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Barnardo's loses appeal to amend pension scheme

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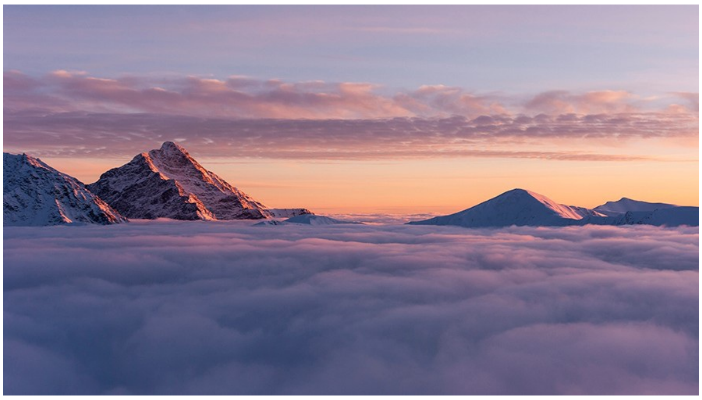

Barnardo's, like many other charity employers funding final salary pension scheme deficits, was seeking to reduce its funding costs to its final salary pension scheme by altering the measure by which future pension increases were calculated. In this much awaited case, the Supreme Court has ruled that the scheme's trustees did not have the power under the scheme's rules to change the measure of inflation (the retail prices index ('RPI') used to calculate annual pension increases until the RPI was itself officially replaced by the body responsible for its publication.

Barnardo's could not therefore make the valuable cost savings it had hoped to achieve by making the change. The ruling is also very important for any charities looking to manage or reduce the costs of their final salary pension schemes by amending the measure for calculating annual pension increases.

Barnardo's had hoped to change the measure of inflation used to calculate future pension increases from the RPI to the Consumer Prices Index ('CPI'). It is widely recognised that the CPI is (in many ways) a more accurate measure of the cost of living compared to the RPI which is considered to overstate the cost of living because of the way the index is formulated. The CPI, which is also published annually by the Office for National Statistics, has for this reason been adopted for many official purposes including calculating increases to state pensions under the triple lock introduced by the Government in 2010.

The rules of the Barnardo's pension scheme required the scheme trustees to apply annual pension increases at the lower of 5% pa or the percentage increase in the RPI in the previous calendar year. RPI for this purpose was defined under the scheme rules as the "General Index of Retail Prices published by the Department of Employment or any replacement adopted by the Trustees without prejudicing approval".
It was the wording in italics that was at issue. The question was whether the trustees could, now that a new measure (CPI) was available, decide of their own volition to replace the use of RPI with CPI; or whether they must wait for RPI to be replaced by the official body publishing it and then, and only then, could they adopt any replacement index available at that time.

On the basis that pension scheme rules are generally drafted with great care, the Supreme Court was reluctant to use wider tools of construction to deviate from the natural meaning of the wording in the rules. The Court therefore held that the rules only permitted the scheme trustees to replace the RPI measure when RPI had itself been officially replaced. In which case, the Barnardo's pension scheme must continue to increase pensions by reference to RPI and the charity could not gain a reduction in costs by altering how pension increases were calculated.

Any charities looking to use this route to reduce the costs of funding their final salary or defined benefit pension schemes should look closely at the precise wording of their scheme's rules in deciding whether they can implement a change to the way in which pensions in payment (or in deferment) can be increased. If you do not consider this carefully, any such change could be open to challenge. Please contact Gillian Johnson in our pension team or your usual charities contact if you would like us to consider how this case may affect any pension scheme changes your charity is currently considering.

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