The National Grid and National Power Case¹

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Christopher Cooke

has been a pensions partner at Linklaters since 1989. He has been advising on pensions law since the early 1980s and advised National Power throughout the litigation.

Abstract

This paper describes the history of the litigation relating to the use by National Grid and National Power of surpluses in the Electricity Supply Pension Scheme to offset their contribution liabilities. The paper examines the legal arguments raised in the various hearings, and discusses the implications of the judgment by the House of Lords for pension schemes.

Keywords: *surplus; arrangements; releasing a debt; payment of scheme monies to an employer*

Background

Since the Pensions Ombudsman's office was set up in 1991, pensions litigation has enjoyed something of a boom in the UK. However, the National Grid and National Power case is one of the few UK pensions cases to have reached the House of Lords. The large sums of money at stake (some £2bn for the electricity supply industry as a whole), combined with the twists and turns in the litigation, attracted a lot of interest. The cases concerned whether arrangements made by The National Grid Company Plc and National Power Plc to deal with surpluses in their sections of the Electricity Supply Pension Scheme were valid. On 4th April, 2001 the House of Lords unanimously decided that they were.

Many commentators had speculated about whether the case would give some guidance about who 'owned' surpluses in pension schemes. In fact, the House of

Lords was careful to avoid making any general pronouncements about surplus, but their judgment was interesting both from the approach they took to interpreting the scheme provisions, and also on the technical issue of whether a debt owed by an employer to its pension scheme was 'monies of the Scheme'.

The origin of the dispute and structure of the Electricity Supply Pension Scheme

The saga began in 1995 when two pensioners in the electricity supply industry made a complaint to the Pensions Ombudsman against National Grid about the way it had used surplus in its 'Group' of the Electricity Supply Pension Scheme (the ESPS) following an actuarial valuation of the ESPS as at March, 1992.

When the electricity industry was privatised in 1990, the ESPS, which was

Chris Cooke
(Linklaters & Alliance, One
Silk Street, London EC2Y
8HQ)

Tel: 0207 456 3684; Fax:
0207 456 2222; E-mail:
christopher.cooke@
linklaters.com)

the industry's pension scheme, was divided into a number of 'Groups' for each of the newly privatised companies, each with its own Principal Employer and Group Trustees. Some powers were left to a Scheme Trustee and the Coordinator, an employers' representative body. Although the assets of the ESPS continued to be held in common, each of the new employers became responsible for funding the liabilities (and providing any benefit increases) only in respect of its own Group. Since the former Central Electricity Generating Board had been split into three companies, each pensioner of the CEGB was allocated to the Group of one of the CEGB's successor companies, which included National Grid and National Power. One of the complainants was originally allocated to the National Power Group of the ESPS but at his request was transferred to the National Grid Group. As a result he received no benefit from National Grid's use of surplus, and missed out on substantial lump sum payments made by National Power to its pensioners in 1993 and 1996.

ESPS rules

Members of the ESPS contribute 6 per cent of pensionable salary. The employers contribute, under various heads, the rest of the funding for the benefits of their Group defined by the Scheme rules. Unusually, those contributions are determined without reference to the state of funding of the Group. However, actuarial valuations are carried out every three years. Clause 14(4) of the Scheme provides that if there is a deficiency the employer shall make arrangements, certified by the Actuary as reasonable, to pay additional contributions to make good the deficiency, and Clause 14(5) of the Scheme provides that if there is a surplus the employer 'shall make

arrangements, certified by the Actuary as reasonable, to deal with such surplus and shall give notice of such arrangements to the Scheme Trustee and the relevant Group Trustees and the Co-ordinator'. It was the interpretation of Clause 14(5) that lay at the heart of the dispute.

The contributions payable by the employers are set out in Clause 13(1) of the Scheme, and the most important of these are set out below:

'13(1) The Employers shall contribute to the Fund:

- (a) a monthly sum equal to twice the contributions for the time being paid by all Members respectively employed by them ...
- (e) in respect of any Member who retires under Rule 16 ... such amount as determined by the Principal Employer on the advice of the Actuary; and
- (f) any sums payable in accordance with paragraph (3) of Rule 44 ...; and
- (g) such further contributions as may from time to time be payable pursuant to the provisions of Clause 14(4) or may be otherwise determined by each Principal Employer.'

