

Police Federation
Of England and Wales



Ffederasiwn Heddlu
Lloegr a Chymru

Established by Act of Parliament

Federation House, Highbury Drive, Leatherhead, Surrey KT22 7UY
Telephone 01372 352022 Fax 01372 352078
Email GenSec@polfed.org www.polfed.org

FROM THE GENERAL SECRETARY'S OFFICE

AF/sjr

26 May 2015

JBB Circular 21/2015

To: All JBBs

Dear Colleagues,

PENSIONS OMBUDSMAN'S DETERMINATION ON COMMUTATION

A recent determination by the Pensions Ombudsman on commutation factors may have implications for police officers who retired from 1 December 2001 to 30 November 2006.

This circular provides the background to a complaint, by a retired firefighter, to the Pensions Ombudsman of maladministration against the Government Actuary's Department (GAD) in respect of commutation factors. It also highlights the main points from the Pension Ombudsman's determination, which upheld the member's complaint, and explains the next steps in the process.

Background

In May 2008 the then Home Secretary issued revised commutation factors for the Police Pension Scheme (PPS) 1987, backdated to 1 October 2007. However, GAD had actually prepared the tables on 1 December 2006. As the PPS Regulations require commutation factors to be the actuarial equivalent of the pension given up at the date of retirement, calculated from tables prepared by the Government Actuary, PFEW judicially reviewed the Home Secretary's decision not to backdate the commutation factors to the date they were prepared by GAD. The High Court ruled in

PFEW's favour and the change in the PPS commutation factors was subsequently backdated to 1 December 2006. A copy of the judgment can be found here: <http://www.bailii.org/ew/cases/EWHC/Admin/2009/488.html>

The commutation provisions in the Firefighter's Pension Scheme 1992 scheme are very similar to those in the PPS and consequently retired firefighters benefitted from the outcome of the PFEW judicial review; their commutation factors were also backdated to the appropriate date (22 August 2006). Whilst PFEW judicially reviewed the Home Secretary's decision to implement the commutation factors from a date other than the date on which they were prepared by GAD, the FBU took a different approach; it encouraged retired firefighters to submit a complaint of maladministration against GAD to the Pensions Ombudsman on the basis that GAD should have reviewed the commutation factors more frequently than it did.

Many retired firefighters and police officers submitted complaints to the Pensions Ombudsman, who chose one of these cases (a retired firefighter, Mr Milne) as a test case. Mr Milne's complaint was that he suffered a loss as GAD:

- i) failed to fulfil its obligation to review and maintain the actuarial equivalence of the commutation factors (between 1998 and 2006) applicable to the calculation of the lump sum which he was entitled to receive under the Firefighters' Pension Scheme 1992 when he retired in November 2005 (aged 50);
- ii) delayed in introducing new factors when discussions started in 2005;
- iii) took into account irrelevant considerations when deciding whether to implement changes to the commutation tables.

GAD challenged (by judicial review) the fact that it came under the jurisdiction of the Pensions Ombudsman, but it was ruled (by the High Court and then the Court of Appeal) that GAD was fully within the Pensions Ombudsman's jurisdiction in respect of this complaint. These legal challenges by GAD considerably delayed the Pensions Ombudsman's investigation.

On 15 May 2015 the Pensions Ombudsman made public his determination, which upheld Mr Milne's complaint against GAD.

The Pensions Ombudsman's Determination

The Pensions Ombudsman's determination can be found via the link below. It relies on, and builds upon, the conclusions reached in the PFEW judicial review case: <https://www.pensions-ombudsman.org.uk/wp-content/uploads/PO-1327.pdf>

The Pensions Ombudsman upheld Mr Milne's complaint of maladministration because "GAD failed to identify its continuing responsibility to calculate appropriate factors." The determination is binding on Mr Milne and GAD only. Mr Milne will, as well as receiving any additional lump sum, be compensated (by the payment of interest) for the loss of use of money and for any tax liability that arises.

The final two paragraphs of the determination refer to its wider implications:

“Wider implications

174. As noted in paragraph 1, there are many other members of the Scheme with an interest in the outcome of this complaint. There are also members of the Police Pension Scheme with the same interest. They will have retired at different points in time, so the result in Mr Milne’s case may not exactly apply to them. (The factors are also age and gender dependent, of course.) However, the principles are the same.

175. In theory every one of those retired members could complain to the Pensions Ombudsman Service – though there would be severe practical difficulties if they did, as mentioned above. However, bearing in mind GAD’s recent detailed work on what the factors should have been in 2001, I have every hope and expectation that GAD, the Department and all other interested bodies, including those representing fire and police authorities, will swiftly jointly consider what steps should be taken to ensure that further determinations are not necessary. That may involve discussion as to where liability lies, particularly as following the division of liability above is likely to be administratively burdensome. However, the particular public sector pocket or pockets used to make payments from is of no significance to the members. So I strongly recommend that the question of where liability ends up should be regarded as secondary to the members receiving as soon as possible such payments as they will be due.”

What happens next?

The Pension Ombudsman’s website says that those interested in making a similar complaint should wait to see what the response to the determination is and notes that an appeal by GAD can be made within one month. If there is no appeal the various responsible bodies will have to decide how to deal with all the other cases.

We are aware from a recent GAD Technical Bulletin (see link below) that it will pass revised commutation tables, based on the “best reconstruction of the commutation factors which would have applied if factors had been reviewed and revised at 1 December 2001 and 1 December 2004... to the relevant government bodies.”

<https://www.gov.uk/government/publications/commutation-factors-pensions-ombudsmans-determination-a-gad-technical-bulletin>

Further, a HM Treasury spokeswoman has been quoted as saying:

“The government accepts the Pensions Ombudsman’s determination in full and will ensure that the directions made in relation to Mr Milne are taken forward in due course. The government recognises that there may be other individuals who are potentially affected by the principles set out in this determination. Firefighters’ and police pension schemes across the UK will work to identify such affected individuals and ensure that appropriate payments are made.”

<http://www.theactuary.com/news/2015/05/firefighters-receive-compensation-after-pension-calculation-failure-by-government-actuaries-department/>

We therefore expect the Home Office to apply the principles of the Pension Ombudsman's determination to police officers who retired from 1 December 2001 to 30 November 2006 and to make the necessary payments to them as soon as possible. I have written to the Home Office in these terms and will keep you informed of further developments as they happen.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Fittes', with a horizontal line extending to the right across the end of the signature.

ANDY FITTES
General Secretary