

PRIME MINISTER ^①

cc Mr Owen

TSRB Pensions

At the meeting on 9 February it was agreed that part of the problem arises from the fact that final salary is defined differently for the different groups. Sir Robert Armstrong was asked to prepare a paper setting out what would be involved in putting all groups on to a basis similar to that of the Civil Service so that the precise day of retirement had less effect on pension. His paper is attached.

Changes could be made to the schemes for judges and senior officers but there are drawbacks. In the case of judges, legislation would be required and there would be a worsening of the terms of the judicial pension scheme. The Lord Chancellor is likely to object if acceptance of the deal for recently retired judges is made conditional upon a worsening in the terms for future retiring judges. In the case of the Services, a scheme has been identified which would eliminate the "cliff edge" without making the scheme as a whole less attractive, but it would require significant administrative changes which can only be justified as a precaution against a possible recurrence of the present problem.

Thus a deal in which the Lord Chancellor and the Secretary of State for Defence are given what they want in return for accepting new arrangements in the future does not seem to be a runner. We might, on merit, want to change the future arrangements but the difficult choices for the present problem remain.

I propose to set up another meeting for which Cabinet Office will provide a brief but unless the Chancellor decides

/to withdraw

to withdraw on the understanding that in future cases it will be made clear that there will be no back-dating another impasse seems likely with the matter being referred to Cabinet.

Agree a meeting as the next step?

AT

Yes mf

27 February 1984

MR. BUTLER
MR. COLES
MR. TURNBULL ✓
MR. FLESHER
MR. BARCLAY
MR. ALISON
MR. SHERBOURNE

I have arranged the following meeting with
the Prime Minister:-

Subject T.S.R.B. Pensions

Date 7 March

Time 1.30

Venue No. 10

Person/people invited Ch. Ex., Hd. Chereethr
* W.P.P., S/D, H.P., S/D, P.

Added Ministerial attendance

Briefing

- a) I have commissioned briefing from
- ✓ b) Could you arrange briefing if necessary
CO will provide .
- CR

* Hd. Gov. write can't make it

Caroline Ryder

CONFIDENTIAL

cc ~~NO~~

B

Ref. A084/636

MR TURNBULL
✓

TSRB Pensions

As your letter of 9 February to Mr Kerr records, I was asked at the meeting on that date under the Prime Minister's chairmanship which discussed the consequences for pensions of the Government's decisions on the 1983 TSRB recommendations to prepare a factual note on certain matters. This is now attached. It has been agreed with officials of the Lord Chancellor's Department, the Treasury, and the Ministry of Defence.


2. I am sending copies of this minute, with attachment, to the Private Secretaries to the Lord Chancellor, the Chancellor of the Exchequer, the Lord Privy Seal, the Secretaries of State for Defence and Social Services, and Lord Gowrie.

RIA

ROBERT ARMSTRONG

27 February 1984

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ECON POL: TSRS  PFS

COMPTON

PENSIONS OF TOP SALARIES REVIEW BODY GROUPS

Note by the Secretary of the Cabinet

INTRODUCTION

The Government's decisions on the salary recommendations in Report No 19 of the Top Salaries Review Body (TSRB) have implications for the pensions of those members of the groups covered by the TSRB who retire during 1983 and 1984. It has been represented that because pensions are related to final pay the staging of the pay award has had severe effects on those retiring before 1 January 1984, and especially on those retiring between 1 April 1983 and 1 August 1983; and that in some cases those retiring during this latter period would receive smaller pensions than those who had retired earlier.

2. These matters were discussed at the meeting of Ministers on 9 February under the chairmanship of the Prime Minister. The meeting identified two possible approaches. One, known as 'Option 2' was to backdate the salary awarded from 1 August 1983 to 1 April 1983 for pension purposes. The other, known as 'Option 5', was to take no special action. The Prime Minister suggested that the apparent anomalies in the situation, which Option 2 was intended to mitigate, arose at least in part from the different methods adopted for each of the three TSRB groups of determining final salaries for pension purposes. The meeting agreed that there was a strong case in principle for putting the groups on to the same basis, but thought that more information was needed before this could be resolved.

