

# PENSIONS ACTION GROUP

## ONE YEAR SINCE ECJ RULING

### Issues still affecting members of the Financial Assistance Scheme August 2019

#### Background

Approximately 140,000 workers, from various companies across the UK, had sacrificed a large amount of their annual pay to invest in a company pension scheme that they were assured by various governments was 'guaranteed', only to find that the word 'guarantee' had a different meaning when it came to their protection.

Following a strong campaign by the Pensions Action Group (PAG), and with the help of pensions expert Dr Ros Altmann (now Baroness Altmann), involving a Parliamentary Ombudsman's Report, a Judicial Review and several UK and European court cases these workers were eventually 'awarded' a proportion of their lost pensions.

Essentially, a legal judgement in the European Court in January 2007 determined that the UK Government was in breach of Article 8 of the EU Insolvency Directive which dealt with workers' rights, and pensions in particular. The ECJ judgement left it to each country to decide what level of award would be given to each worker but that it should not fall below 50% of the *value* of their pension. The UK government and the DWP eventually applied a different calculation, using 90% of a scheme's '*core*' pension.

This approach taken by the then, and subsequent, British governments was to substantially reduce the awards by taking a hard stance, by applying many limitations. This was in contrast to the approach taken by the government in the Republic of Ireland who, following the Irish 'Hogan' case, complied with the Directive by paying a percentage of the full *value* of the member's original benefits, NOT of just the *core* pension as in the case of the UK government. The PAG have consistently campaigned for equality with the calculation based on the *value of individual benefits* for the basis of workers' awards, i.e. FAS payments.

In September 2018 in a further judgement in the ECJ, the 'Hampshire' judgement, confirmed that the basis of calculation should revolve around the *VALUE* of the original scheme benefits. In FAS and the Pension Protection Fund (PPF) an annual cap on benefits had also been imposed. This was deemed to be unlawful and has since been dropped to the benefit of a few members.

The 'full' benefits in most original company final salary defined benefit schemes included full pre-retirement revaluation at original scheme level, and post retirement annual inflation increases on all pre and post 1997 pensionable service. Within FAS rules any pre-1997 pensionable service was ignored for any future inflation increases. For most workers this period is the majority if not all, of their pensionable service. In addition, any inflation increases that are applied are restricted to a maximum of 2.5% pa using the CPI calculation.

## **Current issues**

Full pre and post 1997 inflation proofing is adopted by the public sector, fully funded by the taxpayer, but denied to FAS recipients by successive Ministers. With regard to the FAS, the Treasury has taken and quietly absorbed the residue of the funds from the closed schemes, to the tune of approximately £1.8bn, so as yet no taxpayers' money has been used to pay FAS awards.

PAG, by way of a Freedom of Information request dated 1<sup>st</sup> August 2019, asked the DWP for the number of FAS schemes with or without pre 97 pensionable service escalation but the answer was that the information was not held, which is very strange given that consistently the DWP refused to consider the matter based on the potential cost.

As the majority of schemes closed between 1998 and 2004, most recipients of the FAS awards were left with very little, if any, of the inflation proofing that they had paid for. So, over time, these workers would not receive anywhere near the 90% quoted headline figure, but would slowly slip down to nearer, or below, a figure of 50% of their original pension and benefits. A period of high inflation would exaggerate this erosion very quickly indeed!

The Pension Protection Fund (PPF) also applied the same restrictions as FAS, but their awards were better protected for inflation proofing as most, if not all, of these schemes entered the PPF much later, so the recipients had a larger proportion of post 1997 pensionable service which was inflation proofed. Further, and very importantly, they were aware of the risks following the 2005 Pensions Act, while before that we were told our pensions were safe.

## **Revisions needed**

The vast majority of our original company schemes had the following benefits that formed the VALUE of our pensions, but were excluded in the DWP definition of the CORE pension calculation:

- Full original scheme level of post retirement inflation proofing for all years of the member's pensionable service.
- Full original scheme level of Revaluation between scheme closure and retirement.
- The use of the Retail Price Index rather than the lower Consumer Price Index.
- The full GMP level and inflation proofing on that portion of this so called GUARANTEED MINIMUM PENSION.
- Full original Spouse benefits.
- The option of an actuarially reduced Early Retirement.
- A minimum guarantee level of pension in case of member's death within 5 years of retirement date.
- Inclusion of 'solvent company' scheme wind ups in the uplifted benefits arising from the 'Hampshire' judgement.
- FAS currently regards May 2004 as the earliest starting date for any award calculations, irrespective of whether the member's normal retirement date was before that, which is simply discriminatory and wrong and potentially in breach of the Insolvency Directive

Despite successive letters to various Pensions Ministers, either directly or via MP's, pointing out that the FAS award did not comply with Article 8, the response has always been negative. Requests from the PAG for meetings with the current and recent Ministers have invariably been dismissed, and we have been consistently fobbed off with inappropriate Cut & Paste answers, avoiding the matters raised.

## **PAG demands**

All we are asking is for Government to comply with the law, something we raised at a meeting with the then Pensions Minister on the 29<sup>th</sup> of September 2009, and through many subsequent letters and consultations, and to listen to why we feel FAS members are getting such a bad deal from Government.

The effects and benefits of the Hampshire judgement need to be implemented as soon as possible. We realise that these changes will be difficult to administer, but in the meantime our members and over 140,000 workers are living daily with reduced payments.

We are fully aware of the impending Judicial Review surrounding the methodology and calculations used to implement the Hampshire ruling and of the outstanding German 'Bauer' case currently being finalised by the ECJ, and that this may result in additional benefits for some.

We ask that our demands are fully considered and discussed to avoid further subsequent actions by PAG. Please remember that we have been campaigning for over 19 years, many workers have died waiting, many are ill, many are facing financial hardship, surely a record no Government would wish to be remembered for. The numbers affected in FAS are probably over half a million people when their families are included.

Please can you write to the Secretary of State for Pensions, the Pensions Minister and the Prime Minister to ask for a swift and full response to the issues listed above. You will have constituents affected and it is in the national interest to restore confidence in pensions savings.

Thank you for your time.

[www.pensionstheft.org](http://www.pensionstheft.org)