



UK Pension Scam

Newsletter of British Pensions in Australia No 10 Summer 2009

BPiA's primary mission remains, to force the UK Government to index our British State pensions.

Together with our Consortium partners from Canada and South Africa, BPiA's strategy to achieve our mission of UK pension indexing has 3 prongs;-

1. legal action in the European Court of Human Rights [ECHR];
2. continued political lobbying in Westminster, Canberra and Ottawa;
3. persuading Commonwealth Governments to have the issue discussed and resolved at Commonwealth Heads of Government Meetings, [CHOGM].

Funds are required to pursue these strategies and to provide these funds BPiA, for a membership subscription, is prepared to share its knowledge of the UK State age pension scheme, helping as many people as possible with UK pension enquiries, showing them how to maximise their UK age pension.

If you know of anyone to whom this may apply, please let them know of BPiA. We will be delighted to help them with their UK pension queries on the proviso they join the association. The earlier people apply for a UK pension forecast, the better pension they may achieve. New rules for the "baby boomers" [see below] are very attractive.

It is amazing how many of us, resident in Australia, are unaware of the UK State pension entitlement we generate

when working in the UK and how we can achieve some useful additional retirement income on our arrival/return in Australia, more so now under the new rules, [see later].

To this end, in December 2008, Centrelink's quarterly Newsletter "**News for Seniors**" included a short letter from BPiA advising many couples that they may not be receiving the total UK age pension to which they could be entitled.

We have discovered in recent years that so many couples are unaware of the Category B pension to which the dependent wife may be entitled. This applies even if the wife is not British and may not have even worked or been to the UK. Moreover in some cases the wife had been previously denied a pension, because she had worked too few years there and because she had been told this she may not therefore have applied for a Category B pension based on her husband's NI contributions. We deal in more detail with this issue later.

We have also helped several people achieve a UK pension who have previously been denied one or been given a few ludicrous pence per week in return for their graduated pension contributions deducted from their pay back in the 60's and 70's. Please invite any one you know and to whom these issues may apply, to get in touch with us so we might possibly help them.

The ECHR Case: latest

Many of you will probably have already read in the International Express and/or the Weekly Telegraph or on our own website www.bpia.org.au, about our ECHR case and the result which is displayed in a report we prepared for our website, following the ECHR decision on November 4th 2008. We lost 6-1, a most disappointing outcome. However in our support the "**International Express**" paper screamed as front page headlines, "**NO SURRENDER OVER PENSIONS**", "**The fight goes on say expats after European Court setback**"

Then, following discussions during a conference call from the barristers' London Chambers with the Canadian's board back in Toronto, in which BPiA Chairman Jim Tilley was involved, it was agreed that we must continue our fight for fairness and justice, by endeavouring to take the case onwards to an appeal to the ECHR Grand Chamber. Jim Tilley fortuitously happened to be in the London area at the time, albeit for family reasons.

Our decision to request an appeal was based on the firm belief of our barristers that the 6-1 judgement of the Lower Chamber of 7 judges was legally flawed, in particular for treating our case as a non contributory social security matter as opposed to a contributory pension issue.

Before we could progress with the appeal request we had to ask the 13 original applicants if they were prepared to stay with the case. These applicants include 8 from Canada, 1 from South Africa, and 4 from Australia. Communications were none to easy at the time because not all the applicants have email, but after some days they were all contacted and all agreed to continue with the case.

Meanwhile both BPiA and the Canadians' associations were sent many strong messages of support. More than 95% urged us to forge ahead with a request for an appeal.

Over the next few weeks much work was undertaken by our legal team and the Consortium partners to prepare a cogent and compelling letter to the ECHR panel of five "gate keeper" judges, requesting an appeal. None of these 5 judges was involved in our original "6-1" case. On our counsels' advice we gathered together a package of supporting documents from many significant third parties, including both the Australian and Canadian Governments, representatives of British political parties and a number of UK pensioner organisations.

The reasons for the 6-1 defeat are contained in 13 pages of a 29 page ECHR judgment document. Although 6 of the judges agreed that discrimination is involved in the UK Government's practice of not indexing our pensions, they still regarded our position as being

analogous to UK expat pensioners fortunate enough to live in countries where they do have their UK age pensions indexed. They also saw our treatment, pension-wise, [to freeze our UK State age pensions] as having "objective and reasonable justification". This, in their opinion, was because the State had taken steps to inform us of pension index linking being available only in certain specified countries.

