] as specified by order under Section 2 of Schedule 3 of the Pension Schemes Act.

At the time that the rule was drafted, the revaluation order specified RPI but from 2011 onwards it referred to CPI. From that point, the two limbs in the rule were inconsistent, with Limb 1 referring to RPI and Limb 2, in effect, referring to CPI. The issue in this case was whether Limb 1 or Limb 2 was to be given primacy.

The judge concluded that Limb 1 should be given primacy. His reasoning was that Limb 1 was a "detailed, clear and unambiguous statement of the rate" of increase. It was "complete by itself". Limb 2 was simply there to describe "an attribute of the rate that had been so identified".

The Arup case

Finally, in a case relating to the Arup UK Pension Scheme, the Court held that,



under the relevant rule, RPI was "replaced only if it is discontinued and another similar index is introduced or declared by the responsible body to be in its place". The rule in question did not provide for any sort of "functional replacement" of RPI that would have allowed for a switch to an alternative index.

In all three cases, the Courts held that a switch from RPI to an alternative index was not possible under the schemes' rules. This is a disappointing result for employers facing ever increasing scheme costs. However, is there change on the horizon?

A consultation is currently taking place on a proposal to move away from the current formulation of RPI by 2030. RPI will not be abolished but, instead, it will align with CPIH, a housing-cost based version of CPI, which could see its annual measured rate of inflation being lower, on average, by 1 per cent per annum. The consultation also considers whether the change should be brought forward to a date between 2025 and 2030. This change could have a material impact on pension schemes, in particular, in relation to index-linked gilts, buy-ins and buyouts, long-term funding and, of course, pension increases.



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