

Case study: PPF + DWP vs Paul Hughes + others

✔ Sophie Smith takes a closer look at the events that led to recent court judgments on the Pension Protection Fund, and the progress that made so far in implementing the necessary changes



Paul Hughes may not be the most famous pensions figure, but many will be aware of the key legal action that bears his name: *The Pension Protection Fund (PPF) and Department for Work and Pensions (DWP) vs Hughes and others*.

This case was one of a number of recent court judgments that prompted widespread changes in the compensation provided by the PPF and represents nearly two decades of efforts.

Hughes retired with a pension of circa £63,000 aged 57, three years before his normal retirement date, expecting this to be protected under the 1997 Pensions Act.

However, in 2005 the Heath Lambert pension scheme, which Hughes was a member of, announced that its sponsor had become insolvent.

The scheme subsequently became one of the first schemes to be assessed for membership of the PPF, which had been introduced by the 2005 Pensions Act to

help support members of failed schemes.

However, this also removed the protection given under the 1997 Pensions Act to early retirees who retrospectively became subject to a cap, in many cases substantially reducing pension values.

As a result, Hughes was informed that his pension had been reduced from nearly £70,000 to £17,481 when the scheme entered assessment.

“As this change was brought about by a new Pensions Act, the chances of an individual ever getting anything changed was so remote that one really didn’t quite know where to where to begin,” he says.

After spending three years unsuccessfully taking the case against his pension fund trustee to The Pensions Ombudsman, Hughes was introduced to Grenville Hampshire, who had experienced similar issues and would become a key partner in this legal battle.

A decades long effort

“Together and with other colleagues from both of our firms, we tried very hard to get somewhere with politicians to understand our problem and help us get some justice,” Hughes explains.

However, Hughes says that whilst Pensions Ministers were “sympathetic” and “very happy” to discuss the issues faced, they “did absolutely nothing”.

“We progressively felt that we had to consider using the law to put some pressure on government and hopefully get somewhere,” he adds.

A 2007 European Court of Justice (ECJ) ruling would prove key to this, as the 2007 *Secretary of State for Work and Pensions vs Robins* ruling concluded that whilst governments are not responsible if a pension fund fails, no member should receive less than 50 per cent of their pension entitlement together with scheme indexation.

The Grenville Hampshire case failed in the High Court in 2014, but was successful at the Court of Appeal in 2016. However, the court ruled that further clarification was still needed from ECJ and, in 2018, the ECJ confirmed that the PPF must pay at least 50 per cent of members pensions entitlement, plus scheme indexation.

“That was really good news,” says Hughes, whose pension increased substantially as a result of this ruling.

Nevertheless, there were still matters awaiting further clarification, including the PPF’s use of the so-called Hampshire uplift, one-off compensation calculation aiming to ensure an individual would receive 50 per cent of benefits, as well as the continued use of the PPF compensation cap.

Victory on the horizon

The *Hughes v PPF/DWP* case was referred to the High Court by judicial review in 2020, and then taken back again to the Court of Appeal by the PPF and DWP in 2021. In these court cases, the claimants were also joined by the pilot union Balpa.

The Court of Appeal ultimately

concluded that the use of the Hampshire uplift was legal, although it agreed that the PPF compensation cap was unlawful and must be disapplied.

“We were very pleased. Thinking where we began, it was quite hard to believe that we would ever be successful because a few disaffected individuals rarely take on the government and win,” says Hughes of the judgment.

“I had little expectation of succeeding,” he continues, “but if the government, in the form of the DWP, takes away almost £50,000 from your pension, it is very motivating.

“I’m obviously delighted for my colleagues who helped along the way and certainly for Grenville and his team, but there are potentially thousands of other people who are going to benefit.”

And further wins have since been achieved, as the PPF has confirmed that the proposed six-year arrears payment limit will not be implemented, and full arrears will be paid.

Hughes has also received communications to inform him of his arrears in recent weeks, which is in line with the proposed timeline from the PPF, with the disapplication of the cap and the majority of payments expected to be made by the end of 2022.

Whilst Hughes emphasises that the staff at the PPF have been generally helpful, he admits that he had hoped they would have been able to calculate arrears for all affected members by now.

“It is disappointing, as we are all getting older, that it is going to take to the end of 2022,” he continues.

“I am hoping that the rest of my colleagues are going to have their arrears payments advised to them very soon.”

The lifeboat is facing significant implementation challenges however, as a spokesperson for the PPF explains that the pace of implementation has been affected by the fact that the lifeboat does not always have the relevant data for uncapping, because it was never anticipated it would need this data when

the schemes transferred to it.

“It has also been affected by our decision to offer members the option to take part of their uncapping increase as a lump sum and pay any resulting tax charges,” they explain. “We believe this is the right thing to do, but it does require us to undertake complex and time-consuming calculations for each member.

“We publish news stories and FAQs on our website, and if we need further information from members to be able to process their payments, we’ll write directly to them.”

Reaping the rewards

Progress is underway, however, as a DWP spokesperson comments: “We are working collaboratively with the PPF to ensure that members affected by the judgment receive their full entitlement.”

A spokesperson for the PPF also emphasises that the lifeboat has “acted quickly” to establish how the court rulings could be best implemented, particularly in light of the “significant implementation challenges” posed.

“The compensation levels that were the subject of these challenges were set by Parliament in the Pensions Act 2004,” a spokesperson explains, continuing: “In the Hampshire case the ECJ gave a clear decision that this legislation did not meet the requirements of EU law and that we must change our approach to make sure compensation never falls below 50 per cent of scheme benefits.

“We acted quickly to establish how this could best be done – the judgment posed significant implementation challenges given the PPF was never designed to track scheme benefits. We published our approach on 5 November 2018 – this was then challenged in the Hughes case causing implementation to be put on hold.

“On 19 July 2021 the Court of Appeal supported our approach, and we’re now progressing with making payments and increasing compensation to affected members.

“We’re also disapplying the PPF compensation cap, following the Court of Appeal’s decision that it’s unlawful on the grounds of age discrimination.”

And the PPF also emphasises the pride it has in the work it does, stressing that “without it, many people would face significant financial hardship”, with research revealing that 75 per cent of DB pension savers do not know their pension is protected if their employer fails.

“We protect millions of people throughout the United Kingdom who are members of defined benefit pension schemes, to make sure they’ll be looked after if the employer responsible for funding the scheme they’ve paid into fails,” a spokesperson states.

The lifeboat is also quick to reassure industry levy payers, as a spokesperson for the PPF confirms that, as at January 2021, the number of PPF pensioner members subject to the compensation cap was 630.

“We’ve previously estimated (Feb 2020) that removing the compensation cap would add approximately £200 million (discounted to present values) to our liabilities in respect of future compensation,” a spokesperson explains. “This is just under 1 per cent of all such liabilities. Our reported funding position already makes allowance for this cost.”

Frustrations remain, however, as the 25 claimants involved in the legal action will be required to meet the PPF’s legal costs, after the court upheld its use of the Hampshire uplift.

“It seems most unfortunate, given the huge number of people that are going to benefit, because if all beneficiaries made a small contribution then the fees would be spread on a much fairer basis,” he says.

Despite the success in this case, it is clear that there is still room for improvement by politicians and the industry to ensure that members voices are being heard, and acted on, without resorting to costly legal action.

 **Written by Sophie Smith**