

Police and firefighters' pension schemes

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Since the Pension Ombudsman's publication in May 2015 of [Mr Milne's Determination](#) for the Firefighters' Pension Scheme regarding commutation factors, there have been emerging enquiries and complaints about the Firefighters' Pension Scheme and also the Police Pension Scheme.

The Pensions Ombudsman, Anthony Arter, sets out his response to some recurring themes:

Point 1. Mr Milne has received a lump sum payment, and members of both schemes wish to know if they will also get a lump sum payment like Mr Milne. They are concerned that even if they are eligible their individual authority might not agree to pay it.

Response: The Government Actuary's Department (GAD) has assured me and confirmed in an announcement on its [website](#) that the Government has considered the principles in Mr Milne's Determination and their application to members of both the Police and Firefighters' Pension Schemes. The Government has accepted the Determination and decided that appropriate redress will be paid.

Those affected are members of the Firefighters Pension Scheme who retired between 1 December 2001 and 21 August 2006, and members of the Police Pension Scheme who retired between 1 December 2001 and 30 November 2006.

GAD has prepared tables for use in the calculation of redress; and detailed guidance for each scheme to enable scheme administrators to review each case and access both the appropriate form of redress and its amount.

There are potentially some 34,000 individual cases to process. For more information please click on the following links.

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 my predecessor, Tony King, said in Mr Milne's Determination (see paragraph 174).

My predecessor had every hope and expectation that GAD, the Department for Communities and Local Government, and all other interested bodies, including those representing the fire and police authorities, would quickly and jointly consider what steps should be taken. I am satisfied that this is being done, however because complex actuarial, policy, funding, and taxation issues have to be worked out, and the numbers affected are so large, it will take a

little time to sort out. So I have decided that at present I will not deal with enquiries or complaints about the time it is taking, or suggestions that the authorities will not pay.

Point 2: The commutation figures produced by GAD in 1998 (and other dates) are said to have been incorrect.

Response: My predecessor said at paragraph 152 of Mr Milne's Determination, "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)".

GAD in performing the function of calculating actuarial factors, which necessitates the exercise of an actuarial judgment, is not a 'person' concerned with the administration of the Firefighters' Pension Scheme, so it is not an 'administrator' for the purposes of my jurisdiction. In any event, any complaint is likely to be out of time. A complaint should be made within three years of the complaint occurring or within three years from when the member knew or ought to have known of its occurrence.

The Police and Firefighters' Pension Schemes has attracted widespread publicity, especially since 2009 when the Court pronounced its judgment about the Police Pension Scheme. I envisage no basis for concluding that such a complaint was made within time or indeed that I could reasonably extend the time limit. So unless good reason can be shown, I will not deal with enquiries or complaints suggesting that different actuarial factors could have been used.

Point 3: GAD has said that new commutation factors will be produced for December 2001. Some members say that the date is wrong for those people who retired prior to that date.

Response:

My predecessor said in Mr Milne's Determination, paragraph 64, "The question is simply what commutation tables would have been in place if the reviews that GAD itself had advised should be undertaken had in fact been undertaken. The answer is that the tables would have been reviewed in 2001 and 2004 with effective dates in 2001/2 and 2004/5".

And further, at paragraph 122, "I can therefore consider whether GAD's conduct in relation to the preparation of tables of commutation factors amounted to maladministration and whether Mr Milne suffered any loss as a result. My concern is not with GAD's professional judgment in determining whether and **when factors** should change, but with the administrative matter of its reasonable actions in the context of Rule B7(3)".

GAD says in attempting to reconstruct events, it supposed in all likelihood it would have analysed the demographic experience of the relevant schemes. Namely the statistical evidence of the rates of mortality experienced by members of the schemes, because mortality assumptions are key in calculating commutation factors, using data collected over successive periods of 12 months ending on 31 March. GAD says it would have taken into account also general population mortality (e.g. publication of the Continuous Mortality Investigation Report 20 on 1 July 2001) and developments in relevant interest rates. GAD's selection date of 1 December 2001, it says, recognised the time needed to collect, review, and collate the membership data, complete the analysis and calculate the commutation factors.