Clause 13(2) requires the contributions to be paid as soon as practicable after the end of the month to which they relate. Rule 16, which is referred to in Clause 13(1)(e), provides for employees who have retired consequent on reorganisation or redundancy over age 50 to receive an immediate pension without actuarial reduction, and accordingly Clause 13(1)(e) was designed to ensure that the additional cost of this liability was funded for. Rule 16(3) says that any additional cost as determined by the Principal Employer on the advice of the Actuary arising from the operation of the Rule shall be borne by the Employer who last employed the Member.

Rule 44, which is referred to in Clause 13(1)(f), provides for the assimilation into the ESPS of pensions

originally payable outside the ESPS. That rule was used by National Power to assimilate into the ESPS obligations of National Power under its redundancy schemes to provide 'added years' for redundant employees in addition to the benefit of having their pension paid without reduction. Rule 44 provides for the Group Trustees to set the amount to be contributed by the Employer to secure the extra benefits, and allows the Employer to pay an amount equivalent in value, by way of instalments, if the Group Trustees so agree.

National Grid's arrangements

On 1st December, 1992, after having been told by the Scheme Actuary that there would be a surplus in its Group, but before the actuarial valuation was completed, National Grid suspended payment of its contributions under Clause 13(1)(e). On 25th February, 1993 National Grid's Board allocated £7.6m of the available surplus of £62.3m for Clause 13(1)(e) liabilities arising between 1st December, 1992 and 31st March, 1993, £9.5m to eliminate 'voluntary' contributions under Clause 13(1)(g) and £34.2m (inclusive of the £7.6m) to offset future Clause 13(1)(e) payments generally. Those contribution offsets used up 70 per cent of the surplus, and the remaining 30 per cent was used to increase benefits for active members. The actuarial valuation was signed on 1st March, 1993, and on 27th May, 1993 the Scheme Actuaries issued a supplementary report in which they certified that the arrangements were reasonable.

Determination by the Pensions Ombudsman

The Ombudsman decided that National Grid's arrangements were invalid for two

reasons. The first was that Clause 14(5) gave rise to a duty of good faith approaching a fiduciary duty 'which called for an exercise in the best interests of the scheme without preferring the Principal Employer's other interests', and National Grid's allocation was in breach of that principle. The second was that the arrangements referred to in Clause 14(5) must relate to dealings otherwise authorised by powers conferred on the Principal Employer by the scheme. The scheme document gave the employer no power to reduce or suspend contributions, and no power to repay surplus to an employer. Moreover, any unrestricted construction of Clause 14(5) would be inconsistent with the express prohibition in Clause 41(2)(b) on making amendments which would have the effect of 'making any of the moneys of the Scheme payable to any of the Employers'. The Ombudsman said that National Grid's arrangements had the effect of making moneys of the ESPS payable to National Grid, relying on a case concerning the British Coal Staff Superannuation Scheme² which had an identical restriction on the power of amendment. Following a large valuation surplus in the British Coal scheme, British Coal Corporation had amended the scheme to release its liability to pay future instalments of special contributions payable for enhanced redundancy benefits. Vinelott J decided that cancellation of a debt, even an instalment of a debt that was not yet due, would constitute a transfer or payment out of the fund equivalent to a payment to the employer, and accordingly British Coal had no power to make such an amendment.

National Power's arrangements

The Ombudsman's decision caused widespread concern to other employers

in the electricity industry, most of whom had made similar 'arrangements' to deal with surpluses in their Group of ESPS. The decision was particularly alarming to National Power, which could have had to pay some 500m including interest into the ESPS if the Ombudsman's decision was correct. The actuarial valuation of its Group as at 31st March, 1992 disclosed a large surplus and National Power used one third of its surplus to increase benefits, and the remaining two thirds to offset its contribution liabilities under Clause 13(1)(e) and Clause 13(1)(f). National Power had been paying contributions under both Clause 13(1)(e) and Clause 13(1)(f) by instalments and most of the liabilities offset were future instalments in respect of liabilities that had already arisen (ie, for redundancies that had already taken place before the arrangements were made), though some of the surplus was carried forward to meet liabilities for future redundancies as and when they arose. National Power had made similar arrangements to deal with the 1995 valuation surplus in its Group, and therefore issued a construction summons to test the validity of its own arrangements, which was heard before Mr Justice Walker at the same time as National Grid's appeal against the Ombudsman's determination.

High Court judgment

Following a five-day hearing, Walker J gave judgment on 10th June, 1997. He said that there were two essential issues:

1. What "arrangements" are within the scope of the power in Clause 14(5)? In particular, is it "free-standing" or is it restricted, in one way or another, by Clause 41(2)(b)?
2. What contractual, fiduciary or other duties constrain the Principal Employer in the exercise of the power?

