

Commutation Factors

We have received a number of emails in the last few days about the situation of officers who retired *prior* to December 2001, following the decision of the Pension Ombudsman that commutation factors used in both the Police and Firefighters pension schemes should be increased for those officers, who retired between 2001 and 2006.

I understand that many branches may also have received enquiries from members, which are all similar in nature and address the question as to the validity of commutation factors in use between 1982 and 2001. The enquiries appear to have been generated from a single source, which has selectively quoted from legal proceedings to substantiate the case that the Pension Ombudsman should have looked at commutation factors in use between 1982 and 2006 in his recent consideration and not just between 1998 and 2006 as is the case.

The history of the investigation by the Ombudsman goes back some years and was preceded by a judicial review taken by the Police Federation of England and Wales against the initial decision of Government announced in 2008 to backdate then new commutation factors to October 2007. That judicial review was successful and resulted in the factors being further backdated to 2006.

The Fire Brigades Union chose to challenge the introduction of the new firefighters' commutation factors using the Pensions Ombudsman. Complaints to the Pensions Ombudsman cannot be filed on a group basis by a trade union or representative organisation, so what the FBU did was to assist individual members to file complaints. The Ombudsman decided that, in view of the enormous volume of claims received from retired firefighters that he would select eight test cases, including Mr Milne whose case has now been decided. They were chosen to provide a spread of retirement dates. In the meanwhile, he discouraged the filing of further complaints, and said that he would regard time limits as suspended for other potential complainants.

I have spoken to the FBU's solicitors to find out what these retirement dates are, and I will let you know when I have them.

NARPO took legal advice, independent of the Police Federation at the time of the announcement through Thompsons solicitors and that advice was similar to that received by the Police Federation that the only way to progress this matter for the benefit of our members was through a judicial review.

NARPO became aware of the firefighters' complaints and were also made aware of complaints by police officers who retired in the same period. We were approached by some members to encourage others to make a similar complaint. We were however aware of the Ombudsman's decision to proceed on a test case basis

Despite our legal advice, NARPO chose to come to a similar understanding with the Pension Ombudsman in respect of the implications of any decision for our members, effectively protecting members' positions in respect of the alleged maladministration and putting our members into the same position as the firefighters, who retired in this period and who had not made a direct complaint. This also provided some assistance to the Pension Ombudsman's office as they would have had some considerable difficulty in handling the administration if every officer, who retired in this period, had chosen to complain.

We are grateful to those members, who instigated complaints but some of those members were not satisfied with the assurances we had received from the Ombudsman. They argued that the volume of complaints would put pressure on the Ombudsman and others to find in their favour.

We have always believed that it would be the quality of the facts of the case, independently reviewed by an independent Ombudsman, which would determine the outcome not the volume of complainants.

We chose to put faith in his office and his assurances rather than encourage further complaints. The Fire Brigades Union is of the same view. We believe that we have been

vindicated in that stance, as the Ombudsman has chosen to make a wide ranging determination on the basis of his consideration of a single lead case only.

We have, of course, been in correspondence with the Ombudsman throughout the period of complaint and we have regularly reported any significant developments throughout this period. This has include a regular update and link to the relevant part of the Pension Ombudsman's site on our website 'Police Pension' page at www.narpo.org, updates in NARPO News and in our Annual Report to Conference.

On the 15th May 2015, we were contacted by the Pension Ombudsman directly to be informed that his decision or 'determination' would be released that day. This was in recognition of our position and our offer to help to publicise the decision to those affected.

We updated our website immediately with this information. Members should note that the determination has used the retired firefighter's case as a lead case in this investigation but it is equally clear that the Pension Ombudsman has determined that there should be a direct read across to other firefighters and police officers, who retired within the period of complaint without the need for further complaint.

Government appear to have accepted this position as documents on our website supports. We are still pressing Government for a timescale to complete this task.

It is important to note that the complaint was made specific to 2001 and 2004 but that in his determination the Ombudsman does refer to earlier reviews of commutation factors covering the period 1982 to 1998. That is because of the nature of the complaint. It is a complaint of maladministration, the essence of the allegation being that the Government Actuary's Department should have conducted regular reviews.

It does not say that the Department's professional judgement was wrong when reviews were actually made, and the Ombudsman made it abundantly clear, in paragraphs 122 and 152 of the determination in Mr Milne's case, that he accepts that the decision as to what factors are appropriate is a matter for the Government Actuary's Department, and it is not for the Ombudsman or anyone else to second-guess that.

The Ombudsman records the fact that reviews were conducted in 1982, 1986, 1994 and 1998. No complaint has been made, and no complaint could be made, that these reviews were not sufficiently regular. The Ombudsman's comments about these reviews are not dissimilar to comments made during the Judicial Review proceeding taken by the Police Federation. In particular at paragraph 20, there is an explanation as to why, following the review of the factors in 1994, no increase in factors was recommended by the Government Actuary's Department.

Members who feel that they may have a cause for complaint should consider reading the Pension Ombudsman's findings in this case and in particular paragraphs 16 to 45, where he outlines the '**Material Facts**' of this case and paragraphs 122 and 152 to which I have referred earlier. A link to the Pension Ombudsman's determination can be found on our website 'Police Pensions' page which is within our 'Pensions' pages at www.narpo.org.

The basis of the determination is that he has found that the Government Actuary's Department was guilty of maladministration in that they were aware that an increase in commutation factors was justified both in 2001 and 2004 but did not notify the relevant Government Departments. The reviews should have been conducted regularly (every three years, according to the Ombudsman, who based his decision on this point on what the Government Actuary's Department said itself). It seems clear that this is not the case prior to 2001 from correspondence between the Government Actuary's Department and those Government Departments quoted at both the Judicial Review and in the Ombudsman's determination.

Should it prove to be necessary, the Ombudsman can proceed with the investigation of the other test cases to identify precisely when the 2001 review should have been conducted. The Fire Brigades Union's solicitors are investigating this issue, and will keep NARPO informed.

I will pass on news as it becomes available. But to avoid building up false hopes, there is no possibility that the Ombudsman will conclude that there should have been a review between 1998 and 2001, and there is no possibility that he will conclude that there should have been a review before 1998 other than the reviews that were conducted in 1982, 1986 and 1994. That is because the essential point he has already made is that the reviews should have been

regular. He has not criticised the Government Actuary's professional judgement when the reviews were actually conducted, and he has made it plain that he will not do so.

As I have said above complaints to the Ombudsman are individual in nature and cannot be made by an organisation on behalf of the individual. So any complaint about commutation factors before 1998 would need to be made by an individual, who would need to substantiate maladministration of the scheme along the lines of that found by the Ombudsman in respect of the period between 2001 and 2006.

Finally, this is a significant win for police pensioners and NARPO continues to monitor the situation and will report any significant developments, as in the past, through our website and NARPO News. In particular we will continue to press the Home Office and others to make payments to those affected by this decision at the earliest reasonable time.

Clint Elliott QPM

NARPO Chief Executive