



NEWSLETTER

Number 70

16 June 2011

Dear Colleague

RPI/CPI SWITCH - LEGAL CHALLENGE

Further to Newsletter Number 69, I can now confirm that on Monday 18 April 2011, on behalf of the Police Federation (PF), the National Association of Retired Police Officers (NARPO), Prospect, FDA, GMB and the Civil Service Pensioners' Alliance, our solicitors, Russell, Jones & Walker, issued the necessary Claim Form and Grounds for an application for a Judicial Review at the High Court in London, challenging the Government's decision to switch the indexation of Public Service Pensions from RPI to CPI. On 19 April 2011 the papers were also served on the solicitors acting for both the DWP and HM Treasury, under cover of a letter requesting their urgent views, so that the Claim could be expedited.

Subsequently, the National Federation of Occupational Pensioners (NFOP) [formerly, the National Federation of Royal Mail & BT Pensioners] has joined our consortium and has agreed to contribute to our legal expenses.

In essence, the legal basis for our challenge is that, in selecting CPI as the index upon which increases in certain Public Service Pensions would be linked, the Secretary of State for Work & Pensions has gone beyond his statutory authority, because CPI does not measure **only** annual increases in *the general level of prices* (as required under Section 150(2) of the Social Security Administration Act 1992), but, **also**, consumer behaviour/reactions to rising prices. The CPI assumes that, if the costs of some goods rise, consumers will buy cheaper products. However, the underlying purpose of the legislation is to main the purchasing power of pensions. If the High Court accepts our arguments, the remedy which we seek is that the increases from April 2011 be revalorised in accordance with the September 2010 RPI figure of 4.6%.

On 26 May 2011, Russell, Jones & Walker received the response to our application from the Treasury Solicitor, on behalf of the Secretary of State for Work & Pensions and HM Treasury. In that response, the Treasury Solicitor contested the arguments set out in our application for Judicial Review and sought to persuade the High Court to refuse permission for the challenge to proceed.

On 27 May 2011, despite the Treasury Solicitor's arguments, the High Court notified all parties involved with the legal challenge that **our application for Judicial Review had been granted** and that it would be expedited to be heard in the week commencing 4 July 2011, with three days listed for the hearing. However, in the light of the Treasury Solicitor's response, the Judge who granted the review expressed some **personal** scepticism about the merits of our challenge.

On 09 June 2011, the Treasury Solicitor sought and was granted a delay in proceedings on the grounds of their counsel's unavailability and, in their view, the tight timetable. **So, it now seems unlikely that our case will be heard before September or October 2011.**

On 03 May 2011, the Fire Brigades Union, the National Association of Schoolmasters/Union of Women Teachers, the Public and Commercial Services Union and the Prison Officers' Association lodged their own separate application for Judicial Review. Their application supports the main point made by ourselves but includes wider arguments to cover the particular circumstances of their members who are still in employment. The High Court has advised that, if their application is granted, their case will be heard at the same time as our own. Our solicitors are in touch with theirs and will work collaboratively with them.

So, we have been granted our *day in court* and we will be working very closely with our solicitors, our Counsel and the other organisations in our consortium to ensure that the arguments presented by the Treasury Solicitor are rebutted and that the best possible case against the RPI/CPI switch is presented at the High Court hearing.

POLITICAL CAMPAIGN

Whatever the outcome of the outcome of the Judicial Review, we will continue with our political and media campaign for the restoration of RPI. If we do not succeed, the CPI will be applied next year to the basic state pension and then our ranks will be swelled by the 11.5 million or so state pensioners. A formidable army, if we are able to mobilise them.

FINANCIAL PACKAGES BASED ON RPI

Also, whatever the outcome of the Judicial Review **we will be pursuing the cases of those members who have bought particular financial packages based on actuarial tables, which assumed RPI.** Such packages include purchase of added years; purchase of added pension; allocation of pension; conversion of lump sums into pension; pension splitting on divorce; transfer-in of pension benefits from non-public sector schemes; and actuarially-reduced pensions. There might be others. Undoubtedly, if such packages had been bought from the private sector, the politicians, the media and the Financial Services Authority would have been up in arms about "pensions miss-selling".

We have had encouraging initial advice from our solicitors and have had tentative discussions with Cabinet Office as to how such cases should be pursued. The Cabinet Office has maintained that it has acted within the scheme rules but, if specific complaints are made by members, they will have to deal with them under the terms of the Internal Disputes Resolution (IDR) procedures. We have argued that it would be sensible to take a number of "lead" cases in the first instance, with other cases being decided in the light of those. The likely route would be a complaint under the IDR procedures. If that were to be rejected, the case could be pursued with to the Pensions Ombudsman. If he were to reject, we could then pursue via the courts.

All this will take time to work out. Nothing has yet been agreed. **When we have completed our discussions with our solicitors and with the Cabinet Office, we will issue appropriate advice to members via our *Pensioner* magazine.** Cabinet Office has confirmed that members will have three years from April 2011 in which to lodge complaints.

A REVISED CPI TO INCLUDE HOUSING COSTS

The Coalition Agreement "Our Programme for Government" said: *We will work with the Bank of England to investigate how the process of including housing costs in the CPI measure of inflation can be accelerated.* The UK Statistics Authority has said: *We believe that the CPI should become the primary measure of consumer price inflation but only when the inclusion in the index of owner occupiers' housing costs has been achieved.* The Government has said: *As and when the Office of National Statistics comes up with alternative measures, we will certainly look at them, but that is without prejudice at this stage because the work is ongoing.*

We continue to be well advised by statisticians and economists and we are in touch with the UK Statistics Authority and with the Royal Society of Statisticians. However, the necessary work is not expected to be completed before the middle of 2012. Any revised CPI is expected to fall between RPI and CPI, perhaps halfway, but it is too early to say.

APOLOGY

I am sorry that I have not been able to issue this update before now. But things have been fast-moving, we have had to work with our solicitors and with our consortium partners and it would not have been politic to publicly reveal our hand before now.

We will continue to keep you updated whenever we are in a position so to do.

Yours sincerely

John Amos

John Amos
Deputy General Secretary