

Annex D: Information for the Police and Crime Panel on police pension arrangements, ill-health retirements, and Injury on Duty Awards

1. Police Officer Pensions

- 1.1. Police officer pensions are a defined benefit scheme that is not asset backed. The liability is ultimately funded by UK taxpayers.
- 1.2. The PCC administers police pensions for Avon & Somerset, collects and pays contributions and re-claims the net cost of these pensions from central government via a substantial taxpayer funded (not asset backed) annual "Top Up" Grant.
- 1.3. The police officer contributions range from 11% to 15% (depending on pay scale and their start date). Employer contributions have just been increased in 2019/20 from 24% to 31%.
- 1.4. In 2018/19 the PCC paid £95 million as police pension benefits to retired officers, paid and collected £36.5 million contributions and received a Top Up Grant of £58.5 million in July.

2. Local Government Pension Scheme (LGPS) for police and OPCC staff and PCSOs

- 2.1. The pension scheme for PCSOs and police staff is asset backed and, run by the Somerset Local Government pension Scheme (LGPS).
- 2.2. This is a defined benefit scheme based on the average/ final salary of the retiring staff member. There are over 2,700 active members and over 1,600 current pensioners.
- 2.3. This scheme is currently assessed as 80% funded against forecast liabilities and forecast asset values. A new tri-annual actuarial assessment is due later this year.
- 2.4. The PCC is liable for this pension funding deficit. There are £357 million of assets held in the PCC's name in the LGPS scheme.
- 2.5. The PCC contributes to this scheme at rate of 13.2% plus a cash lump sum, currently £2.9m per annum. Employees contribute in a range of 5.8% to 10.5% depending on salary. In total the annual contributions to this scheme in 2019/20 are £12.6m.

3. Age discrimination ruling

- 3.1. The Court of Appeal ruled ('McCloud' December 2018) that transitional provisions offered to some public sector workers, in the course of implementing Transitional Provisions in the Police Pension Regulations 2015, amounts to unlawful age discrimination.
- 3.2. The Home Office are conceding liability on Fire and Police age discrimination claims and are requesting a Case Management hearing for remedy. PCCs will not stand in the way of the

Home Office conceding the claims and PCCs have highlighted the need for reassurance from the Home Office on managing the financial implications arising from any remedy.

- 3.3. This ruling will add to the police pensions liability across the whole sector as compensation will become due to officers who were transferred to the new arrangements and deemed subject to discrimination.
- 3.4. Decisions on remedy and indemnifying forces as a result of this ruling remains outstanding. The estimated liability increase is in the order of 5.9%, but this is subject to the final remedy agreement.

4. Reviews of Injury on Duty (IOD) Awards (relating to 1987 scheme)

- 4.1. Under the 1987 Police Pension Scheme, officers are entitled to apply for early retirement and an Injured on Duty Pension Award based on the medical view of a Selected Medical Practitioner. The IOD scheme is an important right and protection for officers which is fully supported by the Constabulary and the PCC. The 2019/20 annual cost to the Constabulary of the IOD pension payments is £7.6m. This compares to £1.4m annual charges for injured on duty pension payments in a similar sized local force, Devon & Cornwall (according to their last accounts). The budget and MTFP assume that 12 officers will retire injured on duty each year, so increasing the annual liability.
- 4.2. Under the 1987 Regulations Avon and Somerset Constabulary as the local administrator for police pensions was entitled to carry out reviews of Injured on Duty Awards which were made to police officers who are injured in the course of their duties. During the period 2014 to 2017 the Constabulary commissioned a series of reviews into the injury on duty awards being received by some police officer pensioners.
- 4.3. The decision was taken in 2017 by the Constabulary to cease the reviews as it had not generally proved possible within the existing 1987 Regulations to meaningfully progress the reviews to a conclusion and the force notified those pensioners, upon whom it had commenced reviews, of that fact. This decision affected all cases in hand at that time and even if future review dates had been scheduled.
- 4.4. The Police Pension Authority continued to support and facilitate any reviews requested by a pensioner (in accordance with the relevant statutory framework) to enable injury on duty awards to be adjusted to reflect any change to the degree of disablement, or relevant earnings capacity in accordance with regulations.
- 4.5. These historical reviews under the 1987 scheme have now ceased. Individuals who were subject to those reviews have had them cancelled. Save for one individual, who asked for voluntary review which the legislation required us to progress, nobody has lost out financially. The Constabulary worked hard to help that individual and made a number of suggestions to them (for example considering judicial review) but they have not taken this up. Since they asked for the review, the Constabulary did what the legislation requires, and undertook a review.
- 4.6. If there are any contemporary specific issues or concerns which are raised with the Constabulary related to the historic reviews, the Constabulary will look into these.

