



GROUP CIRCULAR 758

To: Branches, Groups and Executive Council

11 November 2011

Dear Colleague

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1. RPI/CPI SWITCH LEGAL CHALLENGE - OUR DAYS IN COURT

The two Judicial Review (JR) challenges against the decision to switch the indexation of occupational pensions from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) received their High Court hearings on a joined basis on 25 to 27 October 2011. The first JR application (entitled the *PNB Claim* by the Court), made on behalf of the Alliance, the Police Federation, the National Association of Retired Police Officers (NARPO) and the trade unions FDA, Prospect & GMB, focussed, in the main, on the straightforward legal point that, as CPI did not, as the law required, measure 'increases in the general level of prices', it was beyond the statutory authority of the Secretary of State for Work & Pensions to use it; the second application (given the title of the *Piper Claim* by the Court), by a consortium of six trade unions that included PCS and the Prison Officers'

Association (POA), covered a wider range of legal arguments relating to legitimate expectations, the Human Rights Act and the Equality Impact Assessment. As the Court had, previously, decided to join the applications, the two sets of legal teams for the two consortia of organisations ensured that they would support and complement the other's cases for the hearing.

On the first day of the hearing, members from most of the organisations associated with the two JR challenges gathered outside the Royal Courts of Justice (RCJ) to peaceably show their support for the legal action and to publicise the hearings. The demonstration received lots of welcome publicity on TV, radio and the newspapers, with many subsequent interviews with representatives of the different organisations involved - the issue and consequences of the RPI/CPI switch reached a wider audience!

At the start of the hearing, the Court had to declare an interest in the cases as each member of the Bench was a member of the Judicial Pension Scheme; in the event, there were no objections raised about the competence or integrity of those on the bench to hear the joined cases. The Court also agreed that the National Union of Teachers (NUT), the National Federation of Occupational Pensioners (NFOP) and the Association of Chief Fire Officers (ACFO) could join the *PNB Claim* as additional claimants.

All of the first day of the hearing (morning only) and over an hour of the second day were taken up by the submission made by the Counsel for the *PNB Claimants*, Michael Beloff QC, on the legality of the decision to use CPI as the indexation measure for increasing Official Pensions as required to be based on a determination under the 1992 Social Security Administration Act. The Court was being asked to find that CPI measures consumer reaction to price rises rather than the increase in the general level of prices & was, therefore, out-with the Secretary of State's range of legal options and that the issue of whether cutting spending was wrongly the driving force for the decision rather than the selection of the most appropriate indexation measure - as Michael Beloff QC appropriately asked *whether the Government put the economic horse before the statutory cart?*

Nigel Giffin QC then presented arguments for the *Piper Claimants*, focussing, in the main, on the issue of legitimate expectations and potential breaches of the Public Sector Equality Duty under the 2010 Equality Act, with no great mention of the Human Rights Act, on the basis that little would have been added to the arguments set out under those for legitimate expectations. It has emerged that the Government may well have made mistakes with regard to its responsibilities under the 2010 Equality Act and the Court has asked for further written arguments from both the Counsels for the *Piper Claimants* and the Government.

In response to the *PNB Claim*, the Government's Counsel argued that the methodology used for CPI was generally accepted in expert circles and was thus a legitimate option available to the Secretary of State to determine changes in the general level of prices; additionally, if CPI was an available option under the terms of the 1992 Social Security Administration Act, it was legitimate for the Government to take account of the reduction in costs of future pension payments through the

switch of indexation measures. With regard to the *Piper Claim*, the Government's Counsel contested whether any of the grounds cited represented legal barriers to the ability of Government to decide the best method of assessing rises in the level of prices; and that, even if the DWP had not undertaken its required equality impact assessment, the Treasury, who had driven the change of index, had done so.

In a his reply, Michael Beloff QC for the *PNB Claimants* ably refuted the arguments of the Government's Counsel about the legality of the use of CPI, pointing out that such a switch required primary legislation and that, even if CPI was viewed as a legitimate index elsewhere, the issue was whether it met the statutory test. However, whether the Court shares that assessment, we will have to wait and see! The Alliance's legal advisors expect that the written exchanges over the provisions of the 2010 Equality Act should be concluded within a few days and that, as the Court has indicated that it was keen to give an early decision, the judgement could be laid as early as the end of November 2011!

I will report further as soon as the judgement is published.

