

Police and firefighters' cases – March 2016

Since my predecessor'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 similarly the Police Pension Scheme). In my announcement on 24 August 2015, published on this website, I responded to a number of recurring themes. This announcement responds to a further theme that has arisen.

By way of background, affected individuals are or will be receiving additional payments further to directions set out in Mr Milne's Determination. These payments comprise an additional lump sum payment and an interest payment.

The recent theme that has arisen is that the interest paid on the additional lump sum payment may be said to not adequately compensate an individual for losses arising as a consequence of not having had the additional lump sum available to them at retirement. For example, an individual might claim that had they had the additional lump sum payment at retirement they would have purchased an asset in order to produce an income and achieve significant capital growth in the subsequent years (and into the future). In such circumstances, the individual's claim is that their financial loss is greater than the interest payment for late payment of the additional lump sum they have received.

The question that arises out of this theme is whether I will consider complaints from individuals who claim that despite the additional payment they remain out of pocket.

The Service is independent and established by law to investigate complaints about pension administration. Under s146 of the Pensions Scheme Act 1993 I have discretion whether to investigate a matter.

It is my decision that I shall not investigate complaints about the above theme.

The premise of my decision arises from public policy considerations. The making of additional payments to my mind draws a line under the substantive complaint which was about the review of commutation factors. The Government has put in place significant funding to provide the additional payments. For example, I understand that last month it sought a further £360m to ensure that payments to (circa) 21,000 affected retired police officers are made¹. Significant steps and arrangements have been put in place to apply the directions relating to Mr Milne to all affected individuals. As a matter of perspective and proportionality I consider that the matter of compensation i.e. interest payments, has been dealt with.

¹ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-02-05/HCWS513/>

It is inevitable that some recipients of additional payments will feel aggrieved as to the amount they receive. Others, by contrast, will feel that the additional payment represents a windfall. Had the additional lump sum payments been paid to individuals upon their retirement, it is conceivable that some individuals would have invested and gained returns in excess of the interest payments now offered. However, it is also conceivable that others could have made investment decisions that subsequently proved to be to their detriment.

Had my predecessor been able to deal with Mr Milne's complaint on a class action basis a settlement for all affected individuals might have been addressed. I need to take account that further litigation on these schemes could adversely affect others. As things stand, accepting such complaints would mean that I could potentially receive thousands of complaints, all of which would require me to individually and specifically consider what an individual would have done with a sum of money had they received it a decade or more ago. Experience in dealing with such complaints is that it is usually very difficult to ascertain, on the balance of probabilities, what an individual would have done with a sum of money had it been in their possession many years previously. Although I do not know what evidence would come before me in individual complaints, previous case experience suggests that it is not compelling and invariably scant because of the passage of time and so such complaints are usually not upheld. If success is less than likely and there is no public interest point, I would also be concerned about investigating such complaints bearing in mind the finite resources available to my office. As my office is a public body I should act in a way that is proportionate.

However, I will take this opportunity to refer to my announcement of 24 August 2015 (point 1) where I said, at the time of writing, that I would not look at complaints about non-payment of additional payments. I had taken that view because steps had yet to be taken by the Government in making the funding provision. As steps have now been taken to facilitate additional payments, my view is that complaints about non-payment would be something that I could consider. I confirm that I will consider such complaints, should they arise.

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March 2016