

Pensions Action Group Newsletter

Issue 8

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Maladministration – It's Official!

On 21 February Mr Justice Bean delivered his verdict in the High Court in his Judicial Review of the Government's refusal to accept the judgement of the Parliamentary Ombudsman that they were guilty of maladministration. On the crucial issue of whether Government leaflets were misleading about the risks of final-salary pensions, he was in no doubt that they were, and went so far as to say that "I consider that no reasonable Secretary of State could rationally disagree with that view."

Not all aspects of the judgement went our way (see full story inside) but this does represent a major step forward in our campaign for pensions justice. We therefore have to keep up the pressure to ensure that Government now does the decent thing which, judging on past form, it will be most reluctant to do.

This is a suitable moment to express our gratitude to the four brave litigants (Henry Bradley, Robin

Duncan, Andrew Parr and Thomas Waugh). Right up until the judgement was given, the Government were threatening to hold them liable for 'unlimited costs' if they should lose. For them to risk their remaining assets, having already lost their pensions, to fight this injustice, showed courage of a rare order and we owe them a very great deal indeed.



Our grateful thanks must also go to Dr Ros Altmann who, whilst personally unaffected by any pension loss, has devoted endless hours of unpaid time to preparing and presenting this case, as well as providing interviews to the media and cajoling and persuading politicians in our cause. It is no exaggeration to say that, without her, we would not have achieved this success.

And finally, we should thank our lawyers, John Halford at Bindmans, Dinah Rose QC and the whole legal team." who so generously agreed to take on this case on a no-win-no-fee basis and who prepared and prosecuted it with such enthusiastic and professional vigour.

Government Plays for Time

John Hutton (Secretary of State for Work and Pensions) made a statement on the judgement in the House of Commons on Thursday 22nd February. Essentially he said they need time to consider the judgement and that he hoped to return to the House with his conclusions and proposals "before the conclusion of proceedings on the Pensions Bill" (i.e. by the summer). They have reserved the option with the court of an appeal (as have the claimants) but he has not yet

decided whether, or on what grounds, they might appeal. He did, though, make the welcome announcement that they would not pursue the claimants for costs in this case or in any appeal they may make.

The Hansard report and the subsequent short debate can be found in Hansard at:
<http://tinyurl.com/3al79m>

Judicial Review – the Judgement in Full

By Andrew Parr

We had expected to hear the verdict within four to six weeks of the hearing, but unexpectedly the judge, Mr Justice Bean, delivered his judgement much earlier.

There are four parts to the judge's ruling. As the photo of Jacquie Humphrey on the front page clearly shows, we were very pleased with the outcome:

1) The judge upheld that the information produced by the government was misleading and the government was guilty of maladministration. He went on to say that a government could not reject an Ombudsman's finding of maladministration (i.e. the government cannot be judge and jury on itself), save in very narrow, exceptional circumstances. If the government disagrees with the Ombudsman, the case has to be resolved in court. Outside the issue of our pensions this is a very important constitutional judgement which affects the way the government must operate. As a result of the judgement, the proper role of the Ombudsman as an independent arbiter of whether or not there is maladministration has been protected and strengthened.

He also took apart the government's defence of the various booklets. The defence barrister had said:

....the MFR is described as being "aimed" at making sure schemes have enough money. It "is intended" to ensure schemes are protected. Adherence to the MFR entails that there "should" (not "will") be enough assets. Nowhere does the leaflet state or imply that adherence to the MFR provides a guarantee that all liabilities will be met

To which the judge replied:

[...] Such minute textual analysis of a pamphlet aimed at the general public can in my view only give comfort to those who consider that it is unwise to believe anything one reads in a government publication. It is particularly ironic when applied to a leaflet whose back cover boasts that it has been awarded a Crystal Mark for clarity by the Plain English Campaign. PEC 3, especially page 15, gives the clear impression that following the enactment of the new law scheme members can be reassured that their pensions are safe whatever happens. I have no doubt that this is what it was designed to do. I agree with the Ombudsman that it was inaccurate and misleading.

For these reasons the judge quashed the government's rejection of the Ombudsman's first maladministration finding.

