

# Pensions Action Group Newsletter

Issue 10

12 May 2007

## Government Faces Second Judicial Review

*by Dr Ros Altmann*

The Pensions Action Group's solicitors wrote to the Department for Work and Pensions on 3 May 2007, notifying them of our intention to Judicially Review the recent decisions to extend the Financial Assistance Scheme (FAS). The Judicial Review will cover two main points:

1. The extensions to the FAS do not comply with the High Court ruling against the Secretary of State in the earlier Judicial Review
2. The decision to include only some of the solvent employer schemes, while excluding others, is irrational, discriminatory and unlawful

The Government's position on the plight of the victims of scheme wind-ups is incoherent and appears to consist of a series of knee-jerk reactions to unfolding events, with no proper strategy for actually solving the problems it has created for tens of thousands of people. Piecemeal extensions to the FAS have been announced almost weekly, but these have not helped the people who need money most urgently. Now the DWP has decided to set up a review to look at how to increase the FAS payouts to Pension Protection Fund (PPF) levels, but the review will not report until year-end. This means any recommendations it makes may not be introduced until 2009! This will be far too late for those worst affected.

The reality is that there are still about 9000 out of the 10,000 people already past their pension age who have not received any money from FAS at all. Some are in their late 60's and early 70's, many are very unwell and all are suffering daily without their pensions. The Government's decision to embark on yet another review is perhaps convenient politically, but is merely prolonging the agony for the victims.

In February, the Secretary of State was ordered by the High Court to reconsider the FAS in light of

the fact that the DWP is guilty of maladministration, as found by the Parliamentary Ombudsman's report 15 months ago. The DWP has not done this.

Mr. Justice Bean ruled 'no reasonable Secretary of State could rationally disagree' that the Government misled scheme members about the security (or lack of it) of their company pensions. However, the Secretary of State has decided that he does indeed disagree and has appealed against the judge's verdict. But meanwhile, he has said the latest FAS changes have been made because he accepts that the DWP is guilty of maladministration!

The Secretary of State's position on this issue is irrational and illogical. The Government has consistently ignored all the evidence and all the rulings against it. Such behaviour is totally unprecedented. No Government has ever dismissed the Parliamentary Ombudsman, PASC and High Court like this. Ministers seem to believe they are above the law and, if left unchallenged, this could pose a serious threat to our democracy.

We are also asking the Court to consider the position of solvent employer schemes. Despite the fact that the Parliamentary Ombudsman, PASC and High Court made no distinction between different employer sponsors, the DWP's decision to include only some of these schemes is arbitrary, discriminatory and irrational - and may also breach Section 6 of the Human Rights Act 1998.

Sooner or later, the Government surely now knows it will have to provide a proper resolution to this issue. There is widespread agreement, both inside and outside Parliament, that a fair resolution cannot be achieved at levels below those offered by the PPF. For the sake of those who have suffered so much for so long, let's hope it will be sooner and not later - many of them will not live that long.

## Cross-Party amendments defeated

There was a full scale pensions debate in the Commons on 17th April, and it was clear that the scandal of broken pensions promises commanded widespread and heartfelt support. It was therefore hoped that the cross-party amendments to the 2007 Pensions Bill would be voted through the next day.

In summary, the cross-party amendments would have done the following:

**NC40** This would have amended the FAS regulations so that solvent employer schemes were no longer excluded, which would have allowed solvent employer scheme members to be included straight away, rather than waiting for the Secretary of State to lay new regulations in future

**NC41** Would have set up a Lifeboat Fund to be administered by the PPF. This Lifeboat fund would have provided funding to increase FAS-level payments to PPF level, thus paying PPF to everyone and ensuring payments could start straight away. The Lifeboat Fund would have received money from Government initially, in the form of an interest free loan and thereafter from the Unclaimed Assets Recovery Agency

**NC42** Would have set up the Pensions Unclaimed Assets Recovery Agency. It would have been up to the Secretary of State to determine where these unclaimed assets came from e.g. orphan estates of life and pension companies, banks or building societies etc.

**NC43** Specified the functions of the Pensions Unclaimed Assets Agency

**NC44** Required provision of information to the Unclaimed Assets Agency

**NC45** Within 12 months, regulations had to be laid to specify requirements for transfer of assets to the Agency

**NC46** Halted purchase of annuities.

**NC47** Trustees to pay from scheme assets and interim loan from government to ensure money paid straight away

There were also several independent amendments put forward by Labour MPs.

**NC25** (Tony Wright) This called for solvent employer schemes to be included, but also

removed the restriction of means testing the FAS payments

**NC38A** (Julie Morgan) Would have increased FAS to PPF level but still not paid to anyone before age 65 or before wind-up completed.

During the debate, the Minister (James Purnell) made a commitment to include some (though not all) solvent scheme members under the FAS and this was sufficient to persuade Dr Wright to withdraw his amendment. Julie Morgan also did not push her amendment to a vote.

Purnell argued that it was inappropriate to allocate funds to upgrade the FAS from unclaimed assets until the extent of those assets had been ascertained. He argued that a commission should be permitted to do this and a decision taken when it reported at the end of the year. (Of course, by that time the Pensions Bill will have completed its passage through the Commons and it would be very difficult for MPs to make any changes to the FAS.)

When it came to the vote, only 15 Labour MPs were prepared to support the cross-party amendments and the measures were lost by 22 votes (260 to 282).

In an interview on Radio 5 a few days later, Julie Morgan explained why she had voted against the cross-party amendments. She repeated the Government line, but then went on to say that a decisive factor had been the intensive lobbying by the unions to prevent the amendments being accepted. This came as a surprise to many of us but was confirmed in a letter to his members by Michael Leahy, General Secretary of the Community Union.

In his letter, he wrote:

*"Following assiduous coalition building by Julie and Community we had managed to get a position where, if the Conservatives had agreed to support the amendment we calculated we would be able to win a vote in the House of Commons. Unfortunately an unnecessary and much more complicated amendment was tabled relatively late, at the behest of Dr Ros Altmann and the Pensions Action Group, with the support of the Conservative and Liberal Democrat Parties and a few Labour MPs."*

*"In addition, the Conservatives decision to initiate a debate of no-confidence in Gordon Brown as Chancellor of the Exchequer the day before the Pensions Bill was due to be debated led to the issue becoming polarised on party political lines. This is something we had always*

sought to avoid, since we believe that both Conservative and Labour Governments are to blame for your plight."

"As a result of this some Labour MPs who had been prepared to support Julie Morgan's amendment felt that they could now not do so. In addition, it became clear that the Conservatives would not support Julie Morgan's amendment when previously - if they were serious about solving this problem once and for all - they would have had no choice but to do so. The effect of this was that Julie Morgan did not push her amendment to a vote, since we calculated it would be lost. The unnecessary amendment was, as expected, lost."

This seems illogical for a number of reasons.

The cross-party amendment would have given us a much better package than Julie Morgan's:

- Payments could have started as soon as the Bill became law;
- Payments would have been controlled by the PPF authority, not the shambolic FAS;
- Payments would have started at Scheme Retirement Age rather than 65;
- Payments would have had at least some inflation index linking;
- They included everyone, including all 'solvent' scheme members.

If Julie Morgan had truly built a coalition, it would surely have included the Tories? If not, why not?

Once it was clear that Julie did not have the Tories on board, if the Unions had had their own members interests at heart, surely they should have used their influence to back the cross-party amendments which, after all, would have delivered a better settlement. We only needed 11 more Labour MPs to vote for them and they would have passed.

Instead, they ensured that the amendments failed and we are left with the worst of the three possible outcomes, the Government's own FAS.

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### The roll of honour

Here is the list of Labour MPs who voted for the cross-party amendments. It is not an easy thing to defy your own party whips so we owe them our considerable gratitude.

Frank Cook
Jeremy Corbyn

David Drew
Frank Field
Mark Fisher
Kate Hoey
Kelvin Hopkins
John McDonnell
Michael Meacher
Bridget Prentice
Alan Simpson
Gisela Stuart
Robert Wareing
Mike Wood
Tony Wright

Anne Cryer deserves special mention. She is one of the few MPs who had previously signed all four Early Day Motions supporting our campaign but then, when she had a chance to do something concrete to help, she voted with the Noes.

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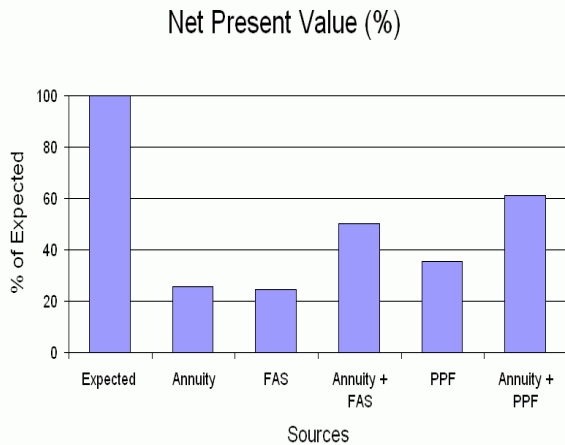
### What does the 'new' FAS mean for me?

The new FAS rules, as announced by Gordon Brown in the Budget sound wonderful. 80% of pension and no-one to be excluded. It almost seems churlish to be asking for the 90% in the PPF scheme. However, these things are never as they seem. There are a whole series of factors which influence what you will end up with, and every case is different. The only way to be sure is to calculate the income you will receive each year and then convert it back into today's money.

As an example, lets take a married man currently aged 50 with a wife of the same age, who was expecting a pension valued at £7,000 when he left his employer in 1999. Let's suppose that his scheme retirement age was 62, that his payments would be index-linked up to 5% per year and that his wife would get a pension of 66% if she survived him.

His scheme commenced wind-up in 2001 and he was offered an annuity of £2,000 per year based on the same terms as his expected pension.

If we assume that he and his partner have normal life expectancies and we assume that future inflation will average 4% per year, then his annuity will give him just 25.6% of the pension he was expecting. The FAS, as presently proposed by the Government, will top that up by a further 24.4% to give a total of 50% of expected pension.



If the cross-party amendments had been accepted, then PPF rules would have resulted in a contribution of 35.3%, taking the total to 60.9% of expected. As you can see, both the FAS and the PPF fall a long way short of the 80% and 90% figures promised by the politicians, but the PPF is clearly better. It is a great pity that the Unions used their influence to snatch that possibility away from us.

### What can I do to help?

All is not lost, as we may still be able to get the cross-party amendments re-introduced in the House of Lords. The MPs who sponsored the original cross-party amendments have committed to doing this and, if they are successful, then the Commons will get a second chance to vote on them later in the summer.

According to Dr Ros Altmann: "It is important for PAG members who have lost their pensions to write to the Lords to explain what has happened to them and ask for their support. All of these letters can mention my name and that the amendments were drawn up with my input on a cross-party basis, to put an end to the scandal once and for all."

With MPs, you have to write to the one for your own constituency, but you can write to any member of the Lords who you think might take up your case. Many of them are never seen in the Chamber, but the following are the Lords which Ros considers to be most likely to be productive:

- The Lord Turner of Ecchinswell (Crossbench)
- Rt Hon the Baroness Dean of Thornton-le-Fylde (Lab)
- Rt Hon the Baroness Hollis of Heigham, DL (Lab)
- Professor the Lord Layard (Lab)
- Rt Hon the Lord Newton of Braintree, OBE (Con)

- The Baroness Howe of Idlicote, CBE (Crossbench)
- The Lord Grabiner, QC (Lab)
- The Lord Giddens (Lab)
- Professor the Lord Desai (Lab)
- Rt Hon the Lord Higgins, KBE, DL (Con)
- The Lord Taverne, QC (LibDem)
- Rt Hon the Lord Varley, DL (Lab)
- The Lord Best, OBE (cross bench)
- The Baroness Murphy (Crossbench)
- The Baroness Greengross, OBE (cross bench)

Letters (no emails) should be addressed as above on the envelope and begin "Dear Lord Turner" or "Dear Lady Murphy" (not strictly correct, but this is probably the most commonly used form). The address is:

House of Lords  
London  
SW1A 0PW

### Government Pension Myths

*by Ros Altmann*

**MYTH 1:** The Government has put £8bn aside for the Financial Assistance Scheme

This is not true. The reality is that the FAS has paid out just £4m since 2004 and has cost taxpayers over £8m to administer. The £8bn is statistically invalid 'cash' cost, worth just £1.9bn in real terms. And this will be reduced by tax paid on FAS and by means tested benefits not paid out.

**MYTH 2:** The FAS is helping those in most urgent need

This is not true. There are over 10,000 people already past pension age - by definition they are the ones in most urgent need - but only about 1000 of them have had any money at all from the FAS. The rest - many of whom are in their 70's now and some battling cancer while still trying to work - have had nothing.

**MYTH 3:** This is all the trustees' fault

Trustees are having to work within the bureaucracy of the FAS and, although they have money to pay all those past pension age, they are not allowed to. The money has to sit in a bank waiting to buy annuities. Meanwhile the members can't get their pensions. In the Pension Protection Fund, trustees are allowed to pay PPF level benefits to all members already past retirement age, so nobody has to live without their pension.

#### MYTH 4: Taxpayers' money is the only source

Again this is not true. It's up to the Government to think creatively about this. Firstly, using scheme assets to pay the pensions out, rather than wasting money on buying annuities would be much more sensible. Secondly, using unclaimed assets from life and pension companies or other financial sector sources would allow the FAS to be topped up to PPF levels without calls on taxpayers. There are still over £1billion in pension schemes which have not yet bought any annuities. This money should be kept to start the compensation.

#### MYTH 5: Proper compensation is unaffordable

Topping up FAS payments to PPF levels would require an extra £600m to be set aside now, or the money can be paid year by year and would be no more than around £20m a year. Official mistakes in benefits calculations cost taxpayers over £700m every year! The cost of a decent compensation package is almost a rounding error in the DWP accounts - it is certainly not unaffordable and, anyway, unclaimed assets could be used.

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#### **The Young review**

*By Terry Monk*

John Hutton announced on the 28th of March the establishment of a review headed up by Andrew Young to, amongst other things:

- Examine how to make best use of the assets in pension schemes that are winding up underfunded with an insolvent employer;
- Determine if these sources of funding could be used to increase assistance for affected scheme members;
- Consider any suggestions from interested and concerned parties;
- Consider "Solvent " wind up eligibility

Hutton said: "The review will be conducted by the Department for Work and Pensions and advised by a panel of technical experts. Due to the complexity of the issues involved the review will be informed by advice from the Government Actuary Department. This will commence immediately and the review will report by the end of the year. Regardless of the review, it continues to be important to the interests of all members of affected pension scheme that schemes are wound up as quickly as possible. Should the review identify an alternative way of using scheme assets

we will ensure that no scheme members lose out because their pension scheme has completed the wind up process. It is also important that trustees continue to apply on behalf of members to the Financial Assistance Scheme for payments and provide member data. Failure to do so will mean that people who could be receiving payments will lose out on the substantial help that is now available."

He added "Let me be clear that the 80% level of support we have committed is from the taxpayer, and it is not contingent on the release of any other funding source."

What does this mean for us? It certainly opens the door for further improvement but provides no certainty for trustees or members and, given that research was carried out earlier this year which identified around £1bn of assets not yet committed to annuity purchase, the government should make the commitment now. There are issues for trustees that could be solved if the Government would do this. FAS has to mirror the scheme benefits for the trustees to transfer assets. For instance, if a scheme had a retirement age of 60 trustees would not give that up to enhance benefits at FAS age of 65. Through PAG and Ros we are seeking to have input but regrettably Ros was not included in the Panel of experts !!

What can you do? It would help if you asked your trustees their views and if they are contributing to the review by offering submissions. The more pressure we bring the greater chance we have of influencing the outcome

The review (we understand) is to produce its initial finding in June with the final report by the year end. This is far too long to wait and we want and deserve a decision now

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#### **Solvent Company Schemes**

*By Richard Nicholl*

Only some of the people have been plucked from the open waters into the overcrowded, leaking lifeboat, leaving others still desperate for help!

Under pressure from all sides during the debate in the Commons on April 18th, James Purnell announced that some of the solvent company schemes would now become eligible for inclusion in the FAS. Welcome though this is to some, it is cruelty beyond belief for those still excluded.

The eligible schemes are those where the trustees made a compromise agreement with the company which prevented the company's insolvency.

The DWP has issued a list of potentially eligible schemes, using this new criteria. These schemes are:

AUCS UK Defined Benefit Pension Plan  
Charles Clifford Industries Ltd  
Expamet International  
Folgate Insurance Co Ltd  
Fredk H Burgess Ltd  
HK Technologies Ltd  
J & D Wilkie Ltd 1982  
Kingsmead  
Lionheart Group  
Lucas Yuasa  
Norman Butcher  
Parsons  
Shipham & Company Retirement Benefits Plan  
Stankiewicz UK  
The Chapman Group  
The Data General Employee Benefit Plan  
Unilabs Trust Laboratories Ltd  
(Total 17 schemes)

Trustees or administrators of the above schemes who have not yet submitted information to the FAS Operational Unit should contact them on 0845 6019941 to obtain form FAS A1 or email them at FAS-Operational-Unit@dwp.gsi.gov.uk

I would suggest that even if you believe your trustees have given information previously, they should make contact to make sure the DWP still have that information, or to see if they require further information. If you cannot contact your trustees, or you have any worries, you should contact the FAS team yourself. The FAS is keen to learn of any other schemes which are not on their list, but which might be covered under the new extension. Such schemes should email their contact details to:  
adelphi.fas-review@dwp.gsi.gov.uk

For other solvent schemes which do not meet the qualifying criteria the Review that has now started will 'look at the definition of solvent employers', and give an initial view in the summer followed by a final report by the end of the year. The terms of reference of the Review include an objective to 'determine whether there are other pension schemes (in addition to those with compromise agreements) where although the sponsoring employer did not undergo an insolvency event, it would be unreasonable to expect the employer to have a continuing responsibility for supporting an under funded scheme.' It is vital that everyone

from solvent schemes and our colleagues from insolvent schemes remain committed to the inclusion of everyone who has lost their pensions. We must all contact our MPs to point out the cruelty of this further criterion to exclude some of those workers who, like everyone else, did everything they were told to do for their retirement.

As you will read elsewhere in the Newsletter, the PAG has written to the DWP informing them that we will press for another Judicial Review to demand the inclusion of all solvent schemes, as per the amendment by Dr Tony Wright MP, Chairman of the PASC, and the Cross Party amendment, and as recommended by the Parliamentary Ombudsman, the PASC and the High Court.

I am still trying to determine the status of some of the 'ineligible' schemes we know about, and if you have any relevant information that you have not yet supplied to me, please do so as soon as possible, either by email to:

richard@nicholl37.fsnet.co.uk  
or by phone on 07711 927 823.

We have the support of the rest of the PAG, and all solvent scheme members can rest assured that our aim is for everyone to be included in the FAS, and then that the FAS needs to be better funded and to pay out more speedily and efficiently.

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## **FAS payments update**

The FAS are now making payments to 1135 people, up from 1041 last month. Given that there are 10,000 people who have reached 65 and are eligible for payments now, and that more are joining the queue every day, there is still some way to go.

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## **PAG poster campaign**

*By Andrew Parr*

The local elections in England and the Assembly elections in Wales and Scotland, as expected, showed a large swing against Labour. The Pensions Action Group paid for posters to be put up in Cardiff (City centre) and Edinburgh (city centre and Waverley station) linking Gordon Brown to our plight. The timing of the posters could not have been better as the news about Gordon Brown's action over the removal of ACT broke just a week before the posters were erected.



The posters themselves, planned and designed over a month earlier, were fortuitously spot on.

Thanks to John & Sally Hayter for the original idea, for providing the body double and for their support in Wales, to John Benson for co-ordinating the Cardiff poster and Marcus Stout for the Edinburgh posters.



The unveiling of the posters was a media event and was widely reported on TV and in the national press. Tony Blair visited Cardiff a few days after the posters were unveiled and was so angered by what he saw that he contacted the local press and gave a statement about the government's position. The paper rang John Benson who said that if Tony Blair was so concerned the Pensions Action Group would be delighted to meet with him and Gordon Brown for discussions. We wait to see if this offer is taken up, but we won't hold our breath.

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### **Governments knew that the MFR was inadequate**

Governments of both parties knew all along that the Minimum Funding Requirement was inadequate to protect our pensions, yet they hid it from the public. When the 1995 Pensions Act was debated in the House of Lords, Lord Eatwell expressed the problem very clearly:

"My Lords, with that simple statement by the noble Lord, Lord Mackay, the Government's case for the minimum solvency requirement has been destroyed. I am grateful to him. He has

acknowledged that the minimum solvency requirement is not a solvency requirement. He will acknowledge that by changing its name, it no longer has the characteristics which the Government have pretended that it had. We now have a funding requirement in which the scale of funding is to be determined by an arbitrary procedure related once upon a time to solvency but so related no more. However, the minimum solvency requirement, or the minimum funding requirement as we shall certainly soon learn to call it, still bears the disfigurement of its misconception. The funding requirement is still defined as though it were a solvency requirement, albeit very much watered down."

"At the time I characterized that amendment as being similar to the role of the England cricket team believing that their abilities were adequate for the purpose of securing the Ashes. So we could call the Government's then position "the Atherton position". But now, with the abandonment of any pretence that there is a minimum solvency requirement in the Bill, the Government's position has become that they continue to support a requirement while they acknowledge in advance that it will not be fulfilled. Their position has switched from the Atherton position to the "Eddie the Eagle position". Eddie the Eagle knew that he could not ski-jump, but he tried all the same. The Government know that their solvency requirement will not guarantee solvency, but they continue to use it all the same."

*Hansard, 13 Mar 1995*

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### **Keep in contact**

If you would like to keep in touch with events as they happen, to chat and exchange notes with others in the same boat, why not join our email group? Full details at <http://tinyurl.com/ruams>

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### **Previous issues**

You can download previous issues of the newsletter from (inserting the number of the issue you want):

[www.pensionstheft.org/newsletters/newsletter01.pdf](http://www.pensionstheft.org/newsletters/newsletter01.pdf)

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