3. I was accordingly asked to prepare a factual paper setting out the pension arrangements and salaries of the groups concerned and examining what would be involved in bringing the method of determining the final salary for pension purposes of judges and senior officers of the Armed Forces into line with other TSRB groups.

4. This note carries out that remit. It has been agreed with officials of the Lord Chancellor's Department, Treasury, and Ministry of Defence. It is divided into three sections:

- i. a statement of the current position;
- ii. an analysis of what would be involved in changing that position;
- iii. other considerations and conclusions.

SECTION I: THE CURRENT POSITION

The TSRB Groups

5. There are three groups involved:
- i. the higher civil service;
 - ii. the judiciary;
 - iii. senior members of the Armed Forces (Major Generals and equivalent and higher ranks).

Details of their salaries are set out in Annex A, which reproduces the Prime Minister's Written Answer of 21 July 1983.

Higher Civil Service

6. Higher civil servants are members of the Principal Civil Service Pension Scheme (PCSPS). This provides pension at the rate of 1/80th of 'final salary' plus a lump sum of 3/80ths of 'final salary', for each year of pensionable service up to a maximum of 40 years at age 60. 'Final salary' is defined as the highest pensionable pay over 4 consecutive quarters in the last 3 years of service: for those covered by the TSRB this is nearly always the pensionable pay over the last 12 months of service.

7. Pensions under the PCSPS are increased in line with inflation after award like other public service pensions. Increases take place each November. All pensions awarded more than 12 months before the uprating are increased by a standard percentage; those awarded less than 12 months before the uprating are increased by 1/12th of the standard percentage for each complete month between the award and the date of the uprating.

The Judiciary

8. Details of judicial pensions are given in Annex B. There are several schemes, all set out in statute. The accrual pattern varies; but all the schemes enable a full career pension of half salary, plus a lump sum of twice the pension, to be earned. Pension is determined as the appropriate fraction of the 'last annual salary'. Legal advice, which accords with current practice, is that this means the standard annual rate for the job actually in payment on the date of retirement. Any change would require primary legislation.

9. Judicial pensions are increased in the same way as pensions under the PCSPS (paragraph 7 above).

The Armed Forces

10. Details of the Armed Forces Pension Scheme (AFPS) are given in Annex C. The AFPS covers all members of the regular forces alike. Partly for management reasons and partly because of the complexity of pay arrangements, pensions under the AFPS are not calculated directly on an individual's pay as in the PCSPS and the judicial pension schemes. Instead, pension codes based on representative rates of pay for each rank are promulgated: these set out scales of pension which, like pay scales, have immediate effect and run until superseded. In recent years, pension codes have run from 1 April to 31 March in the following year.

11. There is no single percentage rate of accrual in the AFPS; but the scales are established for each rank by a formula which sets the lower and upper points by reference to fixed percentages of the representative rate of pay. The pension for an officer with

16 years' service (the normal minimum qualifying period) is 28.5 per cent of the representative rate of pay; the pension for an officer with 34 years' service is 48.5 per cent of that rate. Progression between the lower and upper points is linear. For both officers and other ranks 48.5 per cent is the maximum pension, not 50 per cent as in most other public service pension schemes. The full pension calculation, including lump sum, is therefore based on 97 per cent of the pay rate. This adjustment is based on the assumption of an average pay increase over the long term of 6 per cent a year. Broadly speaking, on this basis, a member of the AFPS retiring at the end of Spetember (the mid-point of the usual 'code year') has his pension based on the equivalent 'final salary' as defined in the PCSPS.

12. Pensions under the AFPS are in general uprated after award in the same way as those under the PCSPS and the judicial pension schemes. However, the method of applying the first pensions increase after retirement is unique to the Armed Forces. The pensions of all who retire within the same code year receive an identical first pensions increase of 1.75 twelfths of the full annual increase. This is applied from the uprating in November for pensions which began before that date; and from the date of award for pensions which began subsequently, but before the end of the code year on 31 March.

