

**TYNE AND WEAR FIRE AND RESCUE AUTHORITY**

**Item No 4**

**HUMAN RESOURCES COMMITTEE: 12 OCTOBER 2015**

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**SUBJECT: COMMUTATION PENSION CLAIM (MILNE v GOVERNMENT  
ACTUARY'S DEPARTMENT) - THE OMBUDSMAN DETERMINATION**

**JOINT REPORT OF THE CHIEF FIRE OFFICER, THE DEPUTY CLERK TO THE  
AUTHORITY, THE FINANCE OFFICER AND THE PERSONNEL ADVISOR TO THE  
AUTHORITY**

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**1 INTRODUCTION**

1.1 The purpose of this report is to inform members of the outcome of the Pensions Ombudsman determination regarding the case of Milne v Government Actuary's Department (GAD) that will affect the commutation factors of members of the Firefighter Pension Scheme 1992 (FPS) who retired between the dates of 1 December 2001 and 21 August 2006.

**2 BACKGROUND**

2.1 Members of the FPS have the right sacrifice part of their pension in return for a cash lump sum on retirement. The lump sum is calculated by multiplying every £1 sacrificed by an aged linked commutation factor set by GAD.

2.2 GAD had carried a review of the commutation factors on 27 July 1998 and at that time GAD recommended that a review of the factors should take place every 3 years. However no review took place in 2001, a further review was not completed until 1 October 2007 (with the new factors being retrospectively applied as of 22 August 2006).

2.3 Mr Milne, who retired in 2005, brought a complaint in 2010 to the Ombudsman complaining that GAD was guilty of maladministration in failing to ensure that the tables were reviewed and updated regularly, and that he had suffered loss as a result.

2.4 The Pension Ombudsman upheld the complaint brought by Mr Milne, and stated that GAD should have carried out reviews between 1 December 2001 and 21 August 2006.



- 2.5 In light of this decision, all fire pension members who retired between 1 December 2001 and the 21 August 2006 are due to an increase to their original lump sum payment, plus interest due to the delay in payment.

### **3 PROCESS**

- 3.1 It is intended that Sunderland City Council (SCC) acting as the Pension Administrators of the Fire Pension schemes on behalf of the Authority will manage the process of recalculation of lump sums and make payments to effected members.
- 3.2 An analysis carried out by SCC identified 221 members who retired between 1 December 2001 and the 21 August 2006 will be affect by the determination.
- 3.3 GAD has provided a calculator to enable Pension Administrators to recalculate the lump sum payment due to effected members on a bulk basis.

### **4 RISK MANAGEMENT**

- 4.1 A risk assessment has been undertaken to ensure that the risk to the Authority has been minimised as far as practicable.

### **5 FINANCIAL IMPLICATIONS**

- 5.1 A costing exercise carried out by SCC on the 16 September 2015 estimated the revised lump sums and interest payable is likely to be almost £3.4m. This initial assessment will be subject to change; however as at that point the information required for all retired members affected was not readily available.
- 5.2 On 24 July 2015 HM Treasury confirmed they had agreed with the Department for Communities and Local Government (DCLG) that the HM Treasury will fund the interest and tax element of the recalculations through the consolidated fund.
- 5.3 Furthermore, it was confirmed that DCLG will absorb the lump sum element, though potential affordability issues have been raised.
- 5.4 The HM Treasury expects the DCLG to make the required funding available to FRAs to enable them to make any necessary payments.
- 5.5 Whilst, the financial implication of these payments will be fully funded via central government, LGA have informed pension administrators not to make any payments to employees until the funding mechanism to FRAs has been finalised.

## 6 EQUALITY AND FAIRNESS IMPLICATIONS

6.1 There are no additional equality implications in addition to those covered this report.

## 7 HEALTH AND SAFETY IMPLICATIONS

7.1 There are no health and safety implications in respect of this report.

## 8 RECOMMENDATIONS

8.1 The members are recommended to:

- a) Endorse the content of this report;
- b) Receive further reports as appropriate.

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## BACKGROUND PAPERS

The under mentioned Background Papers refer to the subject matter of the above report:

- Pension Schemes Act 1993, Part X - Determination By The Pensions Ombudsman