The second part of the win was the judge's rejection of the government's argument that it would have been able to do nothing, even if maladministration had been admitted. He said he could not accept the response politically would necessarily be the same. The judge therefore went on to quash the rejection of the Ombudsman's first recommendation. The government therefore now has to re-consider the Ombudsman's report, but it will be doing so under an intense media and political spotlight. We will be pressurising them along the lines of:

- The Ombudsman found in our favour
- The Select Committee found in our favour
- The European Court found pensions in the UK were not adequately protected
- The High Court have found in our favour.

It's normally three strikes and you are out, the government have had four, when will they see sense?

2) The judge gave a mixed view on causation, (i.e. showing that the misleading information actually caused loss). The Ombudsman had ruled that the government should take a broad brush approach (as it had in relation to very similar maladministration in inherited SERPS) and consider compensating all those who had lost their pensions. The judge said this went too far. His words were:

"If the First Finding had been limited to the causation of injustice to any scheme member who had read the offending leaflets, or who relied on advice from colleagues or others who in turn relied on the leaflets, it would not be open to challenge. But I cannot follow the logic of the Ombudsman's finding that everyone who between 1995 and 2005 suffered losses on the winding up of their pension scheme was the victim of injustice in consequence of maladministration."

This is actually helpful – up to a point – as it says that where it could be demonstrated that an individual had done research and influenced other people it can be assumed that the other people have also suffered injustice.

We will need to see how the government responds to this. If the judge's approach is correct (we have permission to appeal against this part of the ruling, so his word may not be final), it still does not let the DWP off the hook as a strict approach to causation could lead to up to 125,000 individual complaints, or even that many judicial reviews.

3) The judge did not agree that the changes to the

MFR were maladministration. This is debatable and we may appeal. Again, we have permission to appeal against this part of the ruling.

4) The judge dismissed the human rights case outright. Again, we can appeal this if we wish. The human rights point is particularly important for those wholly excluded from the FAS, as the government cannot say it has made proportionate arrangements to compensate everyone when they are excluded.

Notes from Dr Ros Altmann

The government should be pressed in parliament to answer the question whether they now accept that the information that they provided to the public was misleading, and that they were responsible for maladministration. Or are they still maintaining the position which the judge has said that the judge said no reasonable secretary of state could rationally adopt?

What we established in yesterday's ruling

- Government is guilty of maladministration by providing inaccurate information about the security of final salary pensions. Its information for the public misled people into believing their pensions were safe, when they weren't.
- The Government's decision to reject the Parliamentary Ombudsman's finding of maladministration was unlawful.
- The Secretary of State's reasons for rejecting the finding of maladministration were not reasonable or rational, so this decision was unlawful.
- The Government must reconsider its rejection of the Parliamentary Ombudsman's recommendation to compensate people and restore their full pensions.
- The Government agreed to pay all the costs of the case and also the costs of any future appeals.

What we did not win on

(The Government's fig leaf!)

- The judge said that, in law, he could not accept that compensation must be paid to ALL victims of failed pension schemes, because they have not '**so far**' ALL established that they relied on the official information.
- The judge said he was not convinced that the decision to weaken the MFR in 2002 was taken

with maladministration. The judge did not agree that the Government has violated the Human Rights Act.

My comments on these points are as follows (also checked with the barrister):

On causation, the court has made the point that it is hard to see how it could be said that everyone who lost pension rights between 1997 and 2004 has suffered injustice in consequence of maladministration. For some people, official misinformation may have had nothing to do with it, and they may not have had remedial steps open to them (paragraph 70).

However, at paragraph 85 he goes on to say that the first recommendation must be reconsidered on the basis that "*maladministration occurred, but that causation in individual cases has not so far been established*". Of course, many individuals will have no difficulties in establishing causation. They can do this by explaining how they read leaflets themselves, in hard copy or on line, or that they were told that their money was safe by others who had read leaflets - such as trustees who had read the OPRA leaflets - or that they understood from press reports (also influenced by misleading press releases and the 1996 leaflet) that their money was safe. They would then need to just explain how they at least lost chances of remedial action as a result (for example they could have diversified their savings, tried to negotiate higher contributions from their employer, retired at the first opportunity, not put AVCs into their scheme etc etc). In theory, all 125,000 or so could lodge individual claims for compensation with the DWP on this basis. This will be impossible for DWP to process. Therefore, there is a strong incentive for DWP to reach a global deal - as they did in the inherited SERPS case, where the causation issues were closely comparable. The key point we need to stress on causation is that the judge has said that the recommendation for full compensation must be reconsidered on the basis that causation has not **yet** been established in each individual case - in other words, he is not saying that it could not be.