13. The intended effect of these arrangements is to put all those retiring within a typical code year, running from 1 April to 31 March, in the same position as someone retiring at the end of September, the mid-point of the year, under a scheme with the normal public service arrangements for calculating final pensionable pay and post-award pensions increase. This has the advantage of making it a matter of indifference to a member of the Armed Forces, so far as pension terms go, when he retires within a particular code year. It is also broadly equitable by comparison with other public service pension schemes. In typical circumstances, members of the Armed Forces retiring between 1 April and 30 September do rather better than other public servants in terms of the definition of pensionable salary but rather worse in terms of

pensions increase; both these effects are reversed for those retiring between 1 October and 31 March. On the other hand:

a. the system produces a "cliff edge" on the date when one code is superseded by the next. There may be a big incentive to delay retirement from, say, March into April;

b. the system is arguably not well-adapted to circumstances such as those of 1983. The pensions of senior officers who retired after 31 March 1983 continued to be based on 97 per cent of the 1982 pay rate, producing a less favourable result than the PCSPS arrangements; and they received less pensions increase at the November 1983 pensions uprating than other public servants who retired on the same date.

SECTION II: POSSIBLE CHANGES

14. Paragraphs 15 to 21 below discuss the implications of basing pensions under the judicial pension schemes and the AFPS on a definition of 'final salary' as close as possible to that used in the PCSPS. Any changes would apply only to future retirements: it would not be possible to apply changes retrospectively.

15. There is no link between changes in judicial pensions and changes in the AFPS. At least so far as technical and legal considerations are concerned changes could be made in one set of arrangements quite independently of the other.

Judicial Pensions

16. There would be no technical or administrative difficulties in basing judicial pensions on the same definition of final salary as in the PCSPS: full salary records exist for all those would be covered; and there are no undue complications in judicial pay arrangements.

17. The obstacles to change are legal and managerial:

a. Any change would require primary legislation. The Lord Chancellor has no suitable legislative vehicle available or in prospect.

b. To base pensions on average salary over a period of 12 months instead of salary on the last day of service would be a clear worsening in pension conditions. Pensions are a significant part of the remuneration package on offer to prospective judges; and to worsen them would make the Bench that much less attractive. I understand that the Lord Chancellor would therefore resist such a change unless it were possible to offer compensating improvements in other features of judicial pensions.

AFPS

18. As noted in paragraph 10 above, senior officers are members of the AFPS on the same basis as all other members of the regular forces. The Ministry of Defence would not wish to change that situation: other considerations apart, senior officers will have been covered by the AFPS, and had their pay adjusted accordingly, for the greater part of their careers; and there would be difficulties in transferring them to a significantly different scheme in their later years of service. The complexities of the Armed Forces pay and pension schemes preclude full adoption of the PCSPS arrangements.

19. It would, however, be possible, while retaining the basic structure of the AFPS, to achieve a broadly similar effect to that of the PCSPS arrangements in the following way.

a. Pensions would be based on 100 per cent of representative pay rates instead of 97 per cent.

b. Pensions would be determined as a weighted average of the codes applying during the last year of service. Thus if Code X had applied for 100 days and Code X + 1 for 265 days, the pension would be 100/365 of the award due under

Code X, plus 265/365 of that due under Code X + 1. Because pensionable pay is determined by a single rate of representative pay for each rank, and the rank for pension purposes is determined by a qualifying period in the rank, there is no need under the code system to scan back over more than 12 months' service, as in the PCSPS.

c. Pensions increase arrangements would be brought into line with those in the other public services.

20. There would be no fundamental legal, technical, or managerial objections to these changes, though it would be essential to ensure that they did not lead to an increase in total costs. They would avoid the "cliff-edge" effect for those leaving just before and those leaving just after a change in the pension code, and in this sense would be more equitable than the present system. The advantage of delaying retirement until 1 April would be removed. There would be less likely to be distortions, as can arise under the present system, resulting from minimal, or even negative, differentials between the lowest ranks covered by the TSRB and their immediate juniors, who are covered by the Armed Forces' Pay Review Body.