2. PROVISION OF PUBLIC TOILETS - E-PETITION

The British Toilet Association (BTA), to which the Alliance is affiliated, has requested that publicity is given to the following e-petition:

PUBLIC TOILETS SUITABLE FOR ALL - Make it a legal requirement for Local Authorities to provide them

Responsible Department: Department for Communities and Local Government

The law currently allows, but does not compel Local Authorities to provide toilets. The situation is worsening; 40% of Public Toilets have closed in the last decade. Many people lead restricted lives because they cannot rely on access to a Public Toilet in the places and at the times required. There are rarely sufficient toilets for women, resulting in lengthy queues; elderly and disabled people cannot always find accessible toilets; provision for babies and children is inadequate; many toilets shut at inconvenient times. Lack of toilets can lead to street fouling; a major public health issue. "Community toilets" (toilets in private business premises) do not meet everyone's needs. Good public toilet provision will enable everyone to participate fully in civic life and will attract visitors and boost local economies. We want a law requiring Local Authorities to provide and maintain suitable, safe, clean and appropriately located Public Toilets with realistic opening hours.

The wording of the e-petition speaks for itself and is the work of the Campaign Group *We need the Loo*, a joint venture between the Women's Design Service, the British Toilet Association and the Chartered Institute of Plumbing and Heating

Engineering, which is pressing the Government to make adequate public toilet provision a legal requirement.

The petition needs 100,000 signatures for consideration for the issue to be debated in Parliament, so please encourage your members to add their signatures to:

<http://epetitions.direct.gov.uk/petitions/15258>

or via FACEBOOK - please *like* here:

<https://www.facebook.com/pages/We-need-the-loo/142266822533490>

or TWITTER - please retweet the following to as many others as possible:

<http://twitter.com/#!/weneedtheloo>

3. UPRATING OF PENSIONS IN 2012

To add insult to injury, over recent weeks, rumours in the media have been rife that, having switched pension indexation, without notice, from RPI to CPI, the Government could do the unthinkable, because it was unhappy with the unexpected increases in CPI, by renegeing on its commitment to base April 2012 increases in the State & Public Service Pensions on the September 2011 CPI figure.

I have also written to the Pensions Minister about this very serious concern and have reproduced below the relevant extract from that letter:

Finally, could I also raise with you one further point that has caused a significant amount of consternation amongst our members over the past few days, that of the media coverage of the growing speculation that the Chancellor, in his coming Autumn Statement, will announce that, from April 2012, increases in Pensions, including State & Public Service, and Benefits will not even be linked to the September 2011 CPI increase, because it has considerably overshoot the OBR forecast. If the current media stories prove to be correct, you don't need to be advised by me of how such a move would be viewed by the vast majority of pensioners in the UK. So, I would request that you either provide reassurance that there are no plans for the Autumn Statement to include measures to move away from using the September 2011 inflation figures to update pensions and benefits in 2012 or, on behalf of pensioners, as Pensions Minister, make representations to Treasury Ministers not to consider any such action that would further exacerbate the current parlous financial position of many pensioners and increase the cynicism of so many more pensioners regarding politicians.

The Executive Council asks that Groups & Branches encourage all members to contact their MPs to make representations to Ministers about the potential double

whammy of the move to CPI and then the ditching of the CPI figure because it was regarded being too high!

As soon as I receive a reply from the Pensions Minister, Groups, Branches & members will be advised of the terms of the response.

4. CAMPAIGN [MONTHLY NPC BULLETIN] - NOVEMBER 2011 EDITION

I have enclosed, for your information, three copies of the November 2011 edition of *Campaign*, the monthly bulletin of the National Pensioners' Convention (NPC)

5. MOTION A41/2010 - FUTURE ELECTRICITY GENERATION & SECURING UK ENERGY SUPPLIES

At the 2010 Annual General Meeting (AGM), delegates carried the following Motion:

***Motion A41** CSPA energy policy, which was in part determined by Motion A80 at the 2006 AGM, was defined in the Annual Report for 2007. It states that national electricity supply should come from a mixture of sources including nuclear. The policy objective is to maintain secure electricity supplies for the foreseeable future. Because of current Government policy and the EU requirements, it is now widely accepted that this objective may not be achieved by 2015 or in the immediate years following, without a shift in Government direction.*

The AGM therefore calls upon the EC to stress to the Department of Energy and Climate Change that carbon-free nuclear power is an essential part of ensuring security of electricity supply and that current licensing procedures and Government inertia should not continue to delay the start of its safe and swift implementation.

