

# briefingpages

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## ■ PENSIONS

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### **RETIREMENT AGE IN THE SPOTLIGHT**

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One of the key benefits from good company pension provision has been their ability to facilitate and make attractive early retirement with a decent pension income. For example, the majority of employees in final salary schemes have enjoyed a right or expectation to be able to retire at 60 without any reduction in their accrued pension benefit.

There are a number of current trends and prospective legislative changes which are threatening early retirement prospects, and these are reviewed in this briefing. A recent survey by the Chartered Institute of Personnel and Development has suggested that in the last two years about one in six employers have made changes affecting retirement/pension ages and a similar proportion expect to make such changes in the next two years.

### **LIVE LONGER – WORK LONGER?**

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One of the key factors cited in proposals to modify early retirement or normal pension age is increased longevity. Longer life expectancies increase the prospective length of retirement and therefore the cost of pensions and this leads to suggestions that an appropriate response to both factors is that employees should work longer.

Longer life expectancy may not, however, translate easily into an ability to work longer. A recent study by the Institute of Fiscal Studies pointed out that while life expectancy of employees retiring appeared to have increased by three years between 1976-97, the increase in the period of retirement in good health increased by only one year. Recent estimates from the Government Actuary relating to the NHS Pension Scheme indicated that a half of the savings as might be produced if the pension age were raised to age 65 would be absorbed in higher costs of ill health retirement.

### **EMPLOYER MOVES TO LIMIT EARLY RETIREMENT**

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Where employers have moved to reduce final salary pension costs, changes to retirement age/early retirement have been the single commonest change in benefits proposed.

Employees who have been most vulnerable are those in schemes where early retirement requires consent. In such situations a change of practice in regard to consent can, potentially, be effected overnight without any rule change being required and even without any consultation.

Also, the whole of an employee's benefits are affected as the law only prevents rule changes which reduce past service rights. In a consent situation there need be no rule change and early retirement is an expectation and not a right. Expectations may be firmly based on years of established practice in granting consent, and by undertakings that consent will not normally be refused but they may still be dashed by a change 'justified' by a pension scheme deficit and an increase in employer contribution requirements.

Where early retirement is based on rights then the impact of any change will be limited to future service, which can limit the effects on those nearer to retirement but still upset employees' retirement plans. One issue to consider where the normal pension age is increased for future service is what addition will be made to past service benefits drawn after the old normal pension age.

## **MONEY PURCHASE SCHEMES DAMAGE EARLY RETIREMENT PENSIONS**

Early retirement will often be advertised as being freely available in money purchase (DC) schemes but that is only because the full cost of it is generally born by the member in terms of a lower pension.

Early retirement will obviously mean fewer years of pension contributions but it will also mean fewer years of investment returns on those contributions which have been made, and a higher annuity cost of pension. The last of these three factors could on its own mean that an employee's fund will produce a pension 15% less at age 60 than it would at age 65.

Recent research by Hewitt Bacon & Woodrow has suggested that a person starting work at age 25 in a typical DC scheme (10% total contribution) might expect to be able to buy a pension equivalent to 50% of their earnings at the age of 68 (if they invest in equities – if they invested more cautiously in bonds it would be age 80).

All this suggests a future where retirement age will be constrained a great deal more than now by when the employee can afford to stop work.

## **AGE DISCRIMINATION LEGISLATION**

You may not want to work longer but the law is shortly set to change to make it easier for you to do so. The Government is obliged by the EU to legislate on age discrimination by 2006.

At minimum the law is likely to outlaw compulsory age-based retirement before age 65 and an age higher than this may be specified. This will certainly impact directly on the sizeable minority of companies which have a retirement/pension age of 60, but is likely to have a much more general influence on employer thinking.

Amicus concerns in this area are focused on the issue of whether employers will use this as a pretext for worsening pension terms and raising the normal pension age. It would be most unfortunate if legislation to help the minority who are currently prevented from carrying on working are forced to stop work before they want to had an indirect on pension provision which meant others were forced to work longer than they would like to.

