

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No. HC-2017-002418



THE HONOURABLE MR JUSTICE NUGEE

THURSDAY THE 21ST OF DECEMBER 2017

HC-2017-002418

**IN THE MATTER OF A CLAIM UNDER SECTION 48 OF THE ADMINISTRATION
OF JUSTICE ACT 1985**

IN THE MATTER OF THE AVX LIMITED PENSION SCHEME (*the "Scheme"*)

- (1) ROBERT JOHN LAWRENCE**
- (2) KURT P CUMMINGS**
- (3) MARTHA HELEN MCCANN**
- (4) SIMON HOWARD CUNDAY**
- (5) PETER FENWICK**
- (6) NICK BIRKETT**
- (7) MARTIN BOGUES**

(BEING THE PRESENT TRUSTEES OF THE AVX LIMITED PENSION SCHEME)

Claimants

ORDER

UPON THE APPLICATION of the Claimant under Section 48 of the Administration of Justice Act 1985 and Part 64 of the Civil Procedure Rules

AND UPON reading the Witness Statement of Robert John Lawrence dated 16 August 2017 made on behalf of the Claimants

AND UPON reading the written legal opinion of Paul Newman QC dated 3 July 2017

AND UPON the undertaking of the Claimant to include in the next regular communication to members of the Scheme the wording set out in the Schedule hereto

IT IS ORDERED THAT:

The Claimant be authorised to administer the Scheme on the basis that Clauses SD1.2, SD1.3 and SD1.4 of a Deed of Amendment dated 8 November 2002 should be construed by reading in the alterations to those provisions set out below:

Pension in respect of pensionable service before 6 April 1997 in respect of a Member of the Plan

1.2 *Each pension (or part of a pension) in excess of the Guaranteed Minimum Pension accrued in respect of pensionable service before 6 April 1997 shall have compound increases applied each year ~~equal to~~ by the lesser of:*

1.2.1 *the proportion by which the Index (published as at the preceding 30 September in the previous calendar year) has increased during the previous 12 months ending on that date; and*

1.2.2 *3%.*

Pension in respect of pensionable service after 5 April 1997 in respect of a Member of the Plan

1.3 *Each pension (or part of a pension) accrued in respect of pensionable service after 5 April 1997 shall have compound increases applied each year ~~equal to~~ by the lesser of:*

1.3.1 *the proportion by which the Index (published as at the preceding 30 September in the previous calendar year) has increased during the previous 12 months ending on that date; and*

1.3.2 *5%.*

Pension in respect of a Varelco Member

1.4 *Each pension (or part of a pension) in excess of the Guaranteed Minimum Pension shall have compound increases applied each year ~~equal to~~ by the lesser of:*

1.4.1(a) *the proportion by which the Index (published as at the preceding 30 November in the previous calendar year) has increased during the previous 12 months ending on that date; and*

1.4.2(b) *5%.*

If the proportion by which the Index has increased is greater than 5% the Trustees have discretion to pay a further increase up to a maximum amount of 75% of the increase in the Index.

SCHEDULE

PROPOSED WORDING FOR COMMUNICATION TO MEMBERS

As you may know, pensions in payment are increased annually. The rates which are used to calculate the pension increases depend on the period of pensionable service.

For pensionable service completed on and after 6 April 1997 up until 6 April 2006, the pension earned increases by the percentage increase in the retail price index (RPI) up to a maximum of 5%.

For pensionable service before 5 April 1997, the pension earned increases by the percentage increase in the RPI up to a maximum of 3% for members of the AVX Limited Pension Scheme and 5% for members of the Varelco Limited Pension Fund.

Those pension increase provisions have been applied for those periods of service since the deed of amendment dated 8 November 2002. The pension increase provisions in respect of pensionable service after 6 April 2006 are set out in the deed of amendment dated 4 April 2006.

However, during a recent review of the Scheme Rules it was noticed that the text of the pensions increase provisions in the 2002 Deed does not match that of the previous rules, or that of the 2006 Deed. Although the text includes increases based on RPI and fixed percentages, it does not explain how these two values should interact.

The Trustees consider that this was a drafting mistake, and they are confident that the way pension increases have been calculated is correct. Significantly, the way pension increases have been calculated is in accordance with the approach set out in the booklet that was provided to members in April 1999.

Following best practice, the Trustees have applied to the High Court for an order authorising them to continue to administer the Plan and to make increases to pensions on the same basis as they have been doing.

On 21 December 2017 the High Court gave a judgment agreeing that there had been a drafting mistake. The court made an order in the form sought by the Trustees, authorising them to continue to administer the Scheme on the same basis as they have been doing.

Accordingly, the increases to pensions that you are currently receiving for pensionable service before 5 April 1997 and between 6 April 1997 and 6 April 2006 will be made on the same basis as before.

The High Court's order protects the Trustees against any future complaints from members if they act in accordance with the Court's order. It does not, however, bind members (who were not made parties to the proceedings) so as to prevent them from arguing to the contrary should they wish to do so. Any such argument would, however, be at the members' own risk as to costs.

A copy of the judgment and order of the High Court is available at [link to web address] or can be supplied in hard copy form together with the supporting documentation submitted to the court (excluding any confidential information concerning members) on request from Helen McCann.

Should you have any further queries, please speak to Helen McCann.