

Introduction

I am a former director of John Mowlem and Co plc, the construction group. Following the failure of the Mowlem pension scheme, I have been a member of the Pension Protection Fund. I write in response to your item 9, the workings of this Fund.

I write on behalf of the Deprived Pensioners Association. This is a small group founded by, and so far funded by, four Mowlem directors, Sir Philip Beck, Sir John Gains, Brian Watkins and myself. The object of the group is to bring about change to the notorious pre-1997 provision in paragraph 23 of Schedule 7 to the 2004 Pensions Act under which the PPF was established.

The effect of this wording is unjust and unfair and discriminates against those, now all over 80, who receive no indexation at all on their PPF compensation at a time when inflation is running at 10% per annum.

Our grievance

PPF members, as a general rule, are paid compensation payments which benefit from inflation indexation (currently capped at 2.5%). Contrary to this policy, the words complained of in Schedule 7 lay down that pensionable years prior to April 1997 shall carry no entitlement to indexation. The effect of this is that, within PPF, there are some people with indexation, some with partial indexation, and some (60,000) with zero indexation. All those in the latter class are aged over 80. Declaring my interest, I am in this category.

The quantum of damage

It might be thought that, because inflation rates for many years have been low, the damage suffered will have been slight – but the compounding of even small figures can have a large effect. Consider two people in receipt of PPF payments of £10,000 a year in 2005, one with and one without indexation. The one with no indexation is still on £10,000. The one with indexation is now on £14,000, having already been paid £34,000 more than his fellow.

The above example makes the point that the headline issues in our campaign are injustice and unfairness as between those with and without PPF indexation, not poverty. There will undoubtedly be PPF members driven to

poverty by a combination of high inflation and a lack of the 2.5% which indexation would have provided. We do not downplay the seriousness of such poverty, but it is not appropriate to lead with this issue. People who started with large pensions will be losing a lot of money, but will not be in poverty. A person with a small PPF payment might be in receipt of other pensions and thus not be in poverty. Those who really are in poverty are difficult to identify.

What are we going to do about this?

The DPA is working towards bringing an action for Judicial Review to overturn the pre-1997 rule. We do not, however, want to be forced into court and hope that this issue is resolved politically by legislative change. We urge the Committee to recommend changes to undo this unfair and discriminatory position.

It is possible that a court ruling could be along these lines: Yes, this is an egregious case of age discrimination, but No, this court will not overrule Parliamentary wording. In the case of such a judgment, the political pressure for change would be enormous, and it would be morally indefensible for a government to hide behind the primacy of Parliament and leave the discrimination in place.

Age discrimination

There is no need to prove an intent to discriminate. It is well established in law that if a policy, or a legal wording, leads to an outcome which is discriminatory, that is discrimination.

Taking a global and common-sense view, it seems that what we have here must be age discrimination. A court would surely reach the same conclusion. There are 60,000 people with no indexation and they are all over 80.

How did this problem arise?

Unless they are already well briefed on this subject, Committee members might be baffled as to how this pre-1997 clause found its way into the legislation. Its origins relate to the fact that it was in 1997 that it became mandatory for defined benefit schemes to include indexation. It might seem that a naïve assumption was made that, prior to its becoming mandatory, no company schemes provided indexation. This would have been very wrong. PPF have advised that, at the point of their coming into PPF stewardship, 60% of company schemes had indexation.

We have not, however, seen any evidence that even that much thought was given to the issue. What should have been done is that the Act should have required that when new companies fall into the PPF, the sheep should be separated from the goats. Those whose company schemes included indexation should be granted indexation; those whose schemes did not should not. Not difficult. The failure to make this provision is the root of the present injustice. What do we know about the passing of the Bill in Parliament?

Hansard records the lengthy second reading debate on 2nd March 2004. The Secretary of State, Andrew Smith, opening the debate, said:

I am clear that a pensions promise made should be a pensions promise honoured. That is why, for the first time ever, we will set up the pension protection fund to protect workers whose firms go bust without enough funds to pay their pensions.

He then proceeded to introduce a Bill which dishonoured the pension promises made to me and to the countless others who had had indexation in their company schemes. It seems that he did not understand what he was doing. It further seems that nobody else in the House did either.

Sir John Butterfill, who spoke several times, and was referred to by other members as being deeply knowledgeable on the Bill, said:

The Bill does not make it clear whether the PPF will have any indexation.

In this, of course, Sir John was wholly wrong, for Schedule 7 of the Bill made clear (a) that there would be indexation, and (b) that this indexation would be denied to a particular category of people – those with pensionable service prior to 1997.

What is remarkable is not that Sir John was in error, but that neither the Secretary of State, nor any other Member, leaped up to correct Sir John and apprise the House of the existence of Schedule 7. One can only conclude that none of them had read it. It seems to have been a case of legislating by ignorance.

Can we shed any other light on what those who drafted Schedule 7 had in mind? We are assisted in this by two papers held in the House of Commons Library. A research paper dated 25th February 2004, before the Second Reading, stated that:

PPF pensions in payment will be indexed in line with the Retail Price index (RPI) capped at 2.5%, but only in respect of rights built up since April 1997 (which is when the statutory obligation to index occupational pensions in payment was introduced).

This is the linkage previously anticipated, but no justification for it is given, nor any warning of the dire consequences which would follow.

In October 2020, there was a briefing paper on the Act. This presumably took account of deliberations in committee and in the House of Lords. The explanation for the pre-1997 rule as given above was repeated, but then we are told that:

Restricting the amount of indexation paid on PPF compensation would ensure that the PPF could do that (provide a consistent level of support) by being better able to predict its liabilities and plan ahead financially.

So promises were dishonoured, and people unfairly deprived, to save money. It doesn't make one proud to be British. It was not even to save public money, but to help with the internal housekeeping of PPF.

The conduct of the PPF

The PPF say that they will oppose any action seeking a change to the legislation which would remove the pre-1997 restriction. On the issue itself, amending the Act, they say they must be neutral. We don't understand why they adopt this position. At a recent PPF members forum meeting, we were told that they feel obliged to support government policy. It seems that there are two different issues in play.

It is wholly understandable that the PPF defend its conduct up to this time, which has been to make payments as prescribed by the law. The question of whether, on moral and other grounds, the wording of that Act should be amended, is a very different matter. We have been assured that the PPF is an independent body, as the Act requires it to be. It is also a body with a duty of care towards its members. In switching off their brains and adopting a position of neutrality, are they not falling short of their obligation to think independently?

An opportunity for the Select Committee

In making this submission, what are we looking for from the Committee? First, let us consider the present context. There has recently been a major article in the Financial Times on this subject. It is likely that other media will pick up on this. It might soon be a political hot potato. It will be for the government to judge whether to act swiftly or hold out until it is forced to change, as seems likely to happen. That is a political judgment, which is presumably not within the remit of the Committee.

We ask the committee to recommend to government that it take speedy action to amend Schedule 7 by deleting the pre-1997 rule. The grounds for such advice are.

- (1) The effect of this rule is discriminatory.
- (2) The effect of the rule is unjust and unfair.
- (3) The parliamentary process by which the Act came into being was slovenly, possibly negligent. The role of select committees is to hold Parliament to account. Here the Committee is called to tell Parliament in robust terms that the legislative process was not adequate and that its outcome should not be defended.

April 2023