Another issue that could arise is a limitation on employers' ability to offer higher pension benefits to older employees. This is most obviously seen in the form of higher employer contributions to DC schemes on an age-related basis. In pension terms these might be justifiable on the grounds that pensions for older employees are more expensive, but it is not yet clear to what extent they will be justifiable legally in relation to age discrimination legislation, which will focus on pension contributions as pay. Age-related elements may have to be superseded by service-related differentials.

## **NEW INLAND REVENUE FLEXIBILITIES (AND THE 55 LIMITATION)**

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It has been general Inland Revenue practice to require that an employment should cease before a pension in respect of that employment can be drawn. This has meant that, if you wanted to combine pension and pay, you would be required to leave employment/retire and then resume work on a different contract with the same or a different employer. The Revenue have also blocked drawing part of your benefits whilst continuing to work. Employer practice and scheme rules have often reinforced these restrictions.

All this is set to change and a new regime put in place in 2006 as will facilitate greater flexibility as to when pension can be drawn and so encourage new flexible working patterns. For example this will enable an employee to phase their retirement by working reduced hours and maintain their income by drawing a part of their pension, whilst continuing to build up further pension rights.

It has to be stressed that these are only possibilities and it will be at the discretion of employers, largely, as to the extent that they will be made available. An employer such as the NHS which is very keen to retain older skilled staff may take a much more positive attitude than a private employer seeking to reduce employee numbers. However, these flexibilities are potentially very attractive to employees and may become more so if retirement does become less affordable. This will create an important new bargaining agenda for the Union.

It is also being proposed that the minimum at which pension will be able to be drawn will be age 55 from 2010, rather than 50 as at present. One concession in relation to that is that benefits will still be able to be paid at 50 to existing employees, where this is a contractual right. Exactly what constitutes a contractual right has yet to be defined but this does pose a threat, particularly to those schemes where there are good redundancy pension provisions.

## **THE GOVERNMENT'S ROLE**

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As an employer, the Government is seeking to raise the effective retirement date in all the major public sector schemes from age 60 to 65, a policy which Amicus along with all the other public sector unions is seeking to resist. Part of their argument is that 65 is already the norm in the private sector, which is actually not the case if comparable final salary schemes are looked at. If the public sector schemes do change then this will undoubtedly influence future thinking in the private sector.

The Government has, thankfully, ruled out for the present any increase in the State Pension age beyond 65. However, it is being lobbied strongly by various think-tanks, and recently by the CBI, to raise the age to 70 to release resources to pay a higher basic benefit. In rejecting these siren calls the Government has pointed out, quite rightly, the wide differences in life expectancy which average mortality figures do not show i.e variations linked to occupation, social class and environment (e.g inner cities etc).

## **AMICUS**

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Amicus recognises the high value which members place on being able to retire early with a decent pension income. We believe the better way to extend working lives is a positive agenda based on new rights and work and pension flexibilities for older workers and measures generally to make older workers feel more valued in their workplace.

## **JOB REFERENCES**

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You have been offered a new job subject to references. But elation turns to despair when you learn that the job offer has been withdrawn because of the quality of the reference. Or, perhaps your previous employer refuses to supply you with a reference, although you know that in today's job market you are going to need one to stand a chance of getting another job.

## **WHAT CAN YOU DO? AND WHAT ARE YOUR LEGAL RIGHTS?**

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An employer does not have to provide you with a reference. It is entirely a matter for discretion, but pressure from the union can often persuade an employer to oblige, even if it is only to provide a 'standard' reference stating your starting and finishing dates of employment and your job title. However, in certain types of employment the position may be different (see below).

## **DISCLOSURE AND THE CONTENTS OF A REFERENCE**

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If your employer does give you a reference, it may be subject to 'qualified privilege' and you may not get to see it. You have no automatic right to see any reference your employer gives, although you may in some circumstances request a copy under the Data Protection Act 1998 (see below). You should also note that, if this is because your former employer does give a reference, it owes a duty to any future employer to give a full and objective statement about your employment record which is true, accurate and fair and not misleading. Concealing damaging information, even from the best of motives, might lay the employer liable for any losses suffered by a subsequent employer and a claim for damages.

If an employer does write a derogatory statement about you, he/she risks an action for defamation. However, this can be defended successfully by arguing that the reference was 'fair comment'; that it was sent to the employer in confidence; and that it is subject to qualified privilege.

## **THE DATA PROTECTION ACT 1998**

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The Data Protection Act does provide opportunities for disclosure of personal information about an employee on written request, including your personnel file, although recent case law throws doubt on how much information you are entitled to see if the information is only kept on paper and not also on computer. Unfortunately, confidential references given by the employer for the purposes of education, training or employment are excluded from the right under Section.7 of the Act. However, references given by third parties and held in a file by the current employer are not excluded. It is worth trying to get hold of useful information through this route. In circumstances where a prospective employer has not offered a job to you because of an unsuitable reference, you should still try requesting this information from them. However, they will not necessarily be, even though they are not obliged to disclose it.

## **SPRING – V – GUARDIAN ROYAL EXCHANGE 1 AND KIDD – V – AXA EQUITY & LAW 2**

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The House of Lords in the Spring case decided that an employer must exercise reasonable skill and care in preparing a reference. This duty is owed not only to the prospective employer, but also to you as the employee. If an employer is negligent in writing a reference and provides untrue or damaging information to the prospective employer, the employee can sue for

compensation on the basis that he/she lost a reasonable chance of employment because of the negligent reference and thereby suffered a loss. In Mr Spring's case, the reference was crucial because he worked in the finance industry and was subject to special regulatory rules. His ex-employer's damaging and misleading reference stopped him gaining employment in the industry.

In Kidd, the claimant wanted to widen the duty on employers to ensure that any reference provided to a prospective employer is full and comprehensive. This was because his employer had provided a reference by filling in a questionnaire and had not completed certain parts of it. A letter was attached to the questionnaire referring to the reason for the incomplete reference. It referred loosely to complaints from clients and an investigation which was still continuing. As a result, Mr Kidd did not get the job he applied for. The High Court held that there was no duty to provide every material fact in a reference. The duty was 'to take reasonable care when giving a reference not to give misleading information, or by the inclusion of facts or opinions in such a manner as to give rise to a false or mistaken inference in the mind of a reasonable recipient.' The court decided that the employer had not misled the prospective employer by leaving out parts of the questionnaire, because the letter explained the reasons for this and that answers could not be provided until the investigation was concluded.

If an employer's reference is defamatory, then in theory a defamation claim could also be brought against the employer. In practice such claims are unlikely to succeed: the employer will have a defence if it can show that the person giving the reference had an honest belief that the contents of the reference were true.

## **IMPLIED CONTRACTUAL DUTY TO PROVIDE A REFERENCE**

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In situations where an employer refuses to provide a reference, the Spring decision may be helpful. The House of Lords ruled that there may be an implied contractual duty on employers to provide proper references for people working in certain types of employment where it is standard practice to provide a full and frank reference and where an employee will not gain employment without it. A good example of this is the finance sector. This obligation argument can be used to press the employer to provide a reference in situations where a reference is mandatory. However, the down-side to this is that the reference may still be subject to 'qualified privilege' and you may not get to see it.

## **REFERENCES AND DISCRIMINATION**

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If you are refused a reference because you have brought a claim of unlawful discrimination against your employer (for example a claim of sex or race discrimination) or for some other reason related to your sex or race etc, the refusal to provide a reference is likely to amount to an act of discrimination on which a claim could be based.

## **COLLECTIVE AGREEMENT**

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In recognised workplaces, it should be standard employment practice that the collective agreement will make provision for every employee to be provided with a reference and the reference will be made available to the employee for comment. The union should offer to assist in the process of drafting references, particularly in sensitive situations, and should explain the duties placed on the employer to the member concerned.

Note: If you have a problem over a reference, always seek advice and assistance from your shop steward or Regional Officer.

1 Spring – v – Guardian Royal Exchange Plc & Ors (1994) HL

2 Kidd – v – Axa Equity & Law Assurance Society Plc & anor, (2000), HC (QBD)

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### NEW EUROPEAN WORKING TIME PROPOSALS SIGNAL LONGER HOURS FOR WORKERS

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The EU Commission has made a confusing mess of proposals for modifications to the Working Time Directive. First, they recommend increasing the reference period for the calculation of maximum hours from 17 weeks to one year, which means workers could be made to work exhausting hours at periods of peak demand, offset by down time when work is slack. Secondly, the Commission plans to exclude all time on call that is not actually worked, so even if workers have to be on work premises when on-call, unless they are actually working,

Another proposed condition is that the 48-hour limit can only be exceeded if there is a collective agreement between unions and employers, which could encourage bargaining on working time and prove to be an incentive to find creative solutions. On the other hand, there may be employers who would use it as a further reason not to have a relationship with a union, and such a provision could thus increase hostility to unions.

One very worrying proposed provision is that should a worker opt out, he or she will not be able to work more than 65 hours a week, which looks like a substitution of the 48-hour maximum with a new 65-hour maximum. The whole point of the EU Working Time Directive was to set a maximum limit of working time on health and safety grounds, and introducing another limit will throw doubt on the validity of the 48 hour limit. If introduced it would have a devastating effect on the health of workers throughout the UK and doubtless in Europe as a whole. Already UK employees are working long hours, and damaging their health by doing so.

Amicus has produced a brief guide to the new proposals that can be downloaded from our website, along with other working time materials, including the full EU proposals.

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### SAFETY WARNING: BS EN 353-1 2002 PART 1 FALL ARREST EQUIPMENT

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Following a number of serious accidents (including fatalities) within the European Union, concerns have been expressed by users, safety professionals and enforcing authorities about the design and use of vertical rigid rail fall-arrest systems usually found attached or integrated in fixed ladders on permanent structures. In addition, similar issues have been identified during research being undertaken currently for the HSE. A detailed account of these problems and how to deal with them can be found on the HSE website at [www.hse.gov.uk/press/2004/e04074.htm](http://www.hse.gov.uk/press/2004/e04074.htm)

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### UPCOMING EVENTS

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**'30 years on – the future of the Health and Safety Commission', 8 November, Congress House, London**

An event to mark the 30th anniversary of the Health and Safety at Work Act and the establishment of the Health and Safety Commission. To register contact the TUC Health & Safety Unit. Tel: 020 7636 4030. Email: [healthandsafety@tuc.org.uk](mailto:healthandsafety@tuc.org.uk)

**'Health & Safety through Partnership' 19 November, Congress House, London**

Free event for safety reps in the London Region, organised by the SERTUC and the HSE to inform safety reps of developments in health and safety law. To register contact Darren Lewis. Tel: 020 7467 1220. Email: [dlewis@tuc.org.uk](mailto:dlewis@tuc.org.uk)

**'TUC conference on HIV and Aids' 4 December, Congress House, London**

This event is relevant to reps and shop stewards who are active or involved in this issue in the workplace, either from the health and safety angle of prevention of infection at work, or the issue of protecting HIV positive workers from discrimination. To register contact Pat Brown on Tel: 020 7467 1226. Email: [pbrown@tuc.org.uk](mailto:pbrown@tuc.org.uk)

Full details can be found on our website at [www.amicustheunion.org/main.asp?page=38](http://www.amicustheunion.org/main.asp?page=38) or requested in print form or by email by contacting Chris O'Leary. Tel: 020 7939 7016. Email: [chris.o'leary@amicustheunion.org](mailto:chris.o'leary@amicustheunion.org)

