



NEWSLETTER

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Dear Colleague

RPI/CPI: 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 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, and was therefore was 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 in a couple of 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!

We will report further as soon as we have the judgement.

RPI/CPI SWITCH - E-PETITION

This is a repeat of an item which I included in Newsletter Number 73 (06 September 2011). When I checked this morning, the e-petition had attracted 72,130 signatures. We would like to attract 100,000 signatures, so as to stand a chance of securing a Parliamentary Debate. **Therefore, if you have not yet signed, please do so and ask your friends and family to do likewise.** Our sister organisations are making a similar call to their members.

The following e-petition, proposed by Mr Jim Singer, a PCS member in Scotland, and calling for the re-introduction of RPI as the indexation measure for pensions, has been posted on the Directgov website:

1535 Many workers in the Public and Private Sector have contributed to their pensions on the understanding that on retirement these Pensions would be increased each April by the preceding September's Retail Price Index (RPI) rate.

From April 2011 the Government has transferred these increases to the Consumer Price Index (CPI) measure which in the Treasury's own words "...is designed to take account of the fact that consumers tend to shop around, switching to cheaper alternatives when prices of similar goods change." This change, which has been introduced in most cases without any prior consultation, will mean a steady reduction in spending power for pensioners as they progress into their retirement. Given the promises that have previously been made, the RPI measure should be reintroduced without delay to ensure that the spending power of these Public and Private pensioners is maintained.

Along with the other organisations in the RPI/CPI Campaign Group, the Alliance is urging its members to support the e-petition. If it is supported by 100,000 signatures, that might lead to a Parliamentary debate!

I would, therefore, be grateful if you would sign the petition and ask your family and friends to do likewise. <http://epetitions.direct.gov.uk/petitions/1535>

Yours sincerely

John Amos

John Amos
Deputy General Secretary