

Ombudsman's Determination

Applicant	Mr Y
Scheme	The Police Pension Scheme 1987 (the PPS)
Respondent	The National Crime Agency (the NCA)

Complaint Summary

1. Mr Y's complaint concerns the NCA's decision to exercise discretion under Regulation K4 of the Police Pensions Regulations 1987 (the **1987 Regulations**) and withdraw his pension. Specifically, the NCA is not a "police force" and Regulation K4 does not apply to him.

Summary of the Ombudsman's Determination and reasons

2. The NCA is permitted to exercise discretion under Regulation K4 in this case. I am satisfied that it followed a reasonable process when exercising that discretion and making its decision. The complaint is upheld to the extent that the NCA contributed to Mr Y's distress because it delayed providing him with a summary of his pension benefits.

Detailed Determination

Material facts

3. In March 1979, Mr Y joined the Metropolitan Police Service and the PPS. In April 2006, he transferred from the National Crime Squad to the Serious Organised Crime Agency (**SOCA**) under a government transfer scheme (the **Transfer Scheme**).
4. In March 2009, Mr Y withdrew from the PPS on completion of 30 years' pensionable service. His pension in the PPS was deferred.
5. On 1 May 2011, Mr Y joined the Principal Civil Service Pension Scheme (**PCSPS**).
6. The Police Pensions Act 1976 (the **1976 Act**) consolidated the Police Pensions Act 1948, and certain other enactments relating to the pensions in respect of members of police forces. Section 11(1) states that:

“This Act shall have effect as if any reference (however expressed) to membership of a police force or to service or employment in a police force included a reference to—

...

(ca) eligible service as a National Crime Agency officer...[emphasis added in bold]”

7. Section 11(2A)-(C), of the 1976 Act provides that, in relation to any such service mentioned in subsection (1)(bfa)(vi) **or subsection (1)(ca)**, or any service of the kind described in section 97(1)(cj) of the Police Act 1996, “**police pension authority**” means the Director General of the **National Crime Agency** and “pension supervising authority” means the Secretary of State...[emphasis added in bold]”.
8. Section 11(9) of the 1976 Act, provides that a “person's service as a National Crime Agency officer is “eligible service” for the purposes of the 1976 Act in any of the three cases specified in that section. Section 11(11) provides that the “second case” is where:
 - (a) immediately before beginning the service as a National Crime Agency officer, the person—
 - (i) is serving as a member of the staff of the Serious Organised Crime Agency, and
 - (ii) by virtue of that service is, or is eligible to be, a member of a police pension scheme, and
 - (b) the person becomes a National Crime Agency officer by virtue of a scheme under paragraph 2 of Schedule 8 to the Crime and Courts Act 2013.
9. An extract from Section 11 of the 1976 Act is displayed at Appendix A.
10. Schedule A: “Glossary of Expressions” of the 1987 Regulations, states that a “member of this Scheme” includes an active member, a **deferred member** and a pension credit member.
11. Schedule A states that “member of a police force” includes “a specified NCA officer”. A specified NCA officer is defined in Schedule A as an NCA officer whose service as such is eligible service within the meaning of section 11(9) to (13) of the 1976 Act.
12. Regulation A6(5A) of the 1987 Regulations states that for the purposes of these Regulations, a specified NCA officer shall be deemed to be a member of a home police force, except where the context otherwise requires. In relation to a specified NCA officer, any reference in the 1987 Regulations to a force shall be construed as a reference to the NCA. Any reference to a pension supervising authority shall be construed as a reference to the Secretary of State.

13. Part B of the 1987 Regulations contain provisions for “Personal Awards”. Regulation B7(1): “Commutation,” of the 1987 Regulations, states:

“This Regulation shall apply to an ordinary, short service, ill-health or deferred pension under this Part, but in relation to—

 - (a) a deferred pension, or
 - (b) an ordinary pension which is not payable as from the date of the policeman’s retirement,

paragraphs (5), (6) and (7) shall have effect as if any reference therein to retirement or the date thereof were a reference to the coming into payment of the pension or the date thereof”.
14. Regulation B7(6) of the 1987 Regulations states that a “notice of commutation” shall become effective from the later of the date of retirement, or date on which the notice is received by the police authority.
15. Broadly, Regulation B7(7) of the 1987 Regulations provides that where a notice of commutation becomes effective, the police authority shall pay the member the actuarial equivalent of the surrendered portion of his pension as a lump sum.
16. Regulation L1(1) of the 1987 Regulations provides that:

“an award which is payable to or in respect of a person by reason of his having served as a regular policeman shall be payable by the police authority of the force in which he last served as such”.
17. Regulation B7(2) of the 1987 Regulations, provides that “a regular policeman may, subject to and in accordance with this Regulation, commute for a lump sum a portion of any pension to which this Regulation applies to which he is or may become entitled”. Briefly, Regulation B7(3) requires notice to be given to the police authority to commute for a lump sum the amount of pension the member may specify. This is subject to the limitations contained in paragraph (4) and in Regulation B10.
18. Under Section 124(1) of the Pensions Act 1995, (the **Pensions Act**), a “member”, in relation to an occupational pension scheme, means any active, deferred, pensioner, or pension credit member. A “deferred member”, in relation to the same, means a person (other than an active or pensioner member) who has accrued rights under the scheme.
19. Section 125(4) of the Pensions Act says:

“For any of the purposes of this Part, regulations may in relation to occupational pension schemes— (a) extend or restrict the meaning of “member”, (b) determine who is to be treated as a prospective member, and (c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member”.