I consider that any selection of a date will result in a cliff edge which may lead to those retiring before the selected date to feel aggrieved. Any decision I might make about the month chosen by GAD could have a detrimental effect on others who cannot make representations and are not bound by any determination I make. Moreover, while a different month might result in an injustice for some, it does not follow that the exercise of judgment applied in choosing a month, amounts to maladministration. There is nothing to suggest that the decision taken by GAD is one that I should interfere with (assuming that I could). Accordingly, unless good reason can be shown, I will not deal with such enquiries or complaints.

Point 4: My predecessor directed that GAD should pay interest should it be established that Mr Milne was due a further payment from his retirement date. The issue is about the date interest should be calculated.

Response: I believe that the rate for the time being quoted by the reference banks means the rate should alter as it changes over time. This is fair to all the parties.

Point 5: To whom should I make enquiries or raise a complaint; should I bring this to you?

Response: No. Please do not send individual complaints or enquiries to the Pensions Ombudsman Service. While I appreciate the importance of the case I do not intend to respond to such approaches. You should first liaise with the relevant persons e.g. your employer, or administrator. If you are not satisfied with the response I would urge you to discuss the matter with the [Pensions Advisory Service](#).

Anthony Arter
Pensions Ombudsman

Update: 3 July 2015

The Ombudsman's determination issued in May ended our formal involvement in the case. Various parties are continuing to liaise on this matter. It may be some weeks before individuals hear the outcome of their case.

In the meantime please do not send individual complaints or enquiries about the issue to us. While we appreciate the importance of the case, unfortunately, we do not have the resource to respond to individual enquiries on this matter.

Final decision published: 15 May 2015

We have published the [final decision](#) on the complaint made by Mr Milne against the Government Actuary's Department (GAD) about the factor used to convert his pension into a

lump sum at retirement and whether the factors should have been reviewed earlier than they were.

Tony King, the Pensions Ombudsman, has decided in Mr Milne's favour. The Pensions Ombudsman decided that the factors should have been reviewed between 1998 and 2005, when Mr Milne retired. He has directed GAD to assess what the factor would have been in 2005 if reviews had taken place and to notify the administrator of the relevant part of the Firefighters' Pension Scheme so that they can recalculate the cash sum. He also directed GAD to pay interest on any additional cash sum, from Mr Milne's retirement date.

Background

Mr Milne is one of a small number of retired firefighters who had made similar complaints to the Pensions Ombudsman Service. There are many more who would have complained, but were asked not to pending the outcome of Mr Milne's complaint. A similar issue arises in the Police Pension Scheme and so the outcome is also relevant to retired members of that scheme.

The complaints followed a 2009 High Court decision that in the Police Pension Scheme GAD was under a statutory duty to produce tables that resulted in "actuarial equivalence". The firefighters' scheme has identical rules in this regard. Previously GAD had believed that it was only required to review factors at the request of relevant Government departments. The outcome of that case was that new tables were introduced with effect from 2006. It did not deal with periods before then.

What does this decision mean for members of the firefighters' and police schemes?

Strictly our decision only applies to Mr Milne. It is binding between him and GAD, unless there is an appeal to the court on a point of law.

Mr Milne was a member of the scheme in Scotland. Firefighters are employed by Fire and Rescue Authorities in England, Wales and Northern Ireland, and by the Scottish Fire and Rescue Service in Scotland, though these arrangements have changed over time. So the administration of the scheme involves a number of different bodies as well as different departments in Westminster and the devolved administrations.

However, the Pensions Ombudsman said in his decision that he hoped that all the relevant bodies would swiftly take steps to deal with the position of other affected retired firefighters and police so that it would not be necessary for their complaints to be pursued.

I could make a similar complaint. What should I do?

You should wait to find out what the response to the Pensions Ombudsman's decision is.

It is possible that there will be an appeal to the court against the decision in Mr Milne's case. If there is, then it should be known about quite soon as there is a normal time limit for appeals of a month.

If there is no appeal, then the various bodies will have to decide how to deal with all of the other cases. The Pensions Ombudsman Service is completely independent of them and so does not know whether or not they will voluntarily pay additional cash sums where applicable.

When we know what the response to the decision is, we may publish further information on our website. You may also want to stay in touch with your union, if a member.

How many retired firefighters and police are potentially affected?

We do not have the numbers, but the factors were not reviewed between 1998 and 2006, so anyone who retired in between may be affected if they are reviewed. However, it does not follow that a review will result in a different factor and a higher cash sum – particularly in the earlier years.