5. Legal Claims

- 5.1. Some of those pensioners who had been subjected to a review brought legal claims against the Constabulary. The Claimants alleged that between May 2014 and June 2017, they suffered detriments arising out of their disclosures. Specifically, the Claimants alleged that as a result of this and earlier disclosures, the Constabulary subjected them to detriments including subjecting their IOD awards to a review.
- 5.2. The Claimants also alleged that they had been unlawfully discriminated against on the grounds of their disability and age. This related to: Age Discrimination: that they were specifically chosen as they were generally under 50 years old and this amounted to discrimination which could not be justified; and, Disability Discrimination: they were more severely disabled (being in Band 4), compared to their comparators and thus were chosen on this basis to be reviewed. They brought claims of age and disability discrimination on the grounds on which their awards were reviewed.
- 5.3. On the basis of legal advice from Counsel the Constabulary compromised all of the claims in their entirety. For confidentiality reasons, the Constabulary are not able to disclose what the settlement is.
- 5.4. In relation to the 9 IOD claimants, each Claimant received an injury on duty award and, as a consequence, each was ill health retired on a pension under what is now the Police (Injury Benefit) Regulations 2006. The early retirement dates vary from 1996 to 2011.

6. Freedom of Information Requests

- 6.1. The organisation received approximately 224 Freedom of Information requests from the 9 claimants alone. Many were deemed vexatious but some were responded to with the relevant information. Each request was dealt with and treated on an individual basis but consideration was given as to whether they related to the same issue of IODs and whether they should be considered vexatious. At one point, approximately 30% of the Constabulary's total FOIs related to IODs or pensions. In some instances, refusals to disclose information were appealed to the ICO.

7. New cases where the officer has retired since the 2017 decision to cease reviews

- 7.1. The Pension Regulations changed in 2015 for pensioners in the 2015 pension scheme (i.e. those who have only started in the last 4 years), there is a clear and explicit requirement for the Constabulary to review cases where the Selected Medical Practitioner (SMP) who assesses the pensioner's condition suggests that a review would be right thing to do. Under the 2015 Regulations where cases have been given an injury award with a clearly expressed condition of review attached to it, the Constabulary should carry out that review in accordance with the schedule.
- 7.2. The Constabulary expect that under the new Regulations, the Selected Medical Practitioner (SMP) and the Police Pension Authority (PPA) will express clearly and separately that the IOD award is made but that a future review will take place in accordance with the findings of the SMP. Clearly if no further review date is set, then no review will need to be scheduled. The Constabulary are committed to ensuring good record keeping, clear confirmation letters and consistent action in newly approved IOD awards so we will be able to apply the review on schedule with confidence.

8. Police Medical Appeals Board (PMAB)

- 8.1. The Police Medical Appeals Board is a Board to which appeals can be made about the view of the Selected Medical Practitioner. When considering whether to utilise this route, the Constabulary takes a balanced view on each case on an individual basis.
- 8.2. The SMP (Selected Medical Practitioner) is an independent expert who will examine the individual to consider injury, disablement and permanence.
- 8.3. The organisation would normally accept this expert view and proceed on that basis unless we believe there to be an error in their findings. The Force have only judicially reviewed one SMP decision in the last 5 years.
- 8.4. The provisions in place in respect of IOD awards are there to support the officer and the procedural arrangements and decision making framework is clearly and succinctly set out to ensure that those who are entitled to ill health retirement and, where appropriate, an IOD award, receive what they are due.