20. The “Lump sum rule” contained in the Finance Act 2004 (the **Finance Act**), covers the payment of lump sums by a registered pension scheme. No lump sum may be paid other than those specified. A registered pension scheme may pay a member who becomes entitled to certain pension benefits a pension commencement lump sum (**PCLS**). Section 166(2)(a) and paragraph 1(1) (aa) of Schedule 29 of the Finance Act provides that payment of a PCLS must be connected to an arising entitlement to a relevant pension benefit under the scheme in question. For the purposes of the Finance Act, an actual entitlement arises when the member has a right to a benefit without having to fulfill any further conditions or take further action.
21. Mr Y was subsequently transferred into the NCA on 7 October 2013. The Crime and Courts Act 2013, (the **2013 Act**), abolished SOCA.
22. Paragraph 2 of Schedule 8 to the 2013 Act, says that a staff transfer scheme is a scheme which provides for:
- “(i) **a designated member of the staff of SOCA,**
 - (ii) a designated constable in an England and Wales police force,
 - (iii) a designated member of the civilian staff of an England and Wales police force, or
 - (iv) a designated member of the personnel or staff of any other person,
- to become an NCA officer** and, accordingly, to become employed in the civil service of the state [emphasis added in bold]”.
23. Paragraph 2 of Schedule 8 to the 2013 Act is displayed at Appendix B.
24. Paragraph 44 of the Crime and Courts Act 2013 (Consequential Amendments and Saving Provision) Order 2013 (the **Order**)” says:
- “In regulation 3—
- (a) at the appropriate place insert—
- ““NCA” means the National Crime Agency;”;
- (b) omit the definition of “SOCA”;
 - (c) for the definition of “specified employee of SOCA” substitute—
- ““**specified NCA officer**” means an NCA officer whose service as such is eligible service within the meaning of section 11(9) to (13) of the Police Pensions Act 1976;” [emphasis added in bold].
25. Mr Y’s deferred pension in the PPS became payable when he attained age 60 in November 2016. When the NCA refused payment while he remained in service, he complained to The Pensions Ombudsman’s Office (**TPO’s Office**).

26. In May 2018, the Deputy Ombudsman upheld the complaint and directed the NCA to reconsider Mr Y's request to take his deferred pension [PO-14755]. The Deputy Ombudsman stated the following at paragraph 22 of her Determination:

"I do not agree that Mr Y should be compensated because he has lost out on 16 months of deferred pension, as well as any interest he would have received on this. In my view, Mr Y cannot demonstrate that he has suffered loss because a decision properly made under Regulation K4 may in any event result in an outcome that he is not entitled to the payment of his pension while employed. I make no finding about that, because as yet [the NCA's decision maker has not] actually made a decision under Regulation K4. Bearing in mind the parties have expressed views about the policy which was in place and opposing views about whether it has been applied to others, I consider it would be premature for me to express any view about a decision under Regulation K4 which has not yet been made, or about any policy which may be applied to it".

27. At paragraph 23 of her Determination, the Deputy Ombudsman stated that:

"Separately, I have considered whether the NCA's explanation of how it had applied the Regulations constituted maladministration causing significant injustice to [Mr] Y. I conclude that it did because the Regulation creating the right to the deferred benefit is plain and I sympathise with Mr Y's frustration at being told repeatedly that he had no right to a deferred benefit when he clearly did. I accept that from the explanation given he would have been unable to understand whether the NCA were entitled to withhold his pension or not. The IDR process should have resulted in a [decision] which applied the Regulations and explained the basis for the decision correctly. Instead, Mr Y had to pursue a claim to the Ombudsman to achieve that result and will now suffer the inconvenience of further delay while the NCA make a fresh decision".

28. Regulation K4 of the 1987 Regulations states:

"Withdrawal of pension during service as a regular policeman

... Subject to paragraph (2), a **police authority** by whom a pension is payable under Part B of these Regulations or under Regulation E1 (adult dependent relative's special pension) may, in their discretion, withdraw the whole or any part of the pension for any period during which the pensioner is serving as a **regular policeman in any police force** and, where they have done so, they shall be discharged from all actual or contingent liability in respect of the pension or the part thereof withdrawn for the period in question.

(2) This Regulation does not apply to a pension under Regulation B9(7)(b) (allocation). [emphasis added in bold]".

