

Eview



Pensions

Equalisation – A victory for common sense?

The Court of Appeal has reached a landmark determination in a key pensions equalisation case that will have the pensions industry heaving a sigh of relief.

In the case of *Foster Wheeler v Hanley* the Court was asked by the sponsoring employer to clarify how, in practical terms, the pension scheme should pay benefits to members in line with its sex equalisation provisions. The rules of the scheme used to provide different retirement ages for men and women - namely 60 for women and 65 for men. The effect of the *Barber v Guardian Royal Exchange* judgement, which applied from 17 May 1990, was in effect to equalise the normal retirement ages (NRA) of men and women to age 60, in schemes which had such a disparity, from the date of the judgement until an effective amendment was made to provide for an equalised retirement age. In the *Foster Wheeler* case this occurred in 1993 when the rules were amended to increase the retirement age to 65 for all members. This reflected the common approach that many pension schemes adopted although it inevitably resulted in a pre and post amendment period during which a different retirement age applied. This period is often referred to as the "Barber Window".

The Court was asked to rule whether the scheme should provide *all* benefits in full at age 60 for members who had some pension rights calculated in relation to an NRA of 60, or whether those benefits with an NRA of 65 could be actuarially reduced for early payment. (Payment before age 65 also required company consent.) An alternative was to split the benefits so that those accrued in relation to an NRA of 60 were paid at age 60 and those built up in relation to an NRA of 65 were paid at age 65 (although the scheme rules did not contain a provision to split benefits in this way).

In summary, the Court ruled that company consent could be dispensed with and all benefits paid at age 60 but those benefits built up with reference to an NRA of 65 should be actuarially reduced.

The judgement relates to the specific terms of the particular pension scheme which contains a rule allowing deferred pensions to be paid before age 65 with company consent and with an actuarial reduction for early payment: this provision is present in most schemes but is not universal. The judge considered that the solution of a split

pension would provide "substantial interference" with the provisions of the scheme in this case - but that is not to say that this solution would be inappropriate in all cases.

The judgement does provide useful guidance for employers and trustees of other pension schemes. Following these principles, Court approval need not normally be sought for equalisation decisions: trustees should instead adopt the guiding approach to make "the least substantive alteration to the provisions of the scheme that is compatible with the required equalisation" but be mindful of the need neither to create any detriment nor to generate a windfall profit. In other words, the need is to create fairness.

In the light of this judgement trustees should consider how they are dealing with scheme members with Barber Window service. In some cases modifications may be needed.

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