21. But:

a. Adoption of the full PCSPS system would require data for a run of three years to be held on the pay computers. At present only current pay information is held. Such a change could therefore not take place before April 1987, by which time the necessary data base would have been established.

b. Even the adoption of 'average pay over the last 12 months of service', as suggested in paragraph 19 above, would need time to work out. The AFPS applies to over 300,000 people; and the full implications of the change have yet to be considered. The Ministry of Defence consider that it could not take place before April 1985.

c. Either system would be more complicated than the existing one and would probably require a small number of extra staff to run it.

SECTION III: WIDER CONSIDERATIONS AND CONCLUSIONS

22. None of the changes discussed in this note would affect those who have already retired. The question is whether Ministers wish to adopt the changes either for their own sake or as part of a package in which special action was taken under existing arrangements to help those whose pensions were adversely affected by the staging of the 1983 pay award.

23. Much of the current resentment among those affected springs from the fact that expectations have been disappointed because the previous practice of back-dating staged pay awards for pension purposes has not been followed. Moreover, the decision was taken when it was already too late for those who could have chosen to act otherwise to do so. To avoid a recurrence, it would be helpful to issue a clear statement that in future pensions will follow pay.

24. Bringing the definition of 'pensionable pay' for judicial pensions and the AFPS more closely into line with the PCSPS would remove the "cliff-edge" effect whereby, in the extreme, a single extra day's service can make a big difference to the pension. It would not necessarily avoid situations in which those who retire later, from the same office or rank and with the same service, receive smaller pensions than those who retired earlier. These situations derive from the pensions increase arrangements and are bound to arise if pay awards take place at longer than yearly intervals or are lower than the rate of price inflation. (They have, however, been exacerbated by the present special arrangements for initial pensions increase under the AFPS.)

25. Fourthly, in the case of judicial pensions there would be no technical difficulty in adopting the same definition of pensionable salary as in the PCSPS; but the change would require legislation; and there are managerial considerations, especially the ability of the Bench to attract suitable recruits, which Ministers will wish to weigh. In the case of the AFPS there are no obvious legal or managerial obstacles to moving towards the PCSPS system; but the application of that system would need to be modified to fit the

special circumstances of the Armed Forces. As such a move would involve a change in the pension system for over 300,000 Servicemen and women, it is not possible at this stage to be certain that there are no practical obstacles in the way of change. But it is clear that it would not be possible to make changes immediately; and a new system might be slightly more expensive to administer.

DEFINITION OF JUDGES' FINAL SALARY FOR PENSION PURPOSES

Legislative background

1. A summary of the judicial pension schemes is as Appendix A. The main legislation is the Judicial Pensions Act 1981, whose provisions govern pensions for, inter alia, the higher judiciary (Section 2), the Circuit judges (Section 5), the stipendiary magistrates (Section 7), and the Supreme Court Masters and Registrars and the County Court Registrars (Section 14 and Schedule 1). The Judicial Pensions Act itself was simply consolidating legislation which brought together a number of separate pension provisions enacted over a long period of time. All the members of the judiciary who retire between 31 March and 31 July 1983 (and who therefore would benefit from the proposed back-dating in 'Option 2') fall into one of these four groups.

2. All the Schemes determine pensions as a fraction (depending on length of service) of the 'last annual salary'. This has always been interpreted as the standard annual rate for the job in payment on the date of retirement. Current legal advice reaffirms that this interpretation is correct, and that primary legislation to amend the 1981 Act and all other legislation where the same formula is used would be needed to allow pensionable pay to be calculated by reference to the actual pay received during the calendar year up to the date of retirement, or to allow the choice of the best year in the last three (though, in practice, for judges this is always likely to be the immediate past year).

JUDICIAL PENSIONS

OFFICE	STATUTORY BASIS	BASIC BENEFITS	MAXIMUM PENSION SPAN	OPTIONAL WIDOW'S PENSION CONTRIBUTION
Supreme Court Judge	Judicial Pensions Act 1981 S1, 2, 16, 17.	Immediate pension and lump sum after 15 years; or at 70; or on medical grounds	15 years	4% of salary for 180 months
Circuit Judge	Judicial Pensions Act 1981 S5, 16, 17.	Immediate pension and lump sum after 15 years, providing that he is at least 65; or on medical grounds; or at the end of year of service in which he attains age 72.	15 years	4% of salary for 180 months
Stipendiary Magistrates	Judicial Pensions Act 1981 S7, 16, 17.	Immediate pension and lump sum at age 65, providing he has at least 5 years' service; or on medical grounds after at least 5 years' service.	20 years	3% of salary for 240 months
County Court Registrars Masters and Registrars of the Supreme Court President of the Transport Tribunal	Judicial Pensions Act 1981 S16, Schedule 1 Part I and II	Immediate payment of pension and lump sum after 15 years; providing that he is at least 65; at age 72, providing he has at least 5 years' service; on medical grounds after at least 5 years' service.	20 years	3% of salary for 240 months
Lord Chancellor's Legal Visitor	As above	Immediate payment of pension and lump sum after 10 years, providing that he is at least 65; at age 72, providing he has at least 5 years' service; on medical grounds after at least 5 years' service.	20 years	3% of salary for 240 months

APPENDIX B

JUDICIAL PENSIONS

OFFICE	STATUTORY BASIS	BASIC BENEFITS	MAXIMUM PENSION SPAN	OPTIONAL WIDOW'S PENSION CONTRIBUTION
President and Chairman of Industrial Tribunals, Social Security Commissions	Judicial Pensions Act 1981 S12, 13, 16	As for a Circuit Judge; he may also retire with immediate pension and lump sum at the age of 72, irrespective of the length of service.	15 years	4% of salary for 180 months.
Judge Advocate General	Judicial Pensions Act 1981 S8 and 9, 16	If he is already pensionable under the PCSPS, he may opt to remain so. If not, he may receive immediate pension and lump sum at age 60, providing he has at least 5 years' service; or on medical grounds with at least 5 years' service.	15 years	4% of salary for 180 months
President and Members of Immigration Appeal Tribunals	Immigration Act 1971 Schedule 5	Immediate pension and lump sum at age 65, providing he has at least 15 years' service; or on medical grounds after 5 years' service.	20 years	3% for 240 months
President of Pensions Appeal Tribunal	Drawn up administratively - not statutory	As above.	20 years	3% for 240 months
Members of Foreign Compensation Commission	Foreign Compensation Act 1962, S3	Immediate pension and lump sum after 5 years; or if offered reappointment on a part-time basis; or if no longer required.	20 years	As above for 240 months
Law Commissions	Law Commission Act 1965 2 Schemes	1. Amended PCSPS. Pension and lump sum after 2½ years and age 60. 2. Pension <u>only</u> payable at age 60, with at least 5 years' service.	40 years 17 years	1½% 2% for 1st 96 months 4% for next 108mths

JUDICIAL PENSIONS

OFFICE	STATUTORY BASIS	BASIC BENEFITS	MAXIMUM PENSION SPAN	OPTIONAL WIDOWS PENSION CONTRIBUTION
Chairman of Monopolies and Mergers Commission	Monopolies and Merger Act 1965	Immediate pension and lump sum after 5 years, providing he is age 65; or on grounds of ill-health.	15 years	4% for 180 months
Presidents and Chairmen ^e VAT Tribunal	Finance Act 1972 Admin Justice Acts 1950 and 1973	Immediate pension and lump sum after 15 years providing that he is age 65; or on medical grounds.	15 years	4% for 180 months.

