

# ABAP

Caring for BA pensionable people today and tomorrow



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## **Newsbrief No. 107 June 2017**

### **Chairman's Introduction**

Since Newsbrief 106 was published it has been announced that Touchdown will no longer operate. One of the most avidly read sections of Touchdown was "Absent Friends". ABAP has approached BA Pensions to enquire if BA Pensions is to take over publishing Absent Friends as a service to pensioners. If BA Pensions is unable or unwilling to provide this service, ABAP is more than willing to take over its publication. ABAP feels that it is extremely important that an institution such as British Airways should continue to care for its staff after they have retired. Many BA pensioners worked for BA for the major part of their working lives and cared for the colleagues with whom they worked.

In this Newsbrief, with the author's and editor's permissions, we are republishing Tony Cox's excellent article, "...and Statistics" which first appeared in "Pennant", the Forces Pension Society magazine. Tony chairs the Royal Statistical Society's RPI/CPI User Group, to which ABAP contributes. The article explains the long-run significance of the difference between the use of the CPI rather than the RPI for pensioners. It is a good read. The other article is by Mark Fielder explaining his role as Representative Beneficiary in the ongoing BA v APS Trustees court case, the final result of which is not now expected until late 2018.

Lastly, although I can scarcely believe that a year has passed since we sent out renewal forms with a Newsbrief, it is that time of year again. As we have said so many times in the past, ABAP's strength is its members, and the collective voice by which we can make our feelings and opinions known. Please renew your membership, and encourage friends and colleagues to do the same.

Best wishes to you all.

### **Representative Beneficiary Role**

In the dispute between BA the Trustees, BA initially refused to accept that the indemnity in the APS trust deed would apply to the Trustees' costs of defending the claim. Without the comfort of a full indemnity from BA, there was a risk that the individual trustee members could become personally liable for the very significant legal costs. This was a concern for membership because (i) it is important that the claim be defended, because the outcome will determine benefits payable under the Scheme, (ii) if the Trustees face personal risks, they will be deterred from defending the claim.

The solution was for the Trustees to obtain comfort from the Scheme. However, trustees do not have an automatic right to take litigation costs from a pension scheme. To do this, they must first go to Court to seek what is known as a "Beddoe order". In short, this is an order granting trustees permission to bring or defend a claim – it allows trustees to recover their costs from the pension scheme, and protects them

against any claims by beneficiaries that the claim in question should not have been brought/defended. The name derives from the case *Re Beddoe (Downes v Cottam)* [1893].

Because a *Beddoe* order is binding on members, the *Beddoe* proceedings require a “Representative Beneficiary” to be put in place – i.e. someone to represent the interests of all members of the Scheme. I volunteered my services. At the time, I was an active member of the scheme with several years to go before NRA. Subsequently, I have now become a member in benefit, so I have seen the situation from both sides of the fence.

In the *Beddoe* proceedings, the Trustees were asking the Court for an order to provide that, should the indemnity under the APS deed prove ineffective, the Trustees’ legal costs could be paid from the assets of the Scheme.

My role was to represent the interests of scheme members as a whole. But only in relation to the *Beddoe* proceedings – I had no role in the wider dispute between BA and the Trustees. That is an entirely different legal matter.

A legal team was appointed to represent myself versus the Trustees to allow the case to be heard. It might seem odd that it was an adversarial situation, but the interests of the members and the Trustees are not always the same, so this allows the competing arguments to be aired and debated in Court.

The Court’s task was to determine whether the Trustees should be allowed to continue to defend the claim at a potential expense to the Scheme. As part of this exercise, the Court considered the Trustees’ prospects of success and the likely costs of the litigation. My legal team was responsible for putting forward arguments on behalf of the membership, although ultimately it was for the Judge to determine whether money could be paid out of the Scheme.

There were a number of meetings and telephone conversations leading up to a day’s hearing in the High Court in July 2014. Following this hearing, the Chancellor of the High Court gave judgment for the Trustees, ordering that that the Trustees be entitled to draw their costs from the assets of the Scheme up to the point of disclosure<sup>1</sup>. The intention was for the Trustees to return before the *Beddoe* judge following disclosure to provide an update and to obtain further relief to incur legal costs.

However, as the Trustees were preparing to go back to Court, BA decided to accept that the Trustees should, after all, be entitled to the indemnity in the APS trust deed. Following negotiations between BA and the Trustees, on which my legal team had some input, it was agreed that BA would pay the Trustees’ costs directly (subject to BA’s right to claw back any costs which the trial judge later finds to be ‘unreasonable’).

In light of BA’s agreement to pay the Trustees’ costs, it was not necessary for the Trustees to seek further *Beddoe* relief (because it was no longer necessary for them to have recourse to the assets of the Scheme).

The *Beddoe* proceedings have therefore been stayed. This is preferred over a formal discontinuance, because it allows the Trustees and the Representative Beneficiary to come back to Court quickly should the Trustees need any future comfort or guidance from the *Beddoe* judge (e.g. in relation to costs or settlement).

A term of the stay is that the Trustees will continue to provide the Representative Beneficiary with periodic updates in relation to the trial timetable, the prospects of success and costs. Although I have sight of this confidential information (which I cannot discuss), I have no formal role in the dispute between BA and the Trustees, which is currently being heard in Court.

Mark Fielder

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<sup>1</sup> The Chancellor was critical of BA’s refusal to agree the indemnity under the deed, but could not make an order that it would apply (because that was a matter for the wider proceedings between BA and the Trustees).

# ....and Statistics

Statistics are indeed vital for all those with an Armed Forces pension. Every April the pensions of hundreds of thousands of us are increased by the “rate of inflation”. But which rate, and how is it calculated, and how might this change?

**Tony Cox**, member of the Royal Statistical Society and Chair of the RPI/CPI User Group, explains.

**O**ver recent years the method used to calculate the inflation rate has been the subject of technical debate and, more important, political controversy. And no wonder – every year the inflation rate for the previous twelve months is measured and then applied to pensions paid from the following year.

The usual month of measurement is September with the new rate applied the following April. This applies to many public and private occupational pensions and it provides one leg of the ‘triple lock’ for the State Pension. So with very many people’s pensions going up every year under this system, even a small difference of a fraction of a percentage point can mean the Government pays out millions of pounds more (or less) than it would otherwise do.

It is an area which is likely to get more, not less, complex in the years to come.

## Box 1

In 1914, the Government first began a systematic, continuous check on the increase in the cost of living. The published figures initially covered only food but the index was expanded in 1916 to cover clothing, fuel and some other items. The index was designed as an aid towards protecting ordinary workers from price rises associated with the First World War. It continued throughout the 1920s and 1930s but was increasingly criticised particularly in relation to the weights used. These were based on data from a 1904 survey of urban working class households’ expenditure and were influenced by subjective judgements of what constituted legitimate expenditure for a working class family. For example, beer was completely excluded. In 1936, the then Ministry of Labour announced its intention to update the weights using the results from a large-scale household expenditure survey carried out in 1937-38. However, by the time the results became available, war had broken out and further action was deferred.

Source ONS

## The Retail Price Index

It all used to be relatively simple. In the beginning there was the Retail Price Index (RPI). This had a long history: its origins were in the First World War [see Box 1].

It was designed around what people actually paid out, from the money in their pocket, on everyday things. The actual things which underpin the index changed from year to year but the principle behind it remained the same. [see Box 2]

And it was this index which was applied across the board to a number of pension schemes (including virtually all public sector schemes), a number of welfare benefits, and the State Pension.

## Consumer Price Index

A new index was then developed, the Consumer Price Index (CPI). This was an index designed to be used for comparisons of inflation rates with other European countries.

There are a number of differences in the way that the RPI and CPI are

## Box 2

Various relatively minor changes were introduced in the 1960s and 1970s including:

- the introduction of a meals out group from 1968.
- the introduction of seasonal weights for fresh fruit and vegetable items from 1975.
- a component for foreign holidays from 1993.
- UK holidays from 1994.
- random sampling of locations for price collection in 1995.
- local probability sampling for the selection of some high turnover, high technology goods within retail outlets in 2004.