29. The NCA's Retention of Specialist Skills Scheme operating procedure (the **ROSS Policy**) sets out the position in respect of abatement and the required periods of absence between "retirement and re-employment with no competition" in the NCA. Section 6.3 deals with retirement and re-employment where there has been "acceptance of a business case for retention of critical organisational skills".
30. On 26 June 2018, the NCA invited Mr Y to provide details of any exceptional reasons why his pension should not be withdrawn.
31. On 17 July 2018, Mr Y replied to the NCA (the **July Letter**). He said that Regulation K4 did not apply in his case. The NCA had ignored the fact that Regulation K4 was conditional on i) the pensioner serving as a regular policeman; and ii) the pensioner serving in a "police force".
32. Mr Y said that "Police Force", in his case, did not mean the NCA. He cited Schedule A to the 1987 Regulations. He argued that the NCA was a "non-ministerial" government department. Consequently, Regulation K4 could not be relied on to abate his pension. This was supported by the fact that there are/were several hundred police pensioners serving in SOCA/the NCA with unabated police pensions.
33. Mr Y stated that the only other way to abate his pension would be if "inter-service abatement applied". He cited the following extract from HM Treasury Abatement Policy Statement, dated 22 December 2006, which was quoted by the then Pensions Ombudsman in his Determination of Mr George's complaint [PO-0960]:

"Inter-service abatement

A public service pension is not normally abated when a pensioner is employed in a different service covered by a different public service pension scheme. The one exception is where an individual is re-employed in a post covered by a different pension scheme without going through an open competition and is employed before the normal retirement age for the scheme which pays his pension. Inter-service abatement ceases when the pensioner reaches the normal retirement age of [the] scheme from which they draw a pension (or where NRA is difficult to determine, compulsory retirement age)".

34. Mr Y highlighted the following, which he advised had been taken from legal advice obtained by the PCS Union. He also advised that this had been shared with relevant employees:

"In normal circumstances a police officer would have to retire [in] order to claim a pension. A limited exception arises under Regulation B5 of the regulations. A member who has more than two [years'] pensionable service who makes an election not to make pension contributions in circumstances that do not entitle him to any other award under Part B5 is entitled to a deferred pension which by virtue of B5 (40)(a) is payable from the age of 60.

... for example, an officer who has 23 years' service at the age of 60, could, even if he continues serving, trigger entitlements to his pension by opting out of making contributions...In practice the benefits of doing so for a home police officer would probably be limited to being able to take a commuted lump sum, as it is policy for police authorities to abate pension under regulation K4 where a pensioner serves [as] a police officer.

SOCA officers are subject to inter-service abatement. Unusually (if not exceptionally) the Home Office have determined (in HO circular 20/1997) that in relation to inter service abatement (i.e. SOCA officers) the age at which inter service abatement no longer takes effect is the age at which the member can retire with an ordinary pension after at least 25 [years'] pensionable service. In accordance with these rules abatement should not apply to SOCA officers. Having opted out of the police pension scheme after joining SOCA an ex-employee would be neither in the service of the police nor in the service (pensionable service) of the police pension scheme".

35. Mr Y asserted that, based on the facts he had presented, he was entitled to his full unabated pension.
36. On 17 August 2018, the NCA notified Mr Y of its decision. The decision-maker explained that, as a "specified NCA officer", Mr Y fell within the definition of a "regular policeman in any police force" in accordance with Regulation K4. Consequently, the police authority could exercise discretion to decide to withdraw the whole of his deferred pension for any period during which he served as a "specified NCA officer".
37. The decision-maker said he agreed with Mr Y that "post retirement inter-service abatement" did not apply in his case. The decision-maker acknowledged Mr Y had not retired and had not been re-employed without going through an open competition. The decision-maker also acknowledged that Mr Y was not an ex-employee of SOCA or the NCA. The decision-maker stated that while he had opted out of the PPS, he had remained in service with NCA and was a specified NCA officer. So, he was deemed by statute to be a member of a "home police force" and a "regular policeman for the purposes of the police pensions regulations".
38. The decision-maker explained that in the event of continuing employment, it was government policy that abatement/withdrawal of pension should generally apply. Consequently, in the event of a pensioner's continuing employment, the usual policy was that the amount of salary and pension should generally not exceed the amount previously earned as salary. The decision-maker stated that where salary plus pension exceeds the previous level of earnings, the pension is temporarily abated/withdrawn by the amount of the "excess", subject to the abatement/withdrawal not exceeding the annual amount of the pension.
39. The decision-maker advised that, "in considering the application of policy in Mr Y's particular case, he sought to pursue "legitimate aims". Namely, the efficient use of public funds and the fair and equitable treatment of members of the PPS. The

decision-maker acknowledged that Mr Y had challenged the existence of the NCA's discretion but had not made any further submissions. He said Mr Y had also not provided factual information which supported that his particular case was exceptional.

