SUMMARY OF THE DECISION OF THE HIGH COURT IN

R (HUGHES AND OTHERS) v THE BOARD OF THE PENSION PROTECTION FUND

1. This judgment concerns a claim by 25 claimants relating to the arrangements governing the payment of pensions under four pension schemes where the employer had become insolvent. They were the pension schemes for two airlines, BMI and Monarch Airlines, the Heath Lambert Group pension scheme and the Turner & Newall pension scheme.

2. In summary, following an employer's insolvency, a pension scheme which has insufficient assets to meet certain protected liabilities is transferred to the Pension Protection Fund ("the Fund"). The Board is then under a statutory obligation to make compensation payments to members of the pension scheme. The provisions provide for an annual payment of an amount equal to *either* (1) 100% of the benefits fixed by their scheme for those members who had attained the normal pension age, or who had retired early for health reasons, on the date when the assessment period for calculating the value of the scheme's assets began *or* (2) 90% of the benefits fixed by the scheme for those members below normal pension age on that date. In addition, there is an upper ceiling or cap on the compensation payable to the latter group. Those who were below normal pension age at the start of the assessment period receive 90% of the amount of the compensation cap not 90% of the value of their accrued pension entitlement.

3. The first claimant, Mr Hughes, took early retirement and started to receive a pension at the age of 57 in 2003 (his normal retirement age was 60 under the scheme). He received an annual pension on retirement of £66,245. His employer become insolvent

and his pension scheme entered assessment on 26 May 2005. As Mr Hughes was still below normal pension age on that date (he would become 60 in September 2006), the cap on benefits, and subsequently, compensation paid by the Board applied. His pension was reduced to £17,481, a reduction of almost 75%. Similar reductions applied to other claimants.

4. Mr Justice Lewis held that the application of the compensation cap to reduce the pensions of those below normal pension age gave rise to unlawful discrimination on the grounds of age. Persons below normal pension age when their employer became insolvent were treated less favourably than those who were above normal pension age as those below normal pension age had their compensation capped. That differential treatment was not objectively justifiable. The compensation cap had therefore to be disapplied. The claimants would now receive compensation or pension benefits without reduction by reason of the application of a cap. Further, the claimants could seek to recover arrears of compensation from the Board for a period of up to six years.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are publicly available. ***A copy of the judgment in final form as handed down can be made available after 10.30 on 22 June 2020 on request by email to the*** *administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk*