

Judicial Review Appeal

The government's appeal against the Judicial Review verdict was heard in the Court of Appeal on 25th to 27th July and the verdict will be given in the Autumn. It seems highly likely that the case will proceed to the House of Lords whatever the verdict as the case clarifies the role of the Parliamentary Ombudsman and as such is wider than just our pensions saga.

The next section contains an analysis by Dr Ros Altmann, written before the hearing, which lays out the issues in the case.

Government Attacks Ombudsman in Court

The Secretary of State's case against the victims, who had their pensions legally taken away from them after a lifetime of saving, is that Ministers do not need to listen to the Parliamentary Ombudsman, or the Courts, but are answerable only to their own MPs. If the Secretary of State decrees that his Department did nothing wrong (even at a time many years ago when that particular Minister was not even around) then everybody must accept his own verdict and those who have been wronged by his Department's actions are not entitled to any compensation at all.

In a breathtaking display of political arrogance, the Government's lawyers will spell out their contempt for the Parliamentary Ombudsman and her investigation. The Ombudsman is being forced to defend herself against an unprecedented attack on her position. Her lawyers will be asking the Court of Appeal what the point of her office would be if Ministers can, without even knowing the facts, simply decide that they are right and she is wrong. The Government's case is that the Ombudsman has been irrational and so has the High Court judge, when finding that Ministers misled innocent citizens into contributing to company pension schemes, by telling them their money was safe when it wasn't. Every independent investigation into this scandal has laid the blame squarely at the Government's door, yet still the victims have not been rescued.

It is quite incredible that this could be happening in 21st Century Britain - and under a Labour Government.

During this Appeal case, from 25th to 27th July, the Government will be asking the Court of

Appeal to rule that Ministers can be judge and jury in their own cause and that even if everyone else says the Government has behaved wrongly, Ministers can legally over-ride them.

I believe that the Government's case is absolutely scandalous. Firstly, it has misled the Court about what the Ombudsman's report actually says (the Ombudsman will intervene to explain how the Government is misleading the Court). For example, the Government has tried to pretend that the Ombudsman's findings relate only to two leaflets. However, the truth is that the Ombudsman's report contained 100 pages of description of how all official information was inaccurate or potentially misleading. In an unbelievably arrogant manner, the Secretary of State says that he cannot be expected to 'trawl through' 100 pages of the Report! So here we have the Government saying the Ombudsman's investigation and conclusions have been irrational and wrong when he has not even bothered to read what she said!

Secondly, the Government is arguing that only the House of Commons can decide whether Ministers are right or wrong. This is a dangerous challenge to our democracy. Any Government, then, with a large Commons majority, can over-ride citizen's rights and there will be no protection for innocent civilians whatever. Ministers can simply lie about what independent verdicts have actually said (as the Government is doing in this case) and the truth will never prevail.

Thirdly, the Government is also arguing that its Financial Assistance Scheme (FAS) has sorted out the problem properly and will pay 80% of members' pensions. But the reality is that only 1,300 of the 125,000 victims have had any money at all (even though there are already over 10,000 past age 65 who need help immediately) and the FAS does not pay 80% of the pension they would have received from their scheme. The Government has used political spin to placate its own backbenchers by inventing a term called 'core pension' which is not the members' expected pension at all and then taken 80% of that!

The Government has also killed off the amendments to the Pensions Bill that were passed by the House of Lords and would have provided a fair and final resolution of this scandal. The Pensions Minister argued that it was cruel and irresponsible of political opponents to try to promise victims more money when it might not be 'affordable'. However, the amendments were backed by a cross-party group of MPs and called

for all 125,000 victims to be treated the same as those in the far more generous Pension Protection Fund in future. Their trustees would have been allowed to pay their entitlements immediately and they would have been paid as soon as they reach their scheme pension age (not age 65 as the FAS decrees). The Government's own figures show that this would cost less than £20m a year and its own Review has shown that this would not need to cost the taxpayer anything at all by using scheme assets more intelligently than buying annuities as they do now. In light of this, it is clear that it is actually the Government itself that is being 'cruel and irresponsible' by stubbornly denying a fair rescue to these victims and forcing them to fight in court and wait for still more reviews and consultations. How many more of them have to die before the Government does the decent thing?

Having gerrymandered the political process, the Government is now trying to use the Courts to deny justice to the victims and I firmly believe that the three Appeal Court judges will stand up for our constitution and protect our democratic safeguards.

Somebody needs to show this Government that it cannot behave as a dictatorship. We have recently heard much about moving away from political spin and listening to Parliament and the people, but when it comes to matters that it finds uncomfortable, the Government seems to want the power to do exactly as it pleases.

I sincerely hope that the Court of Appeal - with the assistance of the Parliamentary Ombudsman - will show the Government just how wrong it is!

Dr Ros Altmann

Parliamentary Protest

We had very short notice to organise a protest to coincide with the debate in Parliament but managed to get together a small group of protesters in Parliament Square. As you can see from the picture on page 1, we had a telling point to make, which was easily visible to MPs entering and leaving. We must thank the Metropolitan Police for rushing through the paperwork for this in record time, the "Serious Organised Crime and



Police Act" makes protests with little or no notice very difficult to organize.

What next?

Our next demonstration is planned for 12:00 on Tuesday 25 September at Bournemouth, outside the Labour Party Conference. Further details will be sent later but mark the date in your diary and we look forward to seeing you there.

Solvent Company Schemes Update

By Richard Nicholl

The solvent company schemes are now effectively in two groups: those that had a Compromise Agreement with their company, which prevented that company's insolvency; and those that didn't.

Those with Compromise Agreements are now potentially to be included in the FAS. A list has been published by the DWP referring to these schemes, and they currently include:

AUCS UK, Charles Clifford, Folgate, FH Burgess, HK Technologies, J&D Wilkie, Kingsmead, Lionheart, Lucas Yuasa, Parsons, Shipam, Stankiewicz UK, Chapman Group, Data General, Expamet, Norman Butcher and Unilabs Trust.

The DWP FAS team is currently contacting the trustees of these schemes for more information, and then they will be assessed for eligibility. The regulation to admit these schemes will be hopefully passed in November, and those eligible members from qualifying schemes should start to get payments soon afterwards.

The schemes that did not have a Compromise Agreement which prevented insolvency are also being researched by the Andrew Young Review team, so that they can fully understand what happened to these schemes and hopefully they will be able to find a way of also including them in the FAS.

The FAS team have contacted us as they did not have any contact details for some of these schemes. We have researched these and found suitable contacts for all schemes and passed them on. The only exception to this is the Allied Domecq scheme, where we have no contact. If you are a member of this scheme, or know someone who is, please contact me on 07711 927823.

A few of the schemes we contacted are already getting above 60% of their expected pension, including some of the benefits excluded from FAS, such as retirement at scheme age (not 65), and some inflation proofing. The trustees of these schemes have to act in their members' best interests, and they may well be better off with 60% of actual benefits rather than the FAS 80% of 'core' benefits! A case of "FAS? - Thanks, but no thanks!", which just shows how poor the FAS currently is.

Whatever the situation we have made representations that no one who is included in FAS should be worse off than not being in it. This has happened with some people entering the PPF.

The DWP has also announced that while it cannot stop solvent company schemes from buying annuities, it may be better not to, so as to preserve the funds in the expectation of entering FAS. The FAS entry eligibility cut off date of 31st August 2007 has also been extended indefinitely, or at least until the Andrew Young Review team has submitted its final report.

There is still much work to be done to ensure that the solvent schemes, in both groups, are included in FAS. You must continue to write to your MP, the PASC and Lord Turner to tell them of your circumstances and continued suffering.

Richard Nicholl

Pension Action Group Objectives

What we should be receiving, as recommended by the Parliamentary Ombudsman, and backed up by the Public Administration Select Committee, the High Courts and the House of Lords:

- The full original scheme benefits that we were expecting prior to the start of our scheme wind up, and financial recognition of the stress and anguish suffered as a result of the loss of our pension expectations.

What we have been offered. After our prolonged and as yet unfinished campaign the inadequate Financial Assistance Scheme (FAS) will only give those of us eligible for help:

- A top up to 80% of our 'core' pensions. This 'core' is far less than our expected pension.
- Reduced dependants' benefits.
- Benefits only payable from age 65.

What we have not got is:

- Inclusion of all schemes including specific solvent company scheme wind ups

and the following benefits provided by the Pension Protection Fund, introduced following our campaign, to give future scheme liabilities the protection we are currently denied:

- All actual retirement entitlements, backdated to the start of scheme wind up.
- Retirement at scheme retirement age.
- Pre retirement indexation in line with PPF basis
- Post retirement escalation in line with original scheme rules.
- Spouse and dependants' benefits in line with original scheme rules.
- Guarantee of 5 years members pension in the event of premature death.
- Early retirement option in normal health.
- Early retirement option in ill health.
- Option to take a reduced pension and tax free lump sum.
- Payments being made in a speedy and efficient manner.

The above benefits must now be the minimum level provided by the FAS

The way the Government has handled this situation has been nothing less than cruel and has added significantly to our pain and suffering. Many victims have been forced to sell their houses to finance their retirement without their pension. Unfortunately others have died waiting for assistance, and several have committed suicide.

Despite some recent enhancements, there is a vast difference between what the FAS pays and what the Parliamentary Ombudsman recommended in her independent Report, published in 2006.

The Government has introduced a new term, 'core pension' to mislead the public and MPs. The reality is that an average victim's 'core pension' will be equivalent to about 60% of their expected pension which they paid for over their working lives, and without any inflation proofing this amount will reduce in value every year in retirement. Confidence in pensions' savings cannot be restored until the Government stops the spin and fulfils all the recommendations in the Ombudsman's Report.

Future Directions

A personal view from Adrian de Segundo

1. WHERE WE ARE NOW

1.1 PARLIAMENT

As you'll recall Conservatives, LibDems and minor parties united in Parliament to introduce Lifeboat Clauses into the 2007 Pensions Bill which would have brought prompt relief and at least PPF levels of compensation to all those who've lost out so badly on their Company Pensions schemes.

Thwarted narrowly in the Commons, they successfully reintroduced these clauses in the Lords, only for them to be thrown out again in the lower house. Government then invoked the 1911 Parliament Act to cut off further debate and the Bill became law. In the end not enough Labour MPs who'd signed 3 and even 4 EDMs in support of our cause were prepared to rebel. They were bought off by last minute concessions on the Financial Assistance Scheme. Some of these were significant (e.g. inclusion of some failed schemes where the employer is still solvent and an increase in the ceiling from £10k to £26k p.a.) thanks to highly effective lobbying from Richard Nicholl and once again Ros Altmann.

1.2 THE COURTS

The Court of Appeal heard our first judicial review case on 24 - 26 July and will most likely announce their decision in October. To judge by remarks from two of their Lordships - each with his special dispensation to have a pension pot over £1.5m! - don't count on anything and remember that they administer law as well as justice....

Our 2nd judicial review case will now await the findings of the Young review.

1.3 THE YOUNG REVIEW

Andrew Young, government actuary and architect of the PPF, has been asked to look at ways of better using the money of schemes in the FAS and is due to conclude by the end of the year. Peter Hain - 7th DWP cabinet member in the last 10 years - says he hopes that will allow the present 80% ceiling on payments to rise to 90%. PAG are to meet Mr Young shortly.

1.4 THE FINANCIAL ASSISTANCE SCHEME

In spite of some progress the FAS is still inadequate. It continues to have:

- Retirement age of 65 regardless of scheme
- No tax-free cash
- No indexation
- No early retirement option
- Poor spouses benefits
- Reduced ceilings and 'core' pension levels

2. WHERE WE GO FROM HERE

Our mission was, is and remains: fully restored pensions promises for all. A pension is a pension and a promise is a promise. Why should those who've worked their lives in an ever more competitive globalised world be treated so much worse than everyone else, especially those in the public sector?? What did the Parliamentary Ombudsman and the PASC recommend??

Right now the local authority '85' rule which provides a full index-linked pension as soon as your age and years service equals that magic number (ie lets you retire in clover from early 50s onwards) is being extended again - maybe to 2020, while shirts are torn from the backs of those in Company schemes.

Don't get bogged down in FAS details to the point where they become an end in themselves - as no doubt the DWP would like.

Even though well administered, the PPF (should we get there) resulting from the 2004 Pensions Act is full of holes. There are no guarantees, and there is specific provision to cut benefits if funds run short, minimal escalation and then only for those not retired and furthest away from it, ceilings again etc.

Don't be lulled to sleep just because headline - or is it 'core' - inflation came down this month. Look instead at oil & grain prices, and the huge imbalances in world trade.. Why can't we have

the less than 5% annual indexation required of our schemes from 1997? Fully funded public sector schemes in Holland and Norway have shown they provide this - is it beyond the brains of our much vaunted City? Or are they too busy making money for themselves?

3. HOW DO WE GET THERE

Pressure, pressure, pressure, keep up the pressure, and be prepared for anything, including an election. We've full police permission for a major demo at the Labour Party Conference in Bournemouth on Tuesday 25th September - make sure you're there to support us from 12 noon.

New ideas, new surprises and new tactics. Play your part... and watch this space !

Adrian de Segundo

The Union View

The following is an extract from a press release issued by the union Community.

'Community welcomes the decision to restrict the purchase of annuities - except in exceptional circumstances - by trustees of FAS qualifying schemes. The Union - and others - have argued for over four years that the Government should act to end insolvent schemes trustees purchasing of annuities. Had the Government listened to us then the money already committed by the taxpayer - in fact probably less would have been required - and the assets in the schemes would have meant that the equivalent of the Pension Protection Fund (PPF) could easily be paid.

'It is the view of Community and, we believe, the public at large, that those who lost their pensions prior to the establishment of the PPF are entitled to equivalent benefits. Arguments by Government Ministers that they should not receive the same level of financial support because they have not paid insurance contributions simply will not wash.

If successive Governments had adequately implemented the European Insolvency Directive then our members at ASW, Kaye Aluminium, Totectors and UNSCO steel would have all quite happily paid insurance premiums to protect their

pensions. They were denied the opportunity to do so by Government failure. And that is why we believe that the Government has a responsibility to ensure PPF equivalent support'.

Mr Leahy's comments come as Community announced that it is writing to the European Commission to request that they commence 'infringement proceedings' against the UK Government in order that they comply with the European Insolvency Directive.

In January of this year ruling in a case taken by Community and Amicus trades unions, the European Court of Justice (ECJ) ruled that successive UK Governments had failed to adequately implement Article 8 of the Insolvency Directive which required pension scheme members' expected occupational pension benefits to be protected in the event of an employers insolvency. This case is now due to return to the UK High Court from the ECJ.

The Real Rate of Inflation

Figures from Prudential reveal that the cost of living for the over 65s is rising faster than the national average. Prudential looked at levels of household expenditure between 2002 and 2006 and found, on average, annual expenditure in households where the main occupant is aged 65 to 74 has increased by around 9pc - opposed to a national average of 4pc.

Where the person is 75 or over the figures jumps to 10pc. The report said that rising food prices are also hitting retired people far harder than any other age group.

It is clear from this that some measure of indexation for inflation will be an essential part of any fair settlement. It is therefore alarming that the PPF only indexes pensions in payment to a maximum of 2.5% and then only in respect of benefits arising from post-1997 contributions. The pensions of older workers would therefore be largely or entirely unindexed. The FAS is even worse, as there is no indexation at all. We still have a lot to fight for.

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