Did the restriction in the amendment power constrain the employer's power to make arrangements under Clause 14(5)?

First he noted that Clause 14(5) was in the part of the scheme dealing with employers' contributions. The scheme was not a pure balance of cost scheme but it had a balance of cost element. Clause 14(4) and (5) were roughly parallel and together they provided a mechanism (although a very clumsy one) for action to be taken, on the occasion of periodic actuarial valuations, towards bringing the scheme into actuarial equilibrium.

He then considered whether the restriction in Clause 41(2)(b) on the power of amendment affected the construction of Clause 14(5), and concluded that, although that restriction was a matter to be borne in mind in construing Clause 14(5), its importance might be reduced in the light of the fact that it was a survival from the Inland Revenue requirements for 'old code' approval. In reaching that conclusion he referred to the case of *Vauxhall Motors Pension Fund*.³ In that case the trustees of the Vauxhall fund were seeking to exercise a power to transfer members to another scheme. It was claimed that the trustees could not exercise that power without insisting that the receiving scheme should contain a similar restriction on the amendment power to one in the Vauxhall fund, which prevented alterations which would result in a payment to the companies of any part of the trust fund. Mr Justice Browne-Wilkinson decided that the restriction was a limitation on the power of amendment, and was not a restriction affecting the assets as such. He had accordingly allowed the transfer to proceed.

Walker J therefore decided that the wide and imprecise meaning of the word

arrangements was not intended to be restricted by other clauses of the scheme, and held that the permitted arrangements could include benefit improvements, reduction or suspension of contributions, writing-off of arrears of contributions or a payment to the employer. He also decided that National Grid's duty of good faith was not akin to a fiduciary duty, and accordingly the employer was free to act in its own interests, as Browne-Wilkinson J had decided in the *Imperial Tobacco*⁴ case.

Was the British Coal decision correct?

Nicholas Warren QC, National Power's counsel, had also argued that the *British Coal* case was wrongly decided; in other words, that the cancellation of a debt does not have the effect of making the creditor's money payable to the debtor. He cited the decisions in the cases of *Charge Card Services*⁵ and *Re BCCI (No 8)*,⁶ a Court of Appeal case decided in 1995 which quoted Professor Goode's observation to the effect that as between a debtor and creditor a debt is purely an obligation. 'The creditor does not own the debt, he is owed it.' Walker J said briefly that he was inclined to the view that the *British Coal* decision was correct, but he did not have to decide the point since he had already held that Clause 14(5) allowed payments from the scheme to an employer without the need for an amendment. This point assumed much greater importance in the Court of Appeal and House of Lords decisions.

Could contributions under Clause 13(1)(e) be paid by instalments and did it matter?

Finally, Walker J said that there was nothing in Clause 13(1)(e) that gave the employer a unilateral right to decide to pay by instalments (though rather

illogically he also said that it would be absurd if Clause 13(1)(e) were to require the employer to determine to pay contributions which were not needed, ie, the employer was free to pay no contributions under Clause 13(1)(e) if the Actuary advised that the state of funding allowed this). He went on to say that National Power's decision to pay Clause 13(1)(e) contributions by instalments was an irregularity that had largely been overtaken by events, but had he held the scope of Clause 14(5) to be more limited (and in particular if he had held that a payment to the employer out of the fund was not authorised), then there might have been a question of National Power seeking to take advantage of its own breach of duty.

Those words were seized on by the lawyers for the representative beneficiary in the National Power case, who wrote to the Judge before the order was sealed seeking to argue a further point. They argued that if National Power had paid in its contributions under Clause 13(1)(e) in a lump sum, rather by instalments, it would not have been able to take the money out of the scheme in practice, because there was no statutory surplus and hence the Inland Revenue would not have allowed it. So National Power had taken advantage of its breach of duty. They therefore asked the Judge to reconsider that part of his judgment on the basis that it contained an obvious error. At a further hearing on 30th July, 1997, Walker J said that even though real difficulties might have arisen with the Inland Revenue on taking the money out if it had been paid in, that was irrelevant, since as a matter of construction a payment to National Power was authorised by the scheme instrument.

The High Court therefore allowed National Grid's appeal and upheld National Power's actions. The

beneficiaries then appealed to the Court of Appeal.