Item 4 of GC 747 provided a copy of an exchange of correspondence with the Minister, Charles Hendy MP, in which it was made clear that the Coalition Government saw the use of new nuclear energy generation as a key part of the future electricity production in the UK. However, following the Fukushima nuclear accident in Japan earlier in the year in March, the Executive Council (EC) agreed that there was a need to continue to monitor developments regarding this incident, in case it had any influence on future UK nuclear energy generation policy, as had been the case in Germany.

I can now advise that, in the light of the recommendations contained in the final report of the UK Office for Nuclear Regulation and HM Inspector of Nuclear Installations of their investigations into the Fukushima nuclear accident, there are no outstanding implications that will impact on any aspect of the future use of nuclear power generation in the UK. However, that conclusion does not rule out any lessons to be learned to allow for improvements to existing safety provisions.

As a result of these important developments, it is the view of the EC that the terms of **Motion A41/2010** have been fully met by the establishment of the Coalition Government's positive policy on the use of new nuclear generating capacity and the confirmation that the Fukushima accident does not have any implications for the building and use of existing and new nuclear power generating capacity.

6. GROUP CIRCULAR 756 - ERRATA

A number of Groups have kindly pointed out to me that, under Item 2 - **DECISIONS ON MOTIONS** of **GC 756**, I omitted reference to three Motions that were carried in **Section B - Pensions and Related Matters** and erroneously included three Motions in **Section E - Taxation**. Please accept my apologies for this oversight and please insert the following into the relevant part of **Section B of Item 2 of GC 756**:

Motion	Decision
A13	Carried
A14	Carried
Composite A15	Carried

and delete the following from **Section E of Item 2 of GC 756**:

A30	Carried
A31	Carried
A32	Carried

7. AGE ACTION ALLIANCE (AAA)

On 30 September 2011, the Age Action Alliance (AAA) was formally launched as a partnership of organisations to celebrate the lives & contributions to society of older people and to improve the lives of, particularly of the most disadvantaged, older people. With this Circular, you will find 3 copies of the Declaration that was publicised on the day of the launch of the AAA.

The AAA is a joint initiative of the Department of Work & Pensions (DWP) and Age UK, who each provide the necessary resources for the running of the new partnership; the Alliance did sign up to the Declaration and was included in the list of founding supporters in the publicity for the launch.

The Executive Council (EC) has agreed to contribute to and publicise the work of this very worthwhile initiative and is in talks with the Secretariat of the AAA on how to take that joint work forward.

Further information about the work of the AAA will be included in future Group Circulars and publicity for the AAA will be provided to members in a 2012 Issue of

The Pensioner. In the meantime, you may wish to advertise the following two matters to your members that have been highlighted to the Alliance by the AAA:

- The availability, through the **Warm Home Discount Scheme**, of a £120.00 rebate on electricity bills for the next three winters for those who qualify under the scheme. A link is attached and we would be grateful if you would promote this scheme and the other support that is available for fuel bills, among your own networks

http://www.direct.gov.uk/en/Pensionsandretirementplanning/Benefits/BenefitsInRetirement/DG_185940

- The **Cold Weather Plan for England** was issued on 1 November 2011. It is part of the wider suite of measures which the DH and NHS are taking to protect individuals and communities from the effects of severe winter weather. The Plan provides advice for individuals, communities and agencies on how to prepare for and respond to severe cold weather as part of wider winter planning and announces the **Warm Homes, Healthy People** fund

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_130564

8. COLIN JONES - A SAD LOSS

It is with great sadness that I have to advise you that Colin Jones, who for the past decade has served on the Executive Council (EC) as the Regional Representative for Wales & the West Midlands and latterly as Vice-Chairman, passed away on Sunday 6 November 2011.

Whilst Colin had stood down from the EC as Vice-Chairman at our Annual General Meeting (AGM) last month, he had intended to continue to work for the Alliance as Secretary of the Hereford & Worcester Group.

Colin will be greatly missed by many in the Alliance as a stalwart friend, ever ready to provide support and advice. I know that he will be especially missed by his widow, Sylvia, and his close friends and family.

A more properly fulsome and appropriate valedictory for Colin will be given in an upcoming issue of *The Pensioner*.

If you have any questions or require any further information about the matters covered by this Group Circular, please don't hesitate to contact me, either by email at mike.duggan@cspa.co.uk or by telephone on 020 8688 8418 (office)/07884 437690 (mobile).

Yours sincerely

Mike Duggan
General Secretary