Since the determination was published, the Government Actuary's Department have released a Technical Bulletin.

We will release a further update when we know what, if anything, other people affected by the same matter need to do.

Update: 29 April 2015

We have now received responses from the parties to the provisional decision that we issued earlier in March on the lead case we are investigating, and are now in the process of assessing them. We believe that we now have all the information we need to make a final determination and we expect to publish it in May.

Some people have asked if the publication of the Ombudsman's findings has been delayed to wait for the outcome of the general election. The answer is "no". In making decisions we are completely independent of government and party politics. We have not discussed the issue with politicians of any party, nor have they tried to discuss it with us.

Others have asked whether the fact that the present Ombudsman, Tony King, ends his time in office in a few weeks is likely to cause any further delay. Tony King has every expectation of being able to complete the case before he stands down.

Finally, when the determination is made public, we intend to publish guidance on what action, if any, other retired police officers and firefighters who may be affected by the same issue need to take.

Update: 16 March 2015

GAD and the retired firefighter who is the lead complainant have now been sent the Ombudsman's Preliminary Conclusions. Essentially these set out the material facts of the

case, any submissions made by the parties and the Ombudsman's view of the outcome. The parties will now have a little time to prepare responses to what has been said.

The next stage depends on the responses. If the Ombudsman does not think the submissions make a material difference to the outcome he will issue a Final Determination. The alternative, which is relatively unusual, would be for amended Preliminary Conclusions to be sent to the parties so that they can respond. We expect to be able to publish a further update in four to six weeks.

As we have said previously, the Preliminary Conclusions will remain private to the parties to the complaint (this is our standard procedure). The Final Determination, when issued, will be a public document.

Additional information: 14 January 2015

We've been asked a few questions about the process. We hope these answers will be helpful.

Why will the provisional decision not be a public document?

At the moment we are dealing with just one complaint from a single member of the firefighters' scheme. Each complaint that we investigate is only between the person who has made the complaint and the other parties to it. We don't have power to deal with "group complaints" or "class actions". (We explain in the answer to the next question what this means for other members.) The provisional decision will set out what we think the outcome of the one complaint will be. The parties to it will have a chance to comment on it. There would be no point in asking for comments from other members of the two schemes at that stage – because the final decision will not be binding on them. It would also make the process unmanageable. The final decision, which might be different to the provisional decision, is the one that will be published. It will become a strong indicator of how the other cases would be decided, as we explain in our next answers.

Does this mean I won't have a say?

No. Everyone who has complained to us will have an opportunity to have their say, if it's necessary and if they want to. We hope that it won't be necessary in most cases, though.

What will happen when we have made our decision on the current case depends on its outcome.

If the current case is upheld (and if there is no subsequent appeal to the courts) the pension schemes and/or other relevant bodies may decide to take steps that would satisfy the other scheme members who think they are affected. If they do not take those steps, which we hope would be unlikely, then we would begin to look at complaints from other members.

If the current case is not upheld then we will explain to each other scheme member who has made a similar complaint that we think the outcome in their case is likely to be the same. We would give them an opportunity to say why they think their case is different before we reached a final decision on it. (And if we agree, the outcome could be different).

I didn't make a complaint. I was asked not to pending the result of the first case. Should I make one now?

No. The best thing to do is to wait and see what happens after we have decided the first complaint. As in the previous answer, if it is upheld, your own situation may be resolved satisfactorily. If it isn't upheld, then it is unlikely that a complaint from you would be if your circumstances are similar. You would be able to make a complaint to us, but we'd expect you to explain what you thought justified a different outcome.

Why is this taking such a long time?

When we first made a decision to investigate the complaint, the Government Actuary's Department (**GAD**), against whom the complaint is, objected on the grounds that we did not have jurisdiction over them. They were entitled to do that: the position was not completely clear in law. GAD took the issue to the High Court which found against them; they appealed to the Court of Appeal which agreed with the High Court. (The courts did not find GAD 'at fault', just that they were within the Ombudsman's jurisdiction.)

That took a very long time, but once it was over we could begin an investigation into the merits of the complaint. GAD made some very detailed submissions about what had occurred and the legal position. We had to consider those and then take further submissions. We are, we hope, likely to be making a final decision in Spring. It is worth mentioning, though, that either side would be able to appeal the final decision to the Court on a point of law. If that happened it would obviously prolong matters.