Fortunately for us Judge Garliki, one of the ECHR Court Presidents and 1 of the 7 judges who read our submission, disagreed with the other 6 and in particular said in his dissenting report *"there is no objective and reasonable justification for the differences of [pension] treatment. It is difficult to defend the logic of the present situation. While the House of Lords position is convincing at a domestic level [in the UK] such an argument cannot prevail before our Court. A violation that results from legislative omissions is still within the reach of European supervision"*.

It is apparent that the 6 European judges, including 1 from the UK, based their opinions very much on the past findings of the House of Lords judicial review made in 2005.

Spurred on by Judge Garliki's views and our barristers' opinion that the judgment was weak and thin, it was decided that we should proceed to requesting an appeal.

This request for an appeal to the 17 judge Grand Chamber has to

be presented within 3 months of the November 4 decision. Moreover the Grand Chamber, which will hear the case, if an appeal is agreed to, will include only the British judge from the original 7 and President Garliki.

Our letter requesting an appeal was despatched by the barristers on January 14th. It focuses heavily on Judge Garliki's views and strongly comments that, in the judgment it was agreed that although discrimination existed in 5 out of 7 points considered and for one other point, no comment was provided, the judgment seems to weigh heavily on the seventh point. This being that the 6 judges' opined that there was *"objective and reasonable" justification for discrimination to be accepted in our case*. To many of us this viewpoint seems to "fly in the face" of the principle that discrimination is contrary to the UK's Human Rights Act.

Furthermore the letter sent to the ECHR has requested this time an oral hearing. We had expected an oral hearing for the first stage but it did not eventuate, which may have been to our disadvantage. The UK Government too had asked for an oral hearing for the initial hearing and for that reason our barristers had expected that process.

We hope for a response from the 5 "gatekeeper judges" some time in March and the time frame for final judgement- based solely on our observations of other cases- could be about 12 months or thereabouts.

Consortium's Political Lobbying in the UK

The Consortium's chief lobbyist John Markham, a Canadian Alliance board member, has continued his hard work lobbying in the UK not only in London but also during the northern autumn at the political conferences in Manchester [Labour] and Birmingham [Tory].

At these 2 political conferences he distributed colourful and compelling fliers with some very

telling comments in support of our campaign. Included among these are:-

- *"The UK State pension paid overseas gives individuals freedom of choice in deciding where they want to reside"*. Tony Blair, PM, Feb 13th 2007
- *"Under the Human Rights Act everyone gets the same set of basic guarantees from our public services,*

whoever we are and wherever we live" Home Secretary, Jack Straw, October 2nd. 2000.

- *"We take seriously our responsibility to the dignity and security of everyone in retirement"* Gordon Brown PM April 23rd 2008

The fact that worthy words and ideals like these uttered by senior British Ministers are not, in regards to our pensions, practiced, is typical of the

hypocrisy to which we are subjected by UK politicians. Gordon Brown, during the Labour Party conference, is reputed to have made a stirring speech. The speech is littered with many references to fairness:-

- *We are about a fair Britain for a New Age*
- *Why do we strive for fairness? We do it because fairness is in Labour's DNA*
- *It's who we are and what we're for, it's why Labour exists; it's our first instinct, the soul of the Party.*
- *We stand up and fight hard for fairness. We don't give in we never will.*
- *Fairness is treating others as we would be treated ourselves*
- *The mission of our times is a fair society, the cause that drives us on and we will win.*

Ask most people about our case and they'll respond, "that's unfair". I rest my case as to my claim of hypocrisy from the UK Government

During the Labour Party conference John Markham reported that the Pension Reform Minister Mike O'Brien revealed that pension parity for expats is actually included in the UK Government's list of outstanding priorities. This points therefore to the apparent success of our "hearts and minds" campaign in Westminster. However although often stating his sympathy for our cause, Mike O'Brien warns its ranking is nowhere near the top. He reiterated the issue of non affordability and indicated [prior to the ECHR 6-1 judgement] that the ECHR ruling would determine the UK Government's next step on the issue.

John Markham reports of more useful meetings with the barristers as well as with the major seniors' organisations, Help the Aged, Age Concern, Elizabeth Finn, and The National Pensioners Convention.