The rejection of the Ombudsman's finding about the 2002 MFR decision is not the Central issue. The Ombudsman made it clear that her recommendations for redress did not turn on the third finding in any event. In any case, I am quite sure that we would win on Appeal on this issue too, it is just that we did not spend time explaining the detail of how the MFR calculations worked, since it was not crucial to our case. Unfortunately, as the judge says in his ruling (point 76) he found

the Ombudsman unclear on this matter. The explanation we would give is that the decision to weaken the MFR in 2002 was taken on the basis of only looking at the investment markets and the effect of those on the MFR calculation assumptions for **ongoing** schemes, but failed to check what would happen on wind-up to members' for a 100% MFR-funded scheme. Given that the original intention of the MFR was to protect members' pensions **on wind-up** (this was admitted by John Hutton in his response to the Ombudsman report) the fact that the Government did not bother to check what was happening to annuity rates, nor consider the impact of the priority order and cost of annuities on pensions of non-pensioner members on wind-up, is clearly maladministrative. We did not have the opportunity to go into the detail of this in court, but may do if there is an appeal. Importantly, however, the Ombudsman's recommendations were not based on this finding.

Superb Media Coverage

The victory in the High Court had tremendous coverage in the media. BBC News, BBC News 24, ITN, Sky, GMTV all covered it, in many cases with live interviews in the studios, outside the High Court and on College Green. We also think there were reports on every local TV/radio station with affected people in the audience.

There has been very positive daily coverage in the press, notably the Telegraph, Mail, Times, Guardian, Independent, Scottish Herald, Express, Mirror, Sun, Mail on Sunday, Sunday Telegraph, Sunday Times and many more. Thanks to all the journalists who supported our case.

There are some choice examples on the PAG website here:

<http://www.pensionstheft.org/2081.html>

A more extensive list of articles is available on the Equitable Life Action Group's excellent media page here:

<http://tinyurl.com/248tys>

Where Do We Go Next?

A message from the PAG Organising committee

We have now reached a very critical stage in our campaign for justice and proper compensation and we have therefore made a few notes to try to help us through this period and move things along.

While we won an important ruling from High Court and have a lot of support and sympathy from the media and some MPs, it is critical that we nurture this, build on it and do not do anything that may turn people against us.

There are some actions that we urge you to take starting now. Please use these notes freely but please remember that while we want as far as possible to all be sending the same message, your individual letters, emails, phone calls and meetings will have far greater effect than a mass mailing from us. This document is not intended for you to print off and send to your MP, you must make the effort to personalise your circumstances and any communication you might make.

You need to explain that the government's position is unlawful, immoral and unjust. Four different bodies have now told the government to pay a proper level of compensation for all of us, including solvent company members and other people excluded from any help because of their age.

Put simply, the judge found that the government behaved unlawfully and for those that were misled, compensation is due.

You now need to tell your own individual story, explain how you were misled, and the other options that you could have taken if you had known the truth about your pension that was kept from you by government.

The action that you take now is vital not only for a chance of restoring your own pension, but for the restoration of confidence in pensions in Britain. You must tell people that!

The Press, TV and Radio

We need to be even more active writing to the media, thanking them for their support and telling them how much we still need their assistance as the Government appear to be dragging their feet unnecessarily and we are worried that they might try to use further tricks to hoodwink the public and MPs into thinking that they have done the right thing by possibly making minor changes to FAS that would still leave most victims with very little or no compensation.

We should also take every opportunity to correct those people who make inaccurate comments in the media about our case, or who try and say that the taxpayer cannot afford to pay the compensation.