Update: 19 December 2014

In our October update we said that we hoped to be able to send a provisional decision to the parties by the end of November and that we would then have a clearer idea of when the final determination would be made. Matters have taken slightly longer than we had hoped, but the parties' comments on preliminary matters, which we mentioned in the October update, have now been received and while we thought a provisional decision could possibly be issued later this month, we now expect to do this early in the New Year, with a more informative update to follow later in 2015.

The provisional decision is not a public document and will only be sent to the parties to the complaint. It will set out the Ombudsman's proposed findings on the lead complaint and directions (if any). The final determination will be a public document.

We appreciate the significance of the issue being considered and that it is of interest to a considerable number of people. Indeed that is the main reason that it is taking so long to deal with. We are grateful for your continued patience.

Update: 2 October 2014

We appreciate that there is considerable interest in the progress of the lead complaint that we are investigating and in the outcome given the effect that this will have on other retired members.

However, the issues concerned need careful consideration. They are complex and the consequences of the Ombudsman's decision potentially very significant for the affected parties.

We are currently obtaining the parties' comments on certain preliminary views expressed by the Ombudsman on the lead complaint.

This is an important procedural step and we expect that the next step will involve the issuing of a comprehensive preliminary decision by the Ombudsman with his views on all relevant aspects of the lead complaint and the likely outcome.

We hope that this will happen in November and at that stage we will be able to say when we envisage that the complaint will be finally determined.

Update: 2 March 2014

We are investigating a lead complaint concerning the past factors used to convert pension into lump sums at retirement and whether they should have been reviewed earlier than they were.

We expected that a preliminary decision would be issued by the Ombudsman in May with his views on the likely outcome of the lead complaint. This is a confidential document which allows the parties to comment on the Ombudsman's proposed decision before it is made final.

This is taking a little longer than we had hoped and we will provide a further update on the case when we have some more information.

Background information and previous updates

April 2014

We have received GAD's submissions in response to that complaint, the lead complainant has replied to these and further comments have been obtained. It is difficult at this stage to say when the matter will be finalised as this depends on a number of factors.

July 2013

The judicial review instigated by the Government Actuary's Department (GAD) was due to be heard on 14 June and the judge gave his judgment orally the following day. He said that GAD is fully within our jurisdiction in relation to the complaint made by a firefighter about commutation factors.

However, the judge also said that GAD could wait to see the written version of his judgment before they had to decide whether to appeal to the Court of Appeal. The written judgment has now been published and GAD have applied for permission to appeal to the Court of Appeal. It is likely to take a few weeks before the court decides whether or not to grant permission. In the meantime we will not be proceeding with the firefighter's case.

There is still no need for members of police or firefighters' schemes to take any further action and as we have said in previous updates, we plan to use complaints from the ones we have already received as "lead" complaints.

June 2012

In our update of 21 May 2012 (see "News Archive") we explained that the judicial review instigated by the Government Actuary's Department (GAD) was due to be heard in June.

The hearing was on 14 June and the judge gave his judgment orally the following day. He said that GAD is fully within our jurisdiction in relation to the complaint made by a firefighter about commutation factors.

However, the judge also said that GAD could wait to see the written version of his judgment before they had to decide whether to appeal to the Court of Appeal. As this should not take much longer (perhaps a few weeks) we will wait until we know whether GAD intend to appeal before proceeding with the firefighter's case.

There is no need for members of police or firefighters' schemes to take any further action at the moment. As we said in our last update, we plan to use complaints from the ones we have already received as lead complaints.

May 2012

If you are a retired member of either the firefighters' or police pension schemes you may be aware of an issue concerning the past factors used to convert pension into lump sums at retirement and whether they should have been reviewed earlier than they were.

We have received a large number of individual complaints about the matter. At present the question of to what extent we can deal with a complaint from a firefighter against the Government Actuary's Department is the subject of judicial review proceedings. All the other complaints are currently "parked" awaiting the outcome.

The judicial review is due to be heard in mid June. Although it deals with the firefighters' scheme, a similar issue would arise under the police scheme. If you are a member of either the police or firefighter's schemes who has not written to us, there is no need to do so. If we are able to investigate, then we will use complaints from the ones we have already received as "lead" complaints. We plan to provide a further update when the court has dealt with the judicial review application. This may not be immediately after the hearing as it sometimes takes time for judgment to be handed down.

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