40. The decision-maker advised that he had considered the July Letter, the relevant police pensions legislation, and HM Treasury policy on abatement. He said he had decided to exercise discretion, under Regulation K4, and withdraw the whole of Mr Y's deferred pension while he remained in service. Consequently, there was no pension available to him to commute. He invited Mr Y to make further submissions should his circumstances change.
41. On 22 August 2018, Mr Y replied to the decision-maker. He said that despite the Deputy's Ombudsman's finding of maladministration, the NCA had continued to misinterpret the regulations and prolong his "financial disadvantage". The NCA had acknowledged that he was entitled to a deferred pension but had failed to provide him with a summary of those benefits.
42. Mr Y argued that the decision to abate his pension appeared to be "arbitrary" and without any consideration to his ongoing contribution in law enforcement. Regardless of any decision to abate his pension, he was entitled to receive and retain any commuted lump sum. As the NCA had not supplied him with a summary of his benefits, he remained unaware of his pension or "commutation entitlement". This was a further example of the NCA's maladministration.
43. Mr Y said that his circumstances were not compatible with the legal definition of specified NCA officer, as defined in the 2013 Act, the amendments to the 1976 Act and the 1987 Regulations. He argued that they were enacted to enable serving employees of SOCA, who were members of, or entitled to be a member of a police pension scheme on 6 October 2013, to retain those rights on transfer to the NCA.
44. Mr Y asserted that on 6 October 2013, he was neither an active member of a police pension scheme nor eligible to become a member of a police pension scheme. He had opted out before this date; the only scheme he was eligible to join was the PCSPS. Mr Y said that when he transferred to SOCA, he was, at that stage, a "specified employee of SOCA". Any police officer who became an employee of SOCA after 1 April 2006, was not permitted to join or remain in a police pension scheme "whilst so employed". SOCA officers were all civil servants and were restricted to membership of the PCSPS.
45. Mr Y highlighted that his membership of the PCSPS and employment status remained unchanged on transfer to the NCA. He argued that the circumstances of his employment could not be described as that of "a specified employee of the NCA". Consequently, he was not a "regular police officer" or serving in a "home force". The NCA's reliance on Regulation K4 to abate his pension was not compatible with the regulations governing the PPS.
46. Mr Y cited the amendments of the Order that replaced reference to "specified employee of SOCA" in the 1987 Regulations with "specified NCA officer" and section

11 of the 1976 Act. He also cited the following section, which he had taken from the 1987 Member Guide:

“10.4 Abatement of pension

If you are a PPS pensioner resuming service as a regular police officer, you should note that [the police authority] may at their discretion withdraw the whole or part of your PPS pension payments during any period in which you serve in any force as a regular police officer (your pension entitlement on final retirement would not be affected). This is known as abatement.

The Home Office recommends that abatement should entail withdrawing so much of your PPS pension such that the total of pension and pay on re-joining does not exceed the rate of pay before retirement. If your current pay at least equals your previous pay, your pension is likely to be wholly withdrawn during the second period of your service, but you will be able to retain your lump sum and your new salary will not be affected.

Abatement of a PPS pension may be applied if you are in receipt of a PPS pension in your own right, but not if you receive an adult survivor's pension or have been allocated a pension. Pension credit benefits under pension sharing on divorce cannot be abated”.

47. Mr Y stated that the stress of the ongoing proceedings with the NCA was having a detrimental effect on his health. His “pension circumstances” were unique. Consequently, they would only affect him “as an individual”.
48. On 21 September 2018, the decision-maker notified Mr Y that the NCA did not agree with his interpretation of the regulations. The decision-maker stated that while Mr Y ceased to be an active member of the PPS under the 1987 Regulations, he remained a member by virtue of his deferred pension. The decision-maker cited Schedule A and regulation L1(1) of the 1987 Regulations, and Section 124(1) and Section 125(4) of the Pensions Act.
49. The decision-maker highlighted that if Mr Y was not a specified NCA officer, he would not be entitled to a pension from the NCA. The decision-maker said he had to stand by his decision to withdraw the whole of Mr Y's pension for the period during which he served as a specified NCA officer.
50. The decision-maker acknowledged that Mr Y had not been provided with a summary of his pension benefits. The decision-maker advised that while the payroll department had received Mr Y's request in June 2016, he had elected not to retire. Consequently, it did not proceed with his request. The decision-maker also advised that the NCA was obtaining a summary of his benefits and would forward this on receipt.
51. On 26 September 2018, the NCA obtained an estimate of Mr Y's pension benefits for illustration purposes (the **Estimate**). Under option 1, Mr Y was quoted a pension of

£16,156 per annum. Under option 2, he was quoted a pension of £12,117 per annum and a maximum lump sum of £73,027 payable from 1 October 2018.

52. On 23 October 2018, Mr Y complained under Stage One of the Internal Dispute Resolution Procedure (**IDRP**). He asserted that the NCA had continued to misinterpret the regulations that apply to his pension to his detriment. He was not a specified NCA officer. If the NCA's definition was correct, it would equally apply to retired members of the PPS who were employed by SOCA before they transferred into the NCA. Consequently, those members would also have had their pension abated.
53. Mr Y highlighted that several pensioner members of the PPS had transferred into the NCA from SOCA. He argued that they would be, by definition, specified NCA officers. Their pension had not been abated. He also argued that the reason his pension had been abated was because he had previously won a victimisation complaint against the NCA at an employment tribunal.
54. Mr Y quoted the "non-discrimination rule" in section 61 of the Equality Act 2010 (the **Equality Act**). He argued that those provisions would make the NCA's actions unlawful, should it insist on withdrawing his pension under Regulation K4 and not those of pensioner members who had also transferred into the NCA. The relevant section of the Equality Act is displayed at Appendix C.
55. Mr Y repeated that his circumstances were not "compatible" with the definition of specified NCA officer, as defined in the 2013 Act, the amendments to the 1976 Act and the 1987 Regulations. He reiterated that they were enacted to enable serving employees of SOCA, who were members/or entitled to be members of a police pension scheme on 6 October 2013, to retain those rights on transfer to the NCA on 7 October 2013. He was not an active member of the PPS, or eligible to re-join the PPS as he had opted out. The only pension scheme he was eligible to join was the PCSPS.
56. Mr Y argued that while the 1976 Act, the amendments to the 1987 Regulations, and the 2013 Act did not contain a definition of "a member of a pension scheme", it clearly related to the rights of "active" membership and retaining those rights. Pensioners and deferred members of a police pension scheme would retain the rights they had already acquired, regardless of amendments to the scheme. He cited the following from Section 3 of the 1976 Act:

"Application of regulations to former members.