Judgment of the Court of Appeal

The Court of Appeal approached the case from a very different standpoint. The judgment was given by Lord Justice Brooke on 10th February, 1999. It was clear that they were very much influenced by the arguments of Alan Steinfeld QC, counsel for the National Power representative beneficiary, who argued that Clause 14(5) conferred no power on the employers to do anything. It merely imposed a duty on the employer, which it could exercise only by using other powers in the scheme, principally the power of amendment in Clause 41 (which an employer could exercise unilaterally).

Like Walker J, the Court of Appeal said Clause 13(1)(e) contributions could not be paid by instalments, relying on the fact that when the scheme was amended to introduce Rule 44, the draftsman found it necessary to make express provision for payment by instalments.

No power in Clause 14(5) for employers to forgive themselves their accrued liabilities

They said the question to be determined was: How free a hand does each principal employer have when making arrangements under Clause 14(5)? In particular, is the employer at liberty to ignore another provision of the scheme which appears to deny it the power to make an arrangement it wishes to make? The employers' counsel had argued that the contrast between the simple notice procedure in Clause 14(5) and the complicated notice procedure in the amendment power, under which amendments had to be cleared by the

Scheme Secretary (with a disputes procedure if clearance was not given) was one of the indications that Clause 14(5) conferred a separate power on the employers.

The Court of Appeal said that they were unimpressed by an argument that that comparison should lead them to conclude that it was intended that the principal employers should have unilateral power under Clause 14(5) to decide what to do (even if this meant forgiving themselves their accrued debts), whether or not the scheme already gave them such powers. They therefore allowed the appeals on the basis that neither Clause 14(5) nor any other provision of the scheme as it stood gave the employers the unilateral power to forgive themselves their liabilities to pay contributions which were already due and payable. However, they went on to say that without having to decide the point, they could see nothing in Clause 41(2)(b) that would have prevented the employers from proposing and implementing an amendment to the scheme so as to enable them to take that course. That would accord with the general principle, not questioned in *Re BCCI (No.8)* (which by then had been to the House of Lords) that the release of a debt did not involve the transfer of funds from the debtor to the creditor (meaning from the creditor to the debtor), but simply brought about the end of the debt. The British Coal case was distinguishable (though the Court of Appeal did not say why).

Unanswered questions

The Court of Appeal's judgment left all sorts of questions unanswered. What about contributions that were accrued but not yet payable (such as future instalments of the contributions payable by National Power under Clause 13(1)(f),

which could unquestionably be paid by instalments)? What about contributions that were not accrued at all but only arose after the valuation date or after the Clause 14(5) arrangements were made? Most important of all, if the employers could have amended the scheme to achieve their ends, why could they not still do so?

So National Grid and National Power executed deeds of amendment confirming the arrangements they had made under Clause 14(5). At a further hearing the Court of Appeal said that they had of course meant that the employers could not relieve themselves of any contribution liabilities under Clause 14(5), whether accrued or not, and sent the case off to the House of Lords, expressing the hope that they would consider the deeds of amendment.

House of Lords decision

Did the employers' arrangements have the effect of making scheme moneys payable to the employers?

The leading judgment in the House of Lords was given by Lord Hoffmann. He said that the main question was whether the arrangements to treat accrued liabilities of the employers as discharged out of surplus funds amount to a payment to the employers out of the moneys of the scheme. He dismissed arguments by Nigel Inglis-Jones QC on behalf of the National Grid pensioners that it was inconsistent with the purpose of a pension scheme to make payments or the equivalent of payments to the employer. He said that a surplus was by definition money in excess of what was needed to effect the main purpose of the scheme, and the fact that part of the surplus was funded by employees' contributions could not displace the fact that the scheme conferred the power to

make arrangements on the employer and no one else. Once it was accepted that the employer could act in his own interests, and that the extent to which he had done so in this case could not be criticised, he did not see the relevance of the way in which the surplus was funded.

Lord Hoffmann said that the most relevant background was the fiscal origin of Clause 41(2)(b). The wording had been taken over from predecessor schemes which the ESPS replaced when it was set up in 1983 and had been inserted to obtain Inland Revenue approval. He pointed out that pension schemes had always enjoyed great fiscal privileges. Moneys paid into the scheme by both employer and employees was deductible for income tax, and income from the scheme investments was exempt from tax. But the words 'making any of the moneys of the Scheme payable to any of the Employers' were not the most natural way of describing the release of a debt owed by the employer to the scheme. The release of a debt was not a payment, although it had the same economic effect. Debts from the employer to the fund which had not yet fallen due for payment enjoyed no fiscal privileges. They were not deductible for tax until they had been paid, and until they had become payable they could not have earned any tax free income for the scheme. It was true that debts owed by the employer were choses in action, and money in the scheme (for example bank deposits) usually consisted of choses in action. But deposits with a bank represented money which had been paid into the tax sheltered scheme. Money owed by the employer had not.