Source ONS

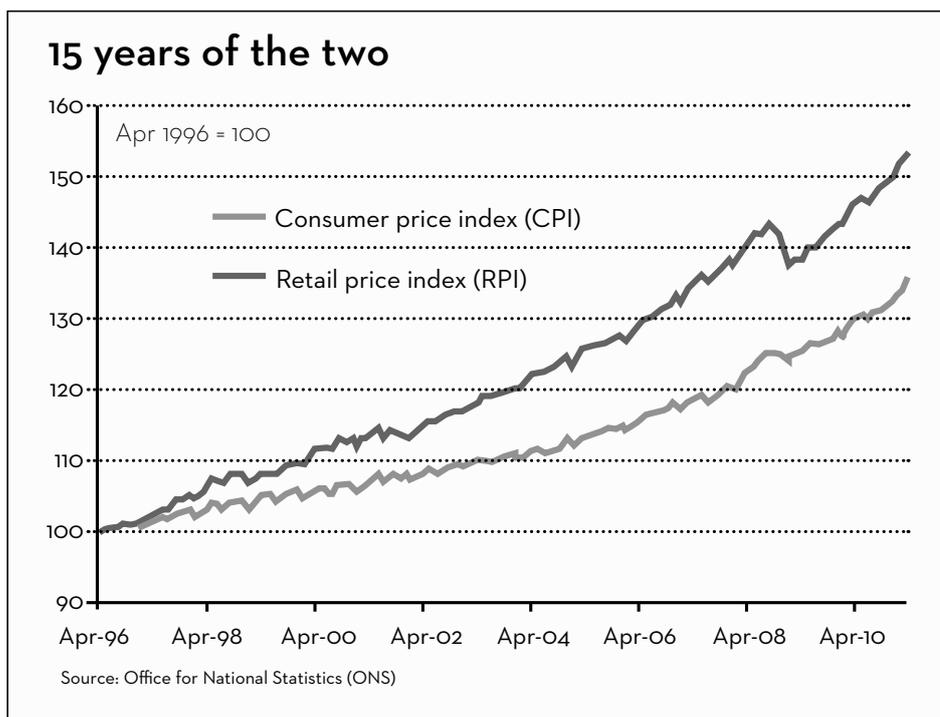
compiled, but two that contribute significantly to the difference between them.

First, the formula used in the CPI assumes that when prices rise in an uneven manner people will switch to products that have gone up by less, so the actual increase in costs is not as great as it would otherwise be.

This use of a formula that assumes substitution is one reason why CPI almost always delivers a lower estimate of inflation than RPI.

And second, CPI excludes housing costs because it proved too difficult to find a mutually agreeable method of measurement given the different types of housing market across Europe.

At present the government uses a pick and mix approach to RPI and CPI [see table opposite].



### It's all about politics

But of course there's more to it than that. It is not and never has been just a matter of a different technical approach.

The key political fact is that over the years CPI has tended to be lower than RPI, and therefore the government saves money by making the shift.

It is not true that CPI is always lower than RPI but, as can be seen above, for most years this has been true, and this year the CPI increase that will be applied to all pensions in April is 1.0%; had it been RPI the increase would have been 2.0%.

CPI has other failings too. It is better at measuring accurately the expenditure of richer households, but it tends to be less accurate at measuring the expenditure of lower spending groups.

Most of all, the key omission of owner occupied housing costs has long been recognised as a shortcoming of the CPI. For that reason we have been looking for a new index which includes housing costs. There is a technical challenge here: just how do you identify and measure these costs? Is it typical mortgage payments? Or some proxy based on the cost of new builds?

### A New Index?

A way through this has now been developed by the Office of National Statistics. It is called CPIH - the H is for housing - and it has been submitted to the UK Statistical Authority for their validation.

This validation has not yet been formally granted, but it is expected soon. If and when that happens, the government will have a decision to make on whether or not to use CPIH rather than CPI, as the key index measuring inflation which will be used to uprate pensions every year.

This is a very important decision and it will not be taken in a hurry: the earliest it might happen would be 2018 (for pension increases in April 2019) but do not put your housing costs on it!

### The Answer - Perhaps!

Of course the question many people reading this article want to know is, will CPIH be higher than CPI. The answer is, as we statisticians say, perhaps. Research shows that between January 2015 and January 2017, CPIH was approximately 0.3% per annum higher than CPI. However, going back to January 2007 reverses the difference and CPI was marginally higher than CPIH.

This longer period does include the recession and the ONS has indicated it expects that a CPIH of 0.3% higher is more likely to hold true in the future.

While a difference of 0.3% may not sound large in terms of an individual's pension increase, it should be remembered that any difference applied to pensions is cumulative for the individual and is an awful lot when measured across all the pensions to which it would apply.

But that is not all. Dissatisfaction with the fundamentals of CPI, and even CPIH, continues; and work is going on to develop another index - the Household Inflation Indicator (HII) which goes back to first principles and measures more accurately what households actually spend. This is still on the drawing board, but it could be the long-term solution.

**To an outsider this might seem technical and rather dry, but it strikes to the heart of our pensions, how they are calculated, how much they are worth, and what they are supposed to cover. The Forces Pension Society, through its membership of the Public Service Pensioners Council, is very close to these discussions. P**

### Some official uses of RPI and CPI

RPI	CPI
Rail fares	Macro economic targets
Water charges	Various pensions
Energy charges	State and other pensions
Telecomms	Benefits (currently frozen)
Postal services	Inheritance tax
Business rates	Tax allowances
Student loans	
Gilts & NS&I index linked certificates	