(1) Subject to the following provisions of this section, any regulations made under section 1 above may be framed—

(a) so as to apply in relation to the pensions which are being paid or may become payable under the regulations to or in respect of persons who, having served as members of police forces, have ceased so to serve or died before the regulations come into force; or

(b) so as to require or authorise the payment of pensions to or in respect of such person.

(2) No provision shall be made by regulations under section 1 above by virtue of subsection (1) above unless any person who is placed in a worse position than he would have been in if the provision had not applied in relation to any pension which is being paid or may become payable to him is by the regulations given an opportunity to elect that the provision shall not so apply...”

57. Mr Y quoted the following from the explanatory notes, (the **Explanatory Notes**), to the Police Pensions (Amendment) Regulations 2008:

“...these amendments make provision for such Regulations to apply to a “specified employee of SOCA”. Specified employees of the Serious Organised Crime Agency (“SOCA”) are those who immediately before joining SOCA, were serving as the Director General of the National Crime Squad, or a police member of the National Crime Squad or the National Criminal Intelligence Service. The amendments enable specified employees of SOCA to remain members of the pension scheme established by the Police Pensions Regulations 1987 and to transfer to the new pension scheme established by the Police Pensions Regulations 2006 should they so wish”.

58. Mr Y argued that the pension paid to the Director General of SOCA was in payment before SOCA’s transfer into the NCA. It was not abated. Consequently, the Director General was not a “specified employee of SOCA” and reference to “remain members of the pension scheme”, in the Explanatory Notes, meant to remain “active” members of the pension scheme.

59. On 14 November 2018, the decision-maker, in his capacity as decision-maker for the Police Pensions Authority (the **Authority**) within the NCA, issued a response. The decision-maker acknowledged that Mr Y had not previously been provided with a summary of his pension benefits. He apologised for this. The decision-maker advised that he had attached a copy of a pension statement that had been emailed to Mr Y on 1 November 2018 and a copy of Schedule A to the 1987 Regulations.

60. The decision-maker said he could not agree that Mr Y was not a specified NCA officer. He cited the definition of specified NCA officer in the 1976 Act, and Section 11(11) of that Act. He also cited section 124(1) of the Pensions Act.

61. The decision-maker advised that the Authority had decided to withdraw Mr Y’s deferred pension for the reasons detailed in his correspondence dated 26 June 2018 and 17 August 2018.

62. The decision-maker explained that a “Regular Policeman”, in Mr Y’s case, meant a “specified NCA officer”. As a specified NCA officer, Mr Y fell within the definition of a regular policeman in any police force. Consequently, the NCA could exercise discretion to decide whether to withdraw the whole of his deferred pension for any

period during which he served as a specified NCA officer. The decision-maker also explained that it was necessary for Mr Y to be a specified NCA officer for the purposes of the 1987 Regulations to be eligible for a police pension from the NCA.

63. Concerning the decision to withdraw Mr Y's deferred pension, the decision-maker restated that he sought to pursue legitimate aims, efficient use of public funds and fair and equitable treatment of members of the PPS. The decision-maker said he was mindful that he must consider whether exceptions to policy should be made based on the facts of individual cases. He highlighted that Mr Y had been invited to provide submissions on why he considered an exception should be made in his case.
64. The decision-maker cited paragraph (5A) and (5B) of Regulation A6 of the 1987 Regulations. He also cited Regulation L1(1) of those Regulations and government policy that abatement/withdrawal of pension should generally apply.
65. When reassessing Mr Y's application for payment of his deferred pension, the decision-maker said he had considered:-
 - Relevant police pension legislation, including the 1976 Act and the 1987 Regulations.
 - HM Treasury policy, including its abatement policy dated August 2007.
66. The decision-maker advised that he was not aware of any NCA officers in a similar position to Mr Y. Namely, NCA officers who had completed 30 years' service and chosen not to retire. He said that the application of Regulation K4 in Mr Y's case, was consistent with HM Treasury policy, the NCA's policy, and its treatment of other PPS members. The decision-maker advised that at least 43 NCA officers had been subject to abatement since October 2013. He also advised that there was currently at least eight NCA officers who were subject to abatement.
67. The decision-maker said that the NCA had several former police officers who had "retired and returned", under SOCA's and subsequently the NCA's ROSS Policy, and were subject to abatement.
68. The decision-maker noted that Mr Y had made a successful application under the ROSS Policy in March 2010, but had elected to let it lapse. The decision-maker said he was unaware whether Mr Y had subsequently reapplied.
69. The decision-maker explained that section 6.3 of the ROSS Policy allowed former police officers who wanted to access their PCLS to "apply and return" in order to access their "commutation". The decision-maker further explained that, if that application was successful, the member was able to retire and access their lump sum. Consequently, the member's "post retirement pay/pension is subject to abatement". The decision-maker said Mr Y's claim that he was being discriminated against, or victimised, was without foundation.