Lord Hoffmann therefore concluded that the release of a debt owed by the

employer to the scheme did not make moneys of the scheme payable to the employer, overruling the decision in *British Coal* to the contrary.

Sections 37 and 40 of the Pensions Act 1995

Lord Hoffmann dealt next with an argument by the beneficiaries' counsel that the deeds of amendment executed by National Grid and National Power infringed section 37 of the Pensions Act 1995, which restricts 'payments to the employer out of funds which are held for the purposes of the scheme'. In particular, section 37 makes trustee consent and a statutory surplus preconditions of a payment to the employer, neither of which conditions were satisfied in this case. Lord Hoffmann said that even though section 37 did not have an exclusively fiscal background, the language showed clearly that Parliament adopted the fiscal concept of payment to an employer out of the funds of the scheme. It substantially reproduced the language of section 601(1) of the Income and Corporation Taxes Act 1988, which imposes a 40 per cent charge to tax 'where a payment is made to an employer out of funds which are or have been held for the purposes of [an exempt approved] scheme.' That section was plainly not intended to tax the employer on money which had never come into the scheme.

Lord Hoffmann said that it made little commercial sense to say that, in the context of reducing a surplus, the employer could not be released from debts which were accrued but not yet payable but could be released from paying contributions which were contingently due but (while the scheme was a going concern) virtually certain to become payable. Lord Hoffmann also rejected an argument that section 40 of

the Pensions Act 1995, which treats debts due and payable by the employer to the fund as if they were loans to the employer, showed that debts from the employer were treated as assets of the fund. Lord Hoffmann said that here we were concerned with debts that were due but not yet payable. He might also have added that section 40 only treats employer's debts as loans to the employer for the purpose of section 40.

Lord Hoffmann said that those conclusions were sufficient to dispose of the appeals. If an amendment was needed, it had been effected. However, the question of whether an amendment was needed was of great practical importance to those administering the scheme.

Did Clause 14(5) confer any power on the employers?

Lord Hoffmann agreed with Mr Justice Walker that the language of Clause 14(5) conferred power on the employer to make the arrangements to deal with the surplus. He said that the word 'shall' connoted not only a duty but also the power to discharge that duty. It did not require the employer to scratch around among the other provisions of the scheme to find specific powers. But he went on to say that he would not go so far as the judge in saying that the employer's powers under Clause 14(5) were not intended to be restricted by other clauses of the scheme. He found it difficult to believe that Clause 14(5) was intended to give the employer power, without amendment, to do something which would contradict the express provisions of the scheme. The suggestion by the employers' counsel that Clause 41(2)(b) was intended only to prevent payments otherwise than out of surplus was implausible. He said that the fact that the scheme could not be amended

to allow something to be done did not necessarily mean that a limited power to do that thing did not already exist with the scheme (see the *Vauxhall Motors* case), but such a prohibition was rather odd if the scheme already contained a very wide power. Lord Hoffmann simply said that he did not intend to solve this puzzle, because on the construction which he had given to making payments to the employer out of the fund, it did not arise. The real question was whether the arrangements which the employers had made contradicted the express provisions of the scheme.

No unnecessary technicalities

Lord Hoffmann said that more important than linguistic points were the practical consequences of insisting that the arrangements should be made by amendments. He said that the operation of the pension scheme should not be encumbered by unnecessary technicalities. On the other hand, if the amendment procedure provided some important safeguards for the members, there might be a good reason to construe the scheme as requiring the employer to adopt it. Lord Hoffmann pointed out that the disputes procedure in the amendment power was only between the employer and the Co-ordinator, representing the other principal employers, and the members and trustees were not involved. It therefore followed that, so far as the members were concerned, it did not matter whether an application of surplus by an employer which fell outside the restrictions on the amendment power was made by amendment or not. Moreover, Counsel for the trustees had said that they saw no administrative difficulties in acting on directions under Clause 14(5) even though those directions were not contained in a deed. Since he had decided that the discharge

of an accrued liability was not equivalent to a payment out of the fund to the employer, the distinction between future contributions and accrued liabilities ceased to matter, and it was a matter of pragmatic choice for the employers as to whether the arrangements made under Clause 14(5) were embodied in scheme amendments or not.

