



Scottish Police Federation

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Dear Colleague

Important Pensions Update for Some Retired Officers - Information

The Pensions Ombudsman has published his determination in a case concerning the lump sum paid to a firefighter on his retirement. The determination in this the case will be of considerable interest and will have relevance to many firefighters and police officers who retired in the 5 years between late 2001 and late 2006.

The full judgement can be read on the Pensions Ombudsman website <https://www.pensions-ombudsman.org.uk/determinations/2015/po-1327/firefighters-pension-scheme/>

In summary, the Ombudsman has determined that the pension commutation factors should have been reviewed twice between 1998 and 2006 when there were reviews, specifically on 1st December 2001 and again on 1st December 2004. Also, that the firefighter should now be paid any difference between what he did receive and what he would have received using the newly calculated figures; plus basic interest over the period since retirement and plus any tax liability which might be incurred as a result of receiving this payment.

This case was treated as a 'lead complaint' but the Ombudsman has stated that the principles are the same for other retired firefighters and police officers and has said he expects Government to make arrangements for payments to be made to others affected.

If this could apply to you, you need take no action at this stage. SPF cannot answer specific questions from individuals on this matter but will post all relevant information on this website as and when it becomes known.

Q: Is it now certain that back payments will be made?

A: 'Only death and taxes are certain.' We know to our considerable cost that nothing about pensions is cast in stone and the only sensible advice is to wait until it's in your bank account – or not, as the case may be.

The following extracts from the judgement reinforce the need for caution;

151. An opportunity to review the commutation factors was lost in 2001/2 and then again between 2002 and 2004. Mr Milne retired in November 2005. The obvious remedy is that Mr Milne should be put in the position he would have been in had those reviews taken place – that is, had his cash sum been calculated using the factor that would have applied to him on his retirement.

152. I make no finding as to what the factor would have been – that is entirely a matter for GAD's judgment (it is not, for example, open to me to direct that an independent actuary should be consulted).

Nor do I find that the factor would inevitably have been higher than the factor that was used, although it seems likely.

153. If the factor would have been higher, then the resulting payment will amount to late payment of the balance of the cash sum that Mr Milne should have received in 2005. Accordingly Mr Milne should receive interest.

154. I have every reason to hope that the payment before interest will be treated for tax purposes as it would have been had it been paid when due (that is, as free of tax). In the event that HMRC consider it taxable, then Mr Milne will need to be compensated in the sum of any tax liability he has.

Q: Who might this apply to?

A: This could make a positive difference to the lump sum which should have applied to officers who retired on or after 1st December 2001 and before 1st December 2006.

Q: Why those dates, 1st December 2001 and 1st December 2006?

A: Before the first date, the commutation tables applying following the 1998 review have been deemed appropriate. From the second date, the tables reviewed in 2006 were applied. The Ombudsman has determined that reviews of the tables should have taken place between these dates.

Q: It seems this might apply to me, what should I do at this stage?

A: It is possible there will be an appeal to the court against the decision in the firefighters case – normally this would be within a month. If there is no appeal, the other bodies will have to decide how to deal with the other cases.

We will try to publish further advice as and when it becomes available but at this stage it seems that no action on your part is necessary.

Q: If this happens when are payments likely to be made?

A: We don't know.

Q: If this happens how will payments be made?

A: We don't know. In the event that a liability is found, there is an additional consideration as to who is liable for that shortfall. This is laid out in the extract below;

110. If there is a shortfall, a period of time should be allowed for cross-Government agreement as to how the shortfall should be made good and by whom. Only if agreement is not reached should the Pensions Ombudsman consider which of the persons responsible for the management of the Scheme should make up the shortfall...

END

Yours sincerely



Calum Steele
General Secretary