JUDICIAL PENSIONS

OFFICE	STATUTORY BASIS	BASIC BENEFITS	MAXIMUM PENSION SPAN	OPTIONAL WIDOW'S PENSION CONTRIBUTION
Supreme Court Judge	Judicial Pensions Act 1981	As for Supreme Court in England.	15 years	4% of salary for 180 months.
County Court Judges		As for Circuit Judges in England.	15 years	4% of salary for 180 months.
Resident Magistrates		As for Stipendiary Magistrates in England	20 years	3% of salary for 240 months
President and Members Lands Tribunal		As for Members of Lands Tribunal in England.	20 years	3% of salary for 240 months.
Supreme Court Masters, Circuit Registrars and Statutory Officers	Judicature Act 1978	Same as PCSPS but with enhanced reckoning of one-third for service since 18 April 1979.	30 years	
President and Chairman of Industrial Tribunals and Social Security Commissioners		As for a Circuit Judge in England.	15 years	4% of salary for 180 months.

SCOTLAND

APPENDIX I (Contd)

JUDICIAL PENSIONS

OFFICE	STATUTORY BASIS	BASIC BENEFITS	MAXIMUM PENSION SPAN	OPTIONAL WIDOWS PENSION CONTRIBUTION
Judge of Court of Session	Judicial Pensions Act 1981	As for Supreme Court in England	15 years	4% of salary for 180 months.
Sheriffs			15 years	4% of salary for 180 months
Chairman, Scottish Lands Court and President, Lands Tribunal in Scotland		As for Court of Session Judges.	15 years	4% of salary for 180 months
Member, Lands Tribunal in Scotland		In accordance with PCSPS	40 years	1½% (compulsory)
President, Industrial Tribunals; Regional Chairman, Industrial Tribunals; Chairman, Industrial Tribunals Social Security Commissioners		As for a Circuit Judge in England	15 years	4% of salary for 180 months.

ARMED FORCES PENSION SCHEMESALIENT FEATURES OF CURRENT ARMED FORCES PENSION SCHEMEBasic Provisions

1. The Armed Forces Pension Scheme (AFPS) is a non-contributory scheme. All members of the regular forces, from the most junior to the most senior, both male and female, are members from entry except officers on gratuity earning short career commissions and a small number of Servicemen on special types of engagement. The Review Body on Armed Forces Pay, in establishing pay rates to recommend to the Government, reduces comparator pay by 11 per cent to take full account of the greater value of AFPS benefits over comparator pension schemes.
2. The statutory basis of the AFPS is the Naval and Marine Pay and Pensions Act 1865, the Pensions and Yeomanry Pay Act 1884 and the Royal Air Force (Constitution) Act 1917. These provide that for the Royal Navy, Army and RAF revised rates and conditions of award should be promulgated respectively by Order in Council, Royal Warrant and Queen's Order.
3. The AFPS, despite its disparate legislative base, provides a single and coherent system of awarding pensions that extends to all scheme members. Pensions are awarded under a pensions code that sets out scales of pension that, like pay scales, are immediately effective and continue to govern awarding until superseded. In recent years codes have run from 1 April to 31 March in the following year.

Calculation of Awards

4. The scales provide for the award of an immediate pension to officers who have completed at least 16 years service from age 21

and to other ranks who have completed at least 22 years from age 18. There are also separate provisions covering death, invaliding, etc. The maximum pension is earned after 34 years service for officers and 37 years for other ranks. Thus retirement on full pension is possible from age 55 onwards.

5. There is no single percentage rate of accrual in the AFPS but the scales are established by a formula which sets the lower and upper points by reference to fixed percentages of the representative rate of pay. Progression between the points is linear. For example, for officers the 16 year point is 28.5 per cent of the representative rate of pay and the 34 year point 48.5 per cent of that rate instead of 50 per cent. For both officers and other ranks the full pension calculation is based on 97 per cent of the pay rate. This adjustment is based on the assumption of an average pay increase over the long term of 6 per cent annually. There is thus a form of averaging implicit in the current AFPS system.

Pensions Increase Arrangements

6. The same annual pensions increases are applied to Armed Forces pensions as to other public service pensions. However, the method of applying the first pensions increase after retirement is unique to the Armed Forces and was specifically introduced to harmonise with the code system. The pensions of all who retire within the same code year receive an identical first pensions increase of 1.75 twelfths of the full annual increase. This is applied from the November pensions increase date for pensions which began before that date; and from the date of the pension's award for pensions which begin subsequently but before the end of the code year on 31 March.