John was also instrumental as reported in our previous Spring Newsletter number 9, in managing to organise a meeting in Canada House London of representatives from 15 Commonwealth High Commissions ahead of the next CHOGM which is booked for Trinidad in November 2009. Trinidad could be a useful location because Trinidad nationals who have worked in the UK do not get indexed UK pensions whilst their neighbours in Barbados do.

This meeting was part of our strategy to bring the UK frozen pension issue to the attention of the heads of 47 Commonwealth Government's for discussion at the next CHOGM.

BPIA's Political Activities in Australia

Following BPIA's Chairman's return from the UK in mid November, BPIA had its Annual General Meeting at which the outcome of the ECHR judgment was discussed together with the usual standard topics and legal requirements needed to be dealt with at an AGM. About 100 members attended, the best turn out we have ever had.

A few days after the AGM, our Chairman was invited to spend an hour with the Minister for Human Services, the department which runs Centrelink. Senator Joe Ludwig is that Minister and he confirmed the Australian Government will give us some help which we had previously discussed with Jenny Macklin in July.

One of the main points made to both Ministers is the need for them to have our issue addressed at the next CHOGM, and both Ministers agreed to have the matter brought to the attention of the Foreign Secretary Steven Smith. In this regard an email has also been sent to the Deputy PM Julia Gillard, whose father has joined BPIA, We are hoping, through family connections, to get the message of the importance of this part of our strategy across to the higher echelons of Australia's Government.

Does this apply to any UK pensioner you may know?

The letter we had printed in **News for Seniors** [see earlier] stated:-

Many men who have worked in the UK are unaware that their wives are most likely also entitled to a part UK pension. Some men do not encourage their wives to claim their British pension because their wife is not British, has not worked in the UK or has not paid enough stamps. However if they do apply they may be in for a pleasant surprise!

Any wife who is not getting a UK age pension can investigate her entitlement by contacting the expat pensioner organisation British Pensions in Australia on a local call charge 1300 308 353.

Kind regards, etc

The response to this short letter has been tremendous with over 500 calls received since its first publication a few days prior to Christmas.

We have thus discovered that many couples are unaware and were not clearly advised of the possibility of their wives being able to apply for a Category B age pension at age 60 assuming their husbands were in receipt of a part UK pension themselves. BPIA has now prepared an information paper on this Category B pension issue and so far we have assisted over 200 new members by providing them with the necessary UK Pension Service BR1 form on which they can apply for their extra pension.

If any of your think this situation may apply to your own circumstances, or you know of any friends to whom this may apply, please get in touch with us. We will send you the information papers and if you are a member, the 16 page BR 1 Pension Service form on which to apply for this Category B pension.

UK Age Pension Changes from 2010

At the end of July 2007 the UK Government made changes to the UK pension rules. These

rules will not apply until after April 2010 but they should be of interest to BPiA members and their friends, but only those who will reach retirement age [65 men and 60 for women] after April 5th 2010, BABY BOOMERS.

The main changes of interest are:-

1. 30 years contributions will generate a full pension
2. Women's pension age will start to increase by 6 months each year from 2010 until 2020, by when it will have reached 65.
3. Both men's and women's pension age will increase from 65 towards 68 but this increase will start in stages but not until 2024, it will reach 68 by 2046!
4. As of April 2010 the State pension will increase in line with earnings and not as now, prices. This means it should increase more quickly each year than now

More details are available by emailing, bpia@people.net.au

A Vacation Benefit Visiting the UK and Europe

Some of you will possibly be thinking now of a trip back to the UK or Europe for your summer vacation. Please remember we can show you how to have your UK pension indexed but only for the period you are on vacation there.

We also know of travel concessions you may be able to achieve in the UK. Travel can be horrendously expensive in the UK but we have discovered that even booking early on the internet reduces your rail travel costs significantly. So it is well worth investigating the concessions available to us and how best to book in advance.

We can also highly recommend a car hire company located in Australia, which provides a good service in the UK and Europe at very reasonable rates.

How you might be able to increase your UK pension

In our last, Spring, newsletter we drew attention to the DWP's DNE exercise, registering for which we gather will cease in early April 2009.