Payment by instalments — had National Power taken advantage of a breach of duty?

Lord Hoffmann dealt next with the argument that National Power had taken advantage of its own wrong by paying contributions by instalments, which Walker J had dealt with at the supplementary hearing. Lord Hoffmann simply said that the shortest answer was that he saw no reason why contributions under Clause 13(1)(e), which required the Employers to pay ‘such amount as determined by the Principal Employer on the advice of the Actuary’, should not be paid by instalments. Another clause in the scheme document provided that singular words should include the plural and there was no contrary context in this case. The determination was made on actuarial considerations and from an actuarial point of view any lump sum could be translated into an appropriate stream of periodic payments. Rule 16(3), which provided that the additional cost of the Rule 16 benefit should be borne by the employer who last employed the member was concerned with the allocation of liability, not the determination of the amount.

Unlike Mr Justice Walker and the Court of Appeal, Lord Hoffmann was not impressed by the contrast between the wording in Clause 13(1)(e), which made no explicit reference to payment by instalments, and Rule 44, which expressly provided for payment by

instalments. Since Rule 44 and Clause 13(1)(f) had been introduced by amendment when Clause 13(1)(e) was already in the scheme, they could not have changed the meaning of Clause 13(1)(e). Secondly, the situations were quite different. Under Rule 44, it was the trustees who determined the amount which the employer must contribute, whereas under Clause 13(1)(e), it was the employer who determined, on the advice of the actuary, what was required.

Lord Hoffmann said finally that National Grid's action of debiting some Clause 13(1)(e) contributions against surplus before that surplus had been officially certified was unobjectionable.

Implications of the Judgment

Many of the arguments in this case were very technical, and are not therefore likely to affect many employers outside the electricity supply industry. Few, if any, other pension schemes, have provisions requiring an employer to 'make arrangements' to deal with the surplus. But the decision that a debt owed by an employer to the scheme does not form part of the scheme assets and the sharp distinction that the House of Lords drew between Section 37 of the Pensions Act 1995 (which restricts the circumstances in which payments can be made from a scheme to an employer), and Section 40 of the Act (which restricts employer-related investments and treats unpaid debts from the employer as if they were employer-related investments for the purpose of Section 40) have wider implications. Lord Hoffman said that Section 37 protected only those funds which have actually been paid into the scheme. That distinction could for example be useful in giving trustees flexibility to release the employers from an accrued contribution liability where the contributions were

not in practice required, such as a debt payable by an employer to trustees under the Deficiency on Winding-up Regulations where the liabilities have been fully secured in another scheme.

In addition, Lord Hoffman's comment that Section 601(1) of the Income and Corporation Taxes Act 1988, which imposes a 40 per cent charge to tax 'where a payment is made to an employer out of funds which are or have been held for the purposes of [an exempt approved] scheme', was plainly never intended to tax the employer on money which has never come into the scheme, now makes it difficult for the Inland Revenue to argue that the release of a debt owed by the employer to the scheme gives rise to a Section 601 charge. Section 601(6) says that references to any payment include references to any transfer of assets or the transfer of money's worth, and those words might perhaps have caught the release of a debt, but it is clear that Lord Hoffman would not have regarded the release of an employer's debt as making a payment 'out of funds held for the purposes of the scheme'. On that basis those words in Section 601(6) would catch only the release of a loan to the employer from the scheme of money that had previously been paid into the scheme.

More generally, the decision does indicate that the courts will give a pragmatic approach to scheme wording, and will not seek to impose unnecessary technicalities on employers and trustees if those technicalities provide no real protection to the members. On the other hand, the scheme provisions need to be construed as a whole and so restrictions in one clause may be found to apply to powers in other parts of the scheme.

References

- 1 *International Power PLC (Applicants) v Healy and others (Respondents)* (formerly *National Power PLC (Applicants) v Feldon and others (Respondents)*). *National*

- Grid Company plc (Applicants) v May and others (Respondents)* [2001] UKHC 20.
- 2 *British Coal Corporation v British Coal Staff Superannuation Scheme Trustees Ltd* [1995] 1 All ER 912.
- 3 *Re Vauxhall Motors Pension Fund, Bullard v Randall* [1989] 1 PLR 31.
- 4 *Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd* [1991] 1 WLR 589.
- 5 *Re Charge Card Services Ltd* [1987] Ch 150.
- 6 *Re Bank of Credit and Commerce International SA (No 8)* [1996] Ch 245 (CA) and [1998] AC 214 (HL).