## NEGOTIATING INFORMATION

### FACTS AND FIGURES

OCTOBER 2004

	RPI	RPI	RPIX	CPI
	Jan 1987 = 100			
<b>2004</b>				
Jan	183.1	2.6	2.4	1.4
Feb	183.8	2.5	2.3	1.3
Mar	184.6	2.6	2.1	1.1
Apr	185.7	2.5	2.0	1.2
May	186.5	2.8	2.3	1.5
June	186.8	3.0	2.3	1.6
July	186.8	3.0	2.2	1.4
Aug	187.4	3.2	2.2	1.3
<b>2003</b>				
	RPI	RPI	RPIX	CPI
	Jan 1987 = 100			
<b>2003</b>				
Jan	178.4	2.9	2.7	1.4
Feb	179.3	3.2	3.0	1.6
Mar	179.9	3.1	3.0	1.6
Apr	181.2	3.1	3.0	1.5
May	181.5	3.0	2.9	1.2
June	181.3	2.9	2.8	1.1
July	181.3	3.1	2.9	1.3
Aug	181.6	2.9	2.9	1.4
Sept	182.5	2.8	2.8	1.4
Oct	182.6	2.6	2.7	1.4
Nov	182.7	2.5	2.5	1.3
Dec	183.5	2.8	2.6	1.3
<b>2002</b>				
	RPI	RPI	RPIX	CPI
	Jan 1987 = 100			
<b>2002</b>				
Jan	173.3	1.3	2.6	1.6
Feb	173.8	1.0	2.2	1.5
Mar	174.5	1.3	2.3	1.5
April	175.7	1.5	2.3	1.3
May	176.2	1.1	1.8	0.8
June	176.2	1.0	1.5	0.6
July	175.9	1.5	2.0	1.1
Aug	176.4	1.4	1.9	1.0
Sept	177.6	1.7	2.1	1.0
Oct	177.9	2.1	2.3	1.4
Nov	178.2	2.6	2.8	1.6
Dec	178.5	2.9	2.7	1.7

### UNDERSTANDING INFLATION

The inflation rate is calculated from the prices of a range of different goods and services selected to represent average spending patterns in the UK. The Office for National Statistics monitors changes in these prices each month, and uses this to work out an average increase for the year. The different items in the basket of goods and services are given different weights, so that things we spend more on, such as housing, motoring and food, are given more importance.

### BASE LENDING RATE (SEPT 2004)

4.75%

### AVERAGE EARNINGS – INCLUDING BONUSES

2004

	Whole Economy			Manufacturing			Public Sector		
	Average Earnings Index	Single Month	3 Month Average	Average Earnings Index	Single Month	3 Month Average	Average Earnings Index	Single Month	3 Month Average
Jan	117.1	7.3	4.7	114.0	3.6	3.5	117.1	4.1	4.2
Feb	114.3	3.9	4.9	114.7	3.6	3.5	117.8	4.4	4.3
Mar	115.7	4.3	5.2	116.1	3.2	3.5	118.2	4.3	4.3
Apr	115.8	4.6	4.3	115.5	4.8	3.9	118.5	4.1	4.3
May	116.0	4.1	4.3	115.9	4.3	4.1	118.9	4.5	4.4
Jun	116.5	4.3	4.4	116.0	4.1	4.4	119.8	4.5	4.4
Jul	116.2	3.3	3.8	116.2	3.9	4.1	119.7	3.6	4.2

2003

	Whole Economy			Manufacturing			Public Sector		
	Average Earnings Index	Single Month	3 Month Average	Average Earnings Index	Single Month	3 Month Average	Average Earnings Index	Single Month	3 Month Average
May	111.4	3.2	3.2	111.1	3.1	3.8	113.8	4.7	5.0
Jun	111.7	3.2	3.0	111.4	3.1	3.0	114.7	5.3	5.0
Jul	112.3	3.6	3.4	111.8	3.2	3.1	115.4	5.3	5.1
Aug	112.4	3.5	3.4	111.9	2.9	3.1	115.6	6.0	5.5
Sep	112.8	3.7	3.6	112.5	3.5	3.2	116.1	5.5	5.6
Oct	113.0	3.6	3.6	112.8	3.2	3.2	116.1	4.7	5.4
Nov	113.7	3.3	3.6	113.3	3.5	3.4	116.4	4.2	4.8
Dec	113.2	3.4	3.4	113.6	3.4	3.4	116.9	4.3	4.4

### Full-time average earnings by occupation

	£pw		£pw
All workers	550.00	Admin & secretarial	356.00
All male	552.30	Skilled/craft	433.80
All female	416.60	Services	297.60
Managers	786.40	Sales	303.90
Professionals	684.50	Operatives	393.20
Associate Professionals	555.40	Other manual jobs	321.90

The table above gives estimates of full-time average weekly earnings by occupation. It is based on the figures from the New Earnings Survey 2003, uprated by the AEI.

For more detailed information on inflation go to [www.statistics.gov.uk](http://www.statistics.gov.uk) or [www.incomesdata.co.uk](http://www.incomesdata.co.uk)

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