If members are interested in improving their retirement income by a few extra £s per month then they will have to register a request to be involved in the exercise to the UK authorities before the end of March this year; i.e. March 2009. Details of the DNE project were published on the DWP website in May 2008 enabling some of us to buy some more voluntary contributions to improve our UK State age pensions. A pamphlet has been prepared by the DWP to display the scope of this project which applies specifically to:-

1. Women born after 5/4/1938 who reached pension age [60] after 5/4/1998 and
2. Men born after 5/4/1933 who reached pension age [65] also after 5/4/1998

If either reached pension age before 24/10/2004, [i.e. men born before 24/10/1939 and women before 24/10/1944]; then one may not have to pay for these voluntary contributions. The required payment can be offset against any back pension being bought for these extra years.

However if you reached pension age after the 24/10/2004 then the voluntary contributions bought will all have to be paid for.

BPiA members wishing to avail them-selves of this offer are best advised to phone the Pension Service ASAP on 0011 44 191 218 2550 advising, your name, date of birth, your NI number, the years you think you wish to buy and from which you may benefit.

The years one may be able to buy are the 6 tax years commencing April 6th 1996 costing £309.40 up to tax year ended April 5th 2002, costing £351.

A copy of this pamphlet is available at the UK Pension Service website www.thePensionService.gov.uk, or from jimtilley@bigpond.com or even by phoning 1300 308 353.

Whether this is a good offer or not is for you to decide, but if you are married and, in particular, a self-funded retiree, it is generally regarded as a very worthwhile investment.

Membership & Funds

In our last Spring newsletter No 9 we advised that membership was 8694. Since end August, membership has risen by 5.5% to 9173

State membership data at End January 2009

NSW	3922
WA	1434
VIC	1321
QLD	1219
SA	700
TAS	274
ACT	226
NT	19
O'Seas	58
TOTAL	9173

BPiA members have continued to help encourage new members from both their social and work circles to join us. These activities are most welcome. Meanwhile we will continue to investigate the best opportunities to promote our cause in senior organisation magazines, local and national newspapers, as well as in such publications as Union, and Club newsletters.

The recent letter in Centrelink's "News for Seniors" has generated a considerable membership surge. We know we have helped dozens of families increase their retirement income with many a wife discovering since Christmas how she may be entitled to a Category B wife's pension.

As a result of BPiA's continuing growth, 6 months gross revenue to December 2008 totalled \$51200; expenses were \$11,300 and our local bank balances have reached \$90,000. This balance we usually keep in Australia because the interest earned here generally exceeds significantly that earned in the

Consortium's Sterling account in Vancouver. However during August with the A\$ soaring in value to the £ we saw an opportunity to transfer some of the substantial balance reported at end June at a good A\$-£ rate. A major part, \$110,000, of the balance was transferred to the Consortium's £Sterling account in Vancouver. Even so our bank balance in Australia, at end December 2008, is still reasonably healthy at over \$90,000.

UK Pension changes from 5th April 2009

We have just been advised that the new full single pension rate for 2009/10 will be £95.25 and £152.40 for a couple. This is an increase of 5%, and puts all those of us a year older even further behind the pension we would get if we were living in the USA or Spain etc. Our table of % losses has been revised and will be published on our website.

BPIA's Monthly Report

Each month, usually at the beginning, a report outlining activities and matters relating to the pension cause, for which we are fighting, is lodged on our website. We commend you to keep up to date with your knowledge of our activities. Any issue that is pertinent to our campaign, whenever it arises, is published on our website.

So a visit to www.bpia.org.au is recommended at least once per week. This will save some members having to phone or email the Chairman to ask what is going on. Too many people do this whilst the information they seek is probably covered in a recent report on the website

Committee Changes

Our long standing Membership Secretary Ed Wilson has asked to be relieved of his job of maintaining the BPIA data base. Ed has been doing this for 5 years and has recently had an unsuccessful eye operation and is finding the task difficult. We sincerely thank him for his sterling efforts over the years and wish him well in an improvement to his eyesight. Consequently we are now investigating other ways to manage the data base. In the interim Tony Jackson has offered to take on the job, but only until a suitable replacement can be found and trained. Ernie Atkinson replaces Ed Wilson on the committee.

A Cautionary Tale

A while ago one of our pensioner members received a letter from the Pension Service including a document "Life Certificate" He chose to ignore it and consequently his pension ceased. It was an audit test to establish if he was still alive. A non reply was interpreted as his being dead.