70. On 27 November 2018, Mr Y complained under Stage Two of the IDRP. He asserted that the NCA had not explained why employees of SOCA, not in receipt of a pension from the PPS immediately before transferring to the NCA, were not specified NCA officers. He argued that there were several NCA employees who are/were in that position and did not have their pension withdrawn.
71. Mr Y said that he suspected he was the only ex-police employee of the NCA whose pension had been withdrawn, which clearly was not fair or equitable. He asked the NCA to confirm the number of ex-police officers whose pension had been withdrawn in accordance with Regulation K4. He also asked the NCA to reconsider its decision.
72. On 21 January 2019, a non-Executive Director of the NCA issued a response under Stage Two of the IDRP. He stated that he was satisfied Regulation K4 had been properly applied in Mr Y's case.
73. **Summary of Mr Y's position**

- He wants to receive his pension and continue in service with the NCA. The decision to withdraw his pension is not equitable or in accordance with the PPS regulations. The NCA is "conflating" HM Treasury abatement policy with an incorrect interpretation of the PPS regulations.
- SOCA was not a police force. When he joined SOCA, he ceased to be a police officer and became a "specified employee" of SOCA, as defined in the Transfer Scheme. This allowed him to remain an active member of the PPS. He has not been employed in a "police force" since 2006.
- He transferred into the NCA, a civilian organisation, as a civilian. On transfer, he ceased to be a "specified employee of SOCA" and did not become a specified NCA officer. He was a deferred pensioner of the PPS and an active member of the PCSPS.
- The NCA failed to clearly explain its rationale or answer the questions he raised during the IDRP.
- The NCA is not a police force: it is a non-ministerial government agency. Its employees are civil servants; many of whom are ex-police officers.
- The non-discrimination rule in section 61 of the Equality Act makes it unlawful for NCA to withdraw his pension under Regulation K4, and not the pensions in respect of pensioners of the PPS.
- He is the only employee of SOCA and the NCA who is having/or has had their pension withdrawn under Regulation K4. The NCA has no legal basis for withholding his pension. It cannot identify a single employee who is in the same position.

- Several of his colleagues, who also transferred to the NCA under the Transfer Scheme, were retired PPS members in receipt of their full pension and pay. They were also members of the PCSPS. Based on the NCA's position, they are all specified NCA officers. Yet none of them had their pension withdrawn.
- His pension has been withheld for several months. This has adversely affected his mental and physical health. The Deputy Ombudsman determined that he is entitled to a deferred pension payable from age 60. The NCA has not abided by this decision and has simply refused to award his pension benefits.
- He does not know the amount of pension that has been withdrawn. Neither does the NCA; it has not undertaken any calculations. He also does not know the value of the deferred pension the NCA accepts he was entitled to receive in November 2016.
- Even by the NCA's interpretation of the regulations, it should have, at the very minimum, calculated the exact pension figure and initiated payment. He should have been able to access his lump sum commutation. The amount withdrawn under Regulation K4 would then have been his pension in payment, which should have been displayed on monthly payslips.
- The NCA delayed providing him with an accurate estimate of the pension he was entitled to receive in 2016, and details of the lump sum commutation available at that time. This is significant because his lump sum reduced on a monthly basis, based on the Government Actuary Department's (**GAD**) commutation tables.
- His lump sum should have been paid on the date his pension was due to come into payment. In refusing to accept that he is entitled to it, irrespective of its decision to withdraw his pension, the NCA acted contrary to Regulation B7(7) of the 1987 Regulations. In doing so, it has unlawfully held back payment of his lump sum, which is a significant amount, for more than two years.
- The Estimate does not quantify the pension the Deputy Pensions Ombudsman ruled, and the NCA agreed, he was entitled to receive when he reached 60 in November 2016. Furthermore, the NCA did not confirm his "commutation figure" despite being aware that he wished to claim it.
- The NCA's irrational interpretation of the regulations will result in a personal loss of his lump sum, which amounts to almost £80,000.
- At each stage of the process, the NCA took over a month to reply to him. His dispute has been ongoing for more than three years. It is obvious that the NCA is prolonging matters until he is forced to retire in order to claim the pension benefits

that he became entitled to receive over three years ago. It is frustrating that he has been forced to return to TPO's Office for a further Determination.

