

Case law update

▶ Matthew Swynnerton looks at two recent court judgments that considered the construction of pension scheme rules

Two recent judgments, in which the courts considered a pension increase rule and two forfeiture rules, show the key role that the wording of the particular scheme rule plays.

Pension increase rule

In January 2020 the High Court issued a judgment concerning a pension increase rule in the Britvic Pension Plan, which provides that the rate of increase is the percentage increase in the retail prices index subject to a cap “or any other rate decided by the Principal Employer”. It concluded that this rule only permits the employer to substitute a higher rate of increase. The High Court’s reasoning included that the rule creates a two-stage mechanism whereby: firstly, the trustee is required to calculate and apply guaranteed increases based on the capped percentage increase in the RPI; and secondly, the employer then has a discretion to direct that a higher, but not a lower, rate of increase is to be applied.

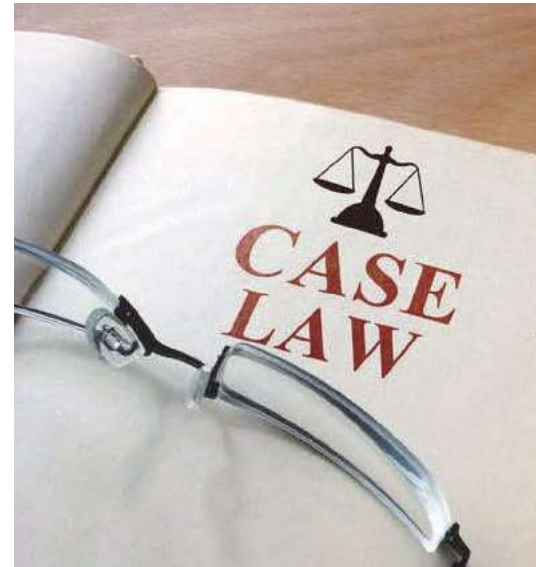
However, in June 2021, the Court of Appeal allowed the employer’s appeal against that decision. The Court of Appeal concluded that the words “or any other rate decided by the Principal Employer” qualify the rate of increase to be provided and allow the employer to fix a rate of increase that is higher or lower than the capped RPI increase for which the rule provides. Its reasoning included that considerable weight must be accorded to the fact that the drafter used the unambiguous words “or any other rate”, which do not naturally mean “or any higher rate”.

Forfeiture rules

Also in June 2021, the High Court issued its judgment in a case concerning the Axminster Carpets Group Retirement Benefits Plan, in which it considered a number of issues relating to arrears of underpaid benefits, including provisions in the Plan’s 1992 and 2001 definitive trust deeds and rules.

The relevant clause in the 1992 document provided that any monies “payable out of the Plan and not claimed within six years from the date on which they were due to be paid may (at the Trustees’ discretion) be applied” for specified purposes. The High Court concluded that this clause does not operate as a forfeiture clause, noting that it does not contain any wording which directly deals with the forfeiture of an entitlement to be paid arrears of benefits. It also stated that the absence of wording providing for forfeiture is particularly striking in view of the references to forfeiture in a clause of the deed relating to non-assignability.

The 2001 rules include a provision stating that if a beneficiary “fails to claim a benefit within six years of its becoming due, it shall be forfeited but the Trustees may at their discretion subsequently apply all or any part of such benefit” for certain purposes. These purposes include applying all or part of the benefit to the beneficiary notwithstanding the forfeiture. The High Court concluded that this rule provides for automatic forfeiture of unclaimed arrears but subject to the trustee having a discretion to pay the arrears to the beneficiary. The High Court also considered specific words in this rule, for example,



concluding that if an instalment was due on a certain date, part of which was paid and part of which was not paid, the relevant “benefit” for the purposes of this rule is the part that was not paid. The High Court was also asked to rule, as a matter of law, whether certain factors are relevant or irrelevant considerations in relation to the discretion under the rule, with its conclusions including that the absence of fault on the part of beneficiaries and/or the presence of fault on the part of the trustees are capable of being relevant factors.

Conclusion

The meaning of pension increase rules has been the subject of a number of court judgments in recent years and the issue of past underpayments may be relevant for schemes in the context of GMP equalisation projects. Whilst the wording of a scheme’s particular rules is key, it is useful to see the approach taken by the courts in cases which address these two important issues for pension schemes.



▶ Written by DLA Piper pensions partner, Matthew Swynnerton

In association with