It is very important that we only make **constructive** comments about those who oppose our campaign. It may make us feel better but we will not win friends by insulting anyone.

Members of Parliament

We need to be very active writing to and, far more importantly when we can, meeting with our MPs. You must explain your own circumstances, put them into figures that they understand, i.e. hard cash. Tell them how your life has changed, how your dreams have been shattered, how you are not only dreading an impoverished retirement, but that you have no quality of life now as so much of your income is trying to replace your lost pension. Tell them how betrayed you feel, the stress you are under, how your life has been shattered and how disillusioned you are with politicians and their lack of respect for Parliament and the law.

MPs that are supporting us:

They may have signed EDM 969, the all party EDM, but find out for sure and if he/she has not please ask him/her to do so or demand to know why. As an all party EDM no MP can really object to signing it unless he/she absolutely opposes our campaign. Even if they have signed the other EDMs it makes sense for all MPs to sign EDM969.

You then need to explain to them our concern that the Government is dragging its feet and that we do not understand why it needs so long to tell us what action they are going to take. This delay is reprehensible after they have been told very clearly by the High Court that the Government was guilty of maladministration and that the Government acted unlawfully in rejecting the Ombudsman's findings, and that therefore it must reconsider compensation.

Please stress to them that the Judge said that the evidence the Ombudsman studied showed that the Government maladministration had caused the claimants' losses and while he said that there was no proof that this was the case for everybody who lost their pension we are confident that people can show that they were influenced by these documents and how it would be unfair and impractical to expect every individual to take his/her case to the court to prove the same point.

Please also tell them to scrutinise carefully further Government action as we have seen so much spin up to now that we would not be surprised if they try to employ further tricks such as minor changes to the FAS dressed up as major improvement but that still leave most people with nothing or very little.

Tell them about a proposed amendment by the PASC to the Pensions Bill currently working its way through Parliament which would quickly help our issue if accepted. It has already won cross party support, but clearly needs MPs from each of the political parties to actually vote in support of us.

If you have a Conservative, Liberal or minor party MP it is absolutely vital that you go and see them, as we must get them to speak to their leaders and impress upon them the urgency of sorting this out. As the opposition they have it in their power to get a proper agreement and to prevent another fudged settlement.

If you have a Labour MP, particularly in a marginal constituency, make sure that they act using their own integrity. Remind them that you are the electorate and that you will remember their actions come the next election. If they show weakness and bow down to Gordon Brown because they are intimidated by him, they are no use as an MP, and you should remind them of that.

What the country needs now is a swift political solution to this problem involving all the party leaders. They will react to their MPs concerns.

Remind your MP that the cost in today's money amounts to less than 70 million pounds a year (even less if you deduct the income tax, VAT and payment of social benefits they will recover) for 50 or 60 years and does not need to come from just the tax payer. The money still in our funds could be used more effectively if annuities did not have to be bought, there are unclaimed assets or if they want to use a little of the taxpayers money they could return a very small percentage of the money that Gordon Brown took from our funds, which in part contributed to the problem. Many other ideas have been suggested but so far ignored by the government.

Every day more of our group are either dying or reaching retirement age and suffering from the financial loss. These people and their families need to be helped as soon as possible and whatever the eventual solution, the Government should

advance some funds to these people while new arrangements are put in place.

MPs that are not supporting us:

It is even more important that we meet with these MPs rather than write to them.

The points to be made are really the same as those for MPs that are supporting us but we need to put more emphasis on the justice of our campaign and the integrity and moral responsibility of the Government. We may not be the biggest group in the world but our campaign has the support of many people and if they do not help us they might get a shock when the public next have a chance to vote. We may be a thorn in their side, but we could equally be a nail in their political coffin!

Take your notes with you. Don't let them sidetrack you with Government spin. Tell them politely but firmly that you know the facts and you came to see them to have a proper discussion about a serious issue because you are fed up with spin.

Please do not simply print off these notes and send it to your mp or local media. Use the contents to personalise a letter if necessary but better still make an appointment to attend your MP's surgery and ask them what they intend to do for you.

Your pension restoration could depend upon your action now!

