

Pensions Bulletin – RPI/CPI Update October 2014

Background

As you may recall, from January 2011 the government adopted the Consumer Price Index (CPI) to replace the Retail Price Index (RPI) for the purpose of defining certain minimum inflation-linked pension increases before and after a member's retirement. Whether this affects any particular scheme depends on the exact wording of its rules. Where a scheme's rules referred to the relevant legislation a switch to CPI would usually be automatic but where RPI was hard coded into the rules, in many cases, there appeared to be no flexibility to change.

However, recent cases have been brought to the courts which may mean there is more scope for a scheme to switch to using CPI as its measure of inflation.

Qinetiq

The trustees of the Qinetiq Pension Scheme wished to adopt CPI in order to reduce the Scheme's deficit. However, before doing so, they wanted to ensure that such a change would not breach legislation that broadly states that a member's accrued rights cannot be worsened ("Section 67 legislation"). An application was brought to the court for the question to be determined. The scheme's rules defined the inflation index to be used as "the index of Retail Prices published by the Office of National Statistics or *any other suitable cost-of-living index* selected by the Trustees".

The judgment concluded that the wording of the trust deed and rules did not afford members a right to a specified level of increase. An entitlement to a certain increase only arose when the increase actually occurred. This meant it would be possible for the trustees to adopt CPI in place of RPI in respect of future increases without breaching Section 67 Legislation.

This case therefore paves the way for schemes to use an alternative index without the fear of triggering the application of section 67.

Arcadia

In this case inflation linked pension increases were to be based on the "Retail Prices Index (or any replacement of that index)". "Retail Prices Index" was defined as "the Government's Index of Retail Prices or any similar index satisfactory for the purposes of HM Revenue and Customs".

The High Court ruled that:

- Where the definition of inflation linked increases anticipated the use of another index but did not say how the change would be made, the power to

select between available indices can be implied. The power is not confined to circumstances in which RPI has been discontinued or replaced.

- The power was vested jointly in the trustees and the employer. Although not expressly set out, it would be odd for the power to vest solely in the employer, given that the power of amendment was exercisable by the employer with the consent of the trustee.
- CPI would be a 'similar' index which is 'satisfactory' for the purposes of HRMC.

The judge also confirmed that *Qinetiq* case was correctly decided, and that switching to CPI for future increases on past service benefits did not adversely affect members' accrued rights so did not breach Section 67 Legislation.

Conclusion

There may be scope for more schemes to use CPI for revaluation or indexation. However, any scope for change will depend on the exact wording of a particular scheme's rules.

If you have any queries on the above or would like to discuss further, please do not hesitate to contact us on 01527 598688.

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