74. **Summary of the NCA's position**

- The NCA is a "Police Force" and a "Police Pensions Authority". This is supported by sections 11(1), 11(1)(ca), and 11(2A)-(C), of the 1976 Act. Since the NCA is a police force under the 1976 Act, it is necessary for Mr Y to be a specified NCA officer in order for him to be a regular policeman for the purposes of the 1987 Regulations. Equally, for him to be eligible for a pension from the NCA. Regulation L1(1) of the 1987 Regulations confirms this.
- If Mr Y were not a "specified NCA officer", the NCA would not be the appropriate Police Pensions Authority to pay his pension. Since the NCA is a "Police Force" for the purposes of the 1976 Act, Section 3: "Application of regulation to former members," does not apply to him. He remains a member of a Police Force for the purposes of the 1976 Act.
- Mr Y joined the NCA from SOCA. So, the relevant sections of the 1976 Act are 11(9) and 11(11). The definition of "specified NCA officers" in Schedule A to the 1987 Regulations, includes reference to the statutory transfer scheme under which SOCA officers became NCA officers. Schedule A to the 1987 Regulations and section 124(1) of the Pensions Act makes clear that a member of the PPS includes deferred members, such as Mr Y.
- Sections (5A) and (5B) of regulation A6 of the 1987 Regulations confirms the position. "Regular policeman" in Mr Y's case means a "specified NCA officer". So, he falls within the definition of "regular policeman in any police force".
- Mr Y's benefits will crystallise when he retires from the NCA. Until such time, only estimates can be provided based on a hypothetical retirement date.
- Reference to "retirement" in Regulation A17(1)(aa) of the 1987 Regulations, includes termination of the contract under which a specified NCA officer is employed by the NCA. Mr Y has not retired, his contract with the NCA has not been terminated. Consequently, there is no pension to commute.
- The NCA does not accept that Mr Y has been treated less favourably when compared to retired officers who transferred from SOCA to the NCA. Mr Y submits that several of his colleagues were retired PPS members in receipt of a full pension and their pay. The word "retired" is significant: there are former police officers in the NCA who have retired and receive their police pension.
- Section 11(11)(a) of the 1976 Act, requires the officer to be serving in SOCA "immediately before" and be an eligible member of a police pension scheme by

virtue of that service. Consequently, it would not include SOCA officers who had retired from the police and received their pension before joining SOCA. Furthermore, they would have gone through open competition to gain their role in SOCA.

- Subsequent “post retirement” appointments in the NCA, or any of its predecessors, were made through fair and open competition. Those appointed would not be subject to abatement/withdrawal of pension. Additionally, they would not be specified NCA officers, as they were not SOCA/NCA police officers “immediately before” appointment in their post retirement role.
- Officers whose application are accepted under the ROSS Policy, are subject to abatement because they did not go through a fair and open competition for their post retirement role. This is broadly consistent with the 1987 Member Guide, which refers to abatement on resuming service as a regular police officer.
- Mr Y made a successful “ROSS application” in March 2010, which he decided to let lapse. In any event, his case is different in that he did not cease to be a regular police officer for the purposes of the 1987 Regulations. Consequently, he cannot “resume” his service.
- Since the establishment of the NCA, at least 43 NCA officers have been subject to abatement. Currently, there are at least eight NCA officers subject to abatement. This demonstrates consistency of treatment across the NCA and the responsible use of public money, in line with HM Treasury policy.
- It is not the NCA’s desire to negatively impact Mr Y’s health. He did not detail any exceptional circumstances in the July Letter. Consequently, there were no grounds for the NCA to consider making an exception in his case.
- Mr Y has been aware of the opportunity to apply to “retire and return” since at least 2010. He is also aware that if he wants to secure a lump sum and unabated pay and pension, he will need to succeed in an open and fair competition. If successful, he could retire within six months of receiving a job offer, take a 31 day break in service, and return with an unabated pay and pension.
- The NCA does not accept that the ROSS Policy is not relevant to Mr Y’s complaint. It is the mechanism under which the NCA balances its obligations in respect of public money as a Police Pension Authority with the interests of its officers who are members of the PPS. It enables officers who want to access their lump sum and return to service to do so, where the NCA agrees their skills are vital. It permits officers to retire and return to service where their service with the NCA had been terminated because of retirement.

- The NCA does not consider those officers to be “specified NCA officers”. They would not have been employed as SOCA/Police/NCA officers “immediately before taking up their post retirement role.”
- It is not correct that the ROSS Policy was closed before the NCA came into existence. SOCA and the NCA have operated it since 2009. The only exception is the period from December 2011 to October 2012, due to concerns about the tax treatment of lump sums.

75. I issued a Preliminary Decision on 21 July 2021. Mr Y made further representations in response to that Decision.

76. Mr Y’s representations

- He is now over 64 years old and has been in law enforcement for over 42 years. He first raised this issue with the NCA in the period leading up to his 60th birthday, as he considered that he was entitled to receive his pension under the Police Pensions Regulations.
- He has attempted to understand the “intricacies and interpretation” of the various acts, policy, and regulations cited in the Preliminary Decision. He is now more confused as to whether he can actually continue working and receive all or part of his pension, based on his age and length of service.
- This has been a “David v Goliath situation”. He has no knowledge or experience in employment or pension law and the associated regulations. The NCA, on the other hand, is not only “an international and national law enforcement agency but has numerous resources to call upon to “assist and advise”.
- Since the NCA was already refusing to release his pension, it was “pretty much a forgone conclusion” that it would remain steadfast in its decision, unless directed by the Ombudsman to release it.
- Sadly, his experience, knowledge, length of service, and age do not constitute “exceptional circumstances”.

Conclusion

77. Mr Y’s complaint that my Office has accepted for investigation, raised two closely related but distinct issues. Firstly, whether Regulation K4 applied in his case. Secondly, whether a decision had been properly made by the NCA to withdraw his pension until such time as he leaves service.
78. Mr Y submits that he is not a “specified NCA officer” and the NCA is not a “police force”. Consequently, Regulation K4 cannot be applied to him. I disagree.

79. Having considered the legislation governing the PPS, I find that the NCA interpreted the legal position correctly and provided a comprehensive explanation in its exchanges with Mr Y.
80. The 1976 Act provides that a person's service as a National Crime Agency officer is "eligible service" for the purposes of this Act, in any of the cases specified. Schedule A to the 1987 Regulations is clear that "member" of the PPS includes a deferred member. By virtue of Mr Y's status, as a deferred member in the PPS, I find that he can be classed as a "specified NCA officer" for the purposes of the 1987 Regulations.
81. Schedule A to the 1987 Regulations is clear that "specified NCA officer" means an NCA officer whose service as such is eligible service within the meaning of section 11(9) to (13) of the 1976 Act. Regulation A6 states:
- “(5A) For the purposes of these Regulations, a specified NCA officer shall be deemed to be a member of a home police force, except where the context otherwise requires.
- (5B) In relation to a specified NCA officer, any reference in these Regulations—
- (a) to a force shall be construed as a reference to the NCA;
- (b) to a police pension authority shall be construed as a reference to the Director General of the NCA;
- (c) to a pension supervising authority shall be construed as a reference to the Secretary of State”.
82. The NCA can be considered a police force by virtue of Regulation A6 and a police force for the purposes of Mr Y's pension under the PPS. It is necessary for Mr Y to be a "specified NCA officer" in order to be a "Regular Policeman" for the purposes of Regulation L1 of the 1987 Regulations. It is also necessary for Mr Y to be a "specified NCA officer" for him to be entitled to a pension under Part B of the 1987 Regulations in respect of the NCA. I agree that if Mr Y were not a "specified NCA officer," the NCA would not be the appropriate "Police Pensions Authority" to pay his pension. I also agree that the NCA is permitted to exercise its discretion under Regulation K4 to withdraw Mr Y's pension, provided the exercise of discretion was properly made.
83. Regulation K4 provides that a police authority may withdraw the whole or any part of the pension. This is in respect of any period during which the pensioner is serving as a regular policeman in any police force. This is not in dispute.
84. The NCA said that at least 43 NCA officers have been subject to abatement since October 2013. The NCA also said that, in withdrawing Mr Y's pension, it sought to pursue "legitimate aims." Namely, the efficient use of public funds and the fair and equitable treatment of members of the PPS. The issue here is the reasonableness of that decision, in light of all relevant information available to the NCA.

85. I acknowledge that Mr Y has alleged discrimination and unfair treatment on the part of the NCA. For Mr Y to have a valid age discrimination case, he must demonstrate that he was treated less favourably than a member in an identical position to him. I cannot be satisfied from the evidence Mr Y has put forward that he has been unfairly treated because of his age. Similarly, that he has been harassed or victimised by the NCA in relation to the PPS. The evidence presented by the NCA supports consistency in its treatment of officers who have not retired and continue in service.
86. I am satisfied on reviewing the evidence in this case that the NCA followed a reasonable process when exercising its discretion pursuant to Regulation K4. I am also satisfied that it explained the basis for that decision correctly.
87. I have taken into account the fact that the NCA gave Mr Y an opportunity to provide details of any exceptional factors why his pension should not be withdrawn. I consider that to be an appropriate course of action. I find that the NCA gave sufficiently detailed explanations of the legislative framework to enable Mr Y to understand the legal position.
88. Regarding Mr Y's claim to financial loss, I am not persuaded that it amounts to an actual loss in these circumstances. The option for Mr Y to take a lump sum is not available to him until such time as he retires from service, or such time as the NCA reconsiders its decision to withdraw the whole of his pension. The evidence supports the view that Mr Y does not have a separate entitlement to a lump sum under the PPS. It is only available to him if he surrenders part of his pension on retirement for a PCLS in exchange for a lower pension.
89. Under the "Lump sum rule," a PCLS is payable at the point the member becomes entitled to it in connection with becoming entitled to a relevant pension. The Finance Act provides that the PCLS is paid within the period beginning six months before and ending one year after the day the entitlement arose. For the purposes of the Finance Act, an actual entitlement arises when the member has a right to a benefit without having to fulfil any further conditions or take any action.
90. Mr Y will not have an actual entitlement to a PCLS until such time as he has completed and submitted all the relevant retirement paperwork required in connection with his retirement.
91. The sequence of events does not indicate that there were excessive delays on the part of the NCA during the IDRP. That said, the NCA unreasonably delayed providing Mr Y with a summary of his pension benefits. The evidence indicates that this was not provided to Mr Y until November 2018. The NCA, as the Police Pensions Authority in this case, should have ensured that he was provided with a summary of his pension benefits within a reasonable timeframe of the Deputy Pensions Ombudsman's Determination. This would have helped alleviate his ongoing concerns regarding the status of his deferred benefits. The NCA shall pay £500 to Mr Y in respect of the significant non-financial injustice it caused him.
92. I partly uphold the complaint.

PO-26238

Directions

93. Within 28 days of the date of this Determination, the NCA shall pay £500 to Mr Y in respect of the significant non-financial injustice that Mr Y has suffered.

Anthony Arter

Pensions Ombudsman

28 September 2021

Appendix A

Police Pensions Act 1976

“11 Interpretation.

(1) This Act shall have effect as