Pass this on to your colleagues, let us know if we can help at all. We purposely have not produced a standard letter for you to circulate, you need to give your own circumstances to let MPs know how you are suffering.

In addition please make every effort to attend our forthcoming demonstrations, details of which will be published as soon as possible. We do not have the time to wait for lengthy legal and political posturing, we must demand cross party action NOW!

Judicial Review Demonstration

To mark the start of the Judicial Review, PAG members held a highly successful demonstration outside Parliament on 7 February. We were joined in the cold Spring sunshine by over 50 MPs from all the main parties who were keen to show their full support for our campaign. Unfortunately Tony Blair had a more important engagement than

meeting with pensioners who have suffered under his policies – he was in the Commons meeting the attractive young actress who had recently won Big Brother.

After the Westminster demonstration, we all walked across to the Royal Courts of Justice to support the for claimants. The press and broadcasters were very much in evidence and we received a huge amount of very favourable coverage.

There is a full account of the demonstration, with pictures, on our website at:
<http://www.pensionstheft.org/2230.html>

Petitions

There have been several petitions in circulation over the last few months aimed at getting the



Government to change its mind and properly compensate for lost pensions. Saga organised one through their magazine and website which achieved 12,235 signatures and John Benson organised another in South Wales which received 5,000 signatures. Both were handed in at 10 Downing Street during our demonstration on 7 February marking the start of the Judicial review.

Early Day Motions

There are now four Early Day Motions which have been tabled in the House of Commons which support our aims. (EDMs are a device used by MPs to indicate support for various issues.) At the time of writing, 363 individual MPs have signed one or more of these motions. This represents an absolute majority of 30 over the entire House of Commons. If we subtract those who never sign

EDMs (because they hold various offices) then the majority rises to a massive 113 amongst backbenchers. There is therefore a tremendous groundswell of support amongst MPs on this issue which we will have to translate into effective pressure on the Government.

Financial Assistance Scheme Update

The FAS is the scheme put in place by the Government to provide limited compensation to a subset of the people who have lost all or part of their pension. They consider it to be an adequate response to the problem even though it will only pay out to at most 40,000 of the 125,000 people affected, and most of those will get very little.

The FAS organisation was set up in September 2005 and since then it has processed claims for 967 members and survivors. At this rate, it will take 62 years to process all those believed to be eligible. Since the youngest of those were aged 50 in 2004, that suggests that they will not receive a penny until they are aged 112. When John Hutton says he needs to be careful with taxpayers' money, he's obviously in deadly earnest.

Solvent Companies and the High Court Verdict

By Richard Nicholl

The High Court verdict will make the case for solvents that much stronger as one of the claimants, Tom Waugh, is from a solvent company scheme, and no distinction was made in court about him or his scheme.

Any new compensation scheme, therefore, should now include the solvent scheme members, but to ensure this happens we must ALL join in any planned demonstrations and go to see our MPs again, and make them understand that currently we are totally excluded from the FAS, the PPF or any other assistance.

The eligibility date for inclusion in the FAS has been extended from the end of February 2007 to 31st August 2007, after successful lobbying through our MPs. This will help any schemes whose companies become insolvent between now and then.

So many companies have in fact become insolvent since the introduction of the FAS that there are now only 18 solvent schemes that we know about, with about 4,700 people affected, and as this group is now finite it would not cost a great deal to include us in an assistance package - another point to make to your MP.

New PAG Discussion Board

By Peter Lapinskas

Many people feel isolated and powerless when their pension scheme is being wound up, especially if they have also been made redundant - a double whammy. The PAG email group is a good way to keep up with what is happening, but it is dominated by the campaigning issues and so is not a good place for swapping experiences or for supporting each other.

I have therefore set up an experimental message board where people can get together and feel part of a real community. Messages can be posted in different categories so things should be easy to find (there is also a good search facility) and messages which are posted as replies are displayed with the original post, so that it is easy to follow the thread of a discussion. There is a help link at the top of each page if you get stuck.

If you would like to try it out, you can find it at:

www.Lapinskas.com/pagboard

Previous Issues

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www.pensionstheft.org/newsletters/newsletter01.pdf

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