

NATIONAL ASSOCIATION OF RETIRED POLICE OFFICERS

NARPO House, 38 Bond Street, Wakefield, West Yorkshire, WF1 2QP

Tel: 01924.362166 Fax: 01924 372088

Vat Reg No: 656.2938.04

BRANCH CIRCULAR 36/08

To: All Branch Secretaries
NEC Members

29th August 2008

COMMUTATION FACTORS

Branch Circular 21/2008 referred to new commutation factors and outlined the NARPO position to them. There were some significant differences in the introduction of these new factors, when compared to previous changes.

The first and most significant change is that these new factors are 'unisex' figures; the factors are the same for men and women. Both men and women gain from the new figures but the new factors for men mean that there are substantial increases in commuted lump sums, in excess of 20% increases for some, if they retired and chose to commute after the introduction date for the new factors.

The second difference is that, unusually, the commencement date was backdated to 1st October 2007. A consequence of backdating has been that many members have received an unexpected windfall amounting to many thousands of pounds, if their first day of retirement was before the announcement but on or after the 1st October 2007 and they had chosen to commute. It is clear that many members are angry to have missed out on these changes.

The Commutation factors have also changed in one other significant way. They reduce on a monthly basis not annual after age 50 years.

Our offices at Wakefield have been inundated with regular questions about our position in respect of this situation. This despite the fact that we have had an entry on our web site about this matter since shortly after the announcement and featured a piece on the subject in the August edition of NARPO News.

We are seeking independent legal advice and met with counsel on 1st August 2008 to discuss all the issues raised by members in respect of this matter. From our discussions with counsel and what has subsequently transpired, we are sure our advice is similar to that of the Police Federation. They announced on 12th August 2008 that they are seeking a judicial review of the date of implementation of the new factors. This judicial review seeks that the date of implementation be put back to December 2006, the date the GAD first produced the report upon which the new figures are based. We are very strongly supportive of the actions of the Police Federation in this matter.

Included in the large volume of member enquiries, there have been a significant number making comment on issues outside the scope of the Judicial Review. We have asked counsel to consider all these points with a view to receiving a comprehensive written opinion, which we can publish at a suitable time.

We have, however, had quite a few letters about registering alleged discrimination complaints. These are all apparently based on an email from a former GMP Officer, Steve Clough, who has apparently also advised that all those who send these letters contact NARPO to register their complaint.

We had been contacted in August by Steve Clough but subsequent to our meeting with counsel. We received an offer from him that he would provide us with legal advice on the 'commutation' question. We declined this offer. Despite this, as we understand it, he produced his own advice including a draft letter to send to Chief Constables.

This 'advice' has been widely circulated.

We have been sending the below reply or similar to those who have sent us copies of this letter:-

Hi

I am not sure of your personal circumstances but the NARPO position is on our website at www.narpo.org - click on Tensions' and we also did a piece in the August NARPO News. We are taking counsels advice as both these pieces suggest.

In addition to taking advice we have been in close regular contact with the Police Federation over this issue and they announced on 12th August 2008 that they are seeking a Judicial Review over this matter in particular in respect of the date of commencement of the new factors. They are trying through this to get the commencement date moved back to December 2006, the date the GAD produced these new figures to Government.

So far as your letter is concerned, it is a matter for you if you have sent it to your former force, but the information contained in the letter is factually incorrect. In response to very recent correspondence from Mr Clough, the originator of the 'advice', we have already informed him of this fact.

There are no defined periods in which the GAD has to produce new figures. This is bound to affect the 'legal' conclusions arrived at in the correspondence. Perhaps the originator of the letter is in better position to clarify how he arrived at his conclusions but it is not in line with our understanding of the current legal position.'

The letter and 'advice' found its way to the Federation and we have below included the response the Deputy General Secretary of the Constables Central Committee, Ernie Hanrahan provided to one of his members who had enquired about the Federation position in respect of this advice.

'Subject: Commutation Factors.

Thank you for your email in respect of Steve doughs' legal opinion regarding the Home Secretaries announcement to Conference regarding the changes made to the actuarial tables. I will have to make comment upon the assertion in his letter that the Home Secretary recognised an 'anomaly' in the commutation amounts between females and males, as if this anomaly had only just been discovered! Unfortunately the disparity between male and female commutation factors had been in existence for over forty years, and was intentionally factored into the pension scheme by actuaries. It was made on the basis that the school of thought was that women were at that time living longer than men so their commutation was increased so as to 'properly' compensate them for giving up a quarter of then-pension.

The Police Federation did over many years attempt to right this wrong, howsver it was thwarted by the fact that most other final salary pension schemes had similar actuarial consideration in their schemes. In 1991 many male members may recall, that thousands of them, on advise from the federation, made claims to the then Industrial Tribunals, against their chief officers, claiming sexual discrimination as they did not receive the same commutation factors as women. We were not the only body to do so, many others did as well. These claims (over 100.000) became 'lumped' together and became the 'Colorol' case that went all the way to the European Court of Justice where in 1995 that court ruled that it was lawful to discriminate within actuarial tables. Quite simply put the Police Federation has, for many years, been seeking legal advice from some of the best solicitors and leading counsel in the employment field in respect of this issue, none of them, even now, advise in this matter as Steve Clough does.

You may be aware that on the 12th August the Police Federation lodged an application at the Administrative Court seeking to judicially review the decision of the Home Office in respect of the timing of the back dating. However our substantial legal team in the matter, having reviewed all relevant data, have concluded that there would be no basis in law for the new commutation figures to be backdated further than 1st December 2006. Nor have they advised, no doubt on the back of the ECJ Colorol decision, that the best remedy for this matter would be way of individual application to the Employment Tribunals.

The matter as to whether or not individual members should make such applications before 20* August is a matter for them, it is unlikely that the Federation would at this time, fund any such claims.'

There is nothing in the comments from Ernie Hanrahan with which we would disagree and our legal advice, despite being completely independent of the Federation advice, seems to be very much in line with his comments and the advice of the Federation legal team. The NARPO position in respect of the letters to Chief Constables is also somewhat similar to the Federation's position. We are not in any position to support individual or collective claims.

I hope this information, provided to update you on the current position, is helpful.

Clint Elliott

Deputy CEO