We are now working to get his pension restored, many years later. Beware of not replying to any such communication for the Pension service you might receive in the future,

You get all this for your subscription

- **A date with the ECHR**
- **A top London legal team working for you**
- **International support from the consortium of members numbering almost 40,000**
- **Help with your UK age pension queries.**
- **A regular newsletter**
- **Website**

www.bpia.org.au at which our monthly update report can be read

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BPIA COMMITTEE @ 2008/9

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Are you still @ where you said you lived now

The BPIA membership team spend many hours keeping the rapidly expanding membership data base up to date. We do not use sophisticated computer systems but we are competent amateurs. Please help us by sending any changes to your data detail home or email addresses phone numbers etc to our addresses or below

**www.bpia.org.au British Pensions in Australia Inc. Tel 1300 308 353
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BPIA is an expatriate volunteer not-for-profit incorporated organisation

BRITISH PENSIONS in AUSTRALIA Inc

ABN 42 186 383

Media Release 22/11/08

European Court of Human Rights Judgment **Carson, Jackson and Others v the United Kingdom**

The International Consortium of British Pensioners, including British Pensions in Australia, notes the majority decision of the Chamber of the European Court of Human Rights released on November 4th 2008, rejecting the complaints made by the Applicants in *Carson, Jackson and Others v the United Kingdom* and challenging the United Kingdom's refusal to uprate the pensions of all pensioners resident overseas in line with inflation.

While of course disappointed in the majority's decision, the International Consortium remains of the view that the Applicants' case raises very serious questions affecting the interpretation and application of the European Convention on Human Rights and the protection of the fundamental rights of the 11.5 million pensioners adversely affected, including 526,000 overseas and 11 million still resident in the UK who suffer reduced freedom of choice as to where to live in retirement without threat of loss of future income.

In his dissenting judgment, Chamber President, Lech Garlicki of Poland, reinforces this view when he states,

"To my regret, I cannot subscribe to the Chamber's finding of no violation..... In my opinion the difference in treatment has no objective and reasonable justification...."

"First Considerations of social justice and equity require that persons who have duly contributed towards the pensions of others should not be treated differently in the subsequent calculation of their own pension. Differential treatment based solely on current residence has no link to the contributory nature of pensions and, therefore, is deprived of a reasonable justification."

"Secondly, there is a common feature for all countries involved, and this feature is inflation. Thus, it is difficult to accept that the situation of UK residents is basically different from that of non-UK residents. The legislature has, of course, no obligation to up-rate pensions according to inflation in the host country. It is also entitled to adjust indexation to take into account differences between particular countries, but it cannot simply ignore the very existence of inflation as a common economic characteristic of the modern world. Such a regulation penalises persons who, after having fulfilled their side of the contributory scheme, move abroad. Such penalisation runs counter to the principle of individual freedom and, therefore, cannot be regarded as reasonably justified."

"Third, the existing system is not based upon any cogent scheme. As was observed by the domestic authorities (see paragraph 47 of the judgment), it would be difficult "to defend the logic of the present situation ... There is no consistent pattern". In consequence, the situation of British pensioners varies from country to country. This makes the majority's references to the margin-of-appreciation doctrine (see paragraph 81 of the judgment) less convincing. Under this doctrine, the State is allowed to devise its own ways of addressing social and economic problems. Had the UK developed a coherent and logical solution to the issue of index-linking for foreign residents, it would have been easier to accept it. But the doctrine of the margin of appreciation cannot legitimise a situation of an illogical and, therefore, arbitrary nature."

"Finally, I have complete respect for the House of Lords' position that the matter is more legislative than judicial in nature. However, such an argument, while convincing at the domestic level, cannot prevail before our Court. A violation that results from legislative omissions is still within the reach of European supervision."

In these circumstances, the Consortium will consider whether it intends to seek a referral (appeal) of the case to the Grand Chamber of the European Court pursuant to Article 43 of the Convention. This decision will be made quickly so that the request for a referral can be filed as early as possible for consideration by a panel of five judges of the Grand Chamber. If such a referral is made, then the full Grand Chamber of 17 judges will reconsider the case.

A copy of the Court's judgment may be obtained from <http://www.echr.coe.int/echr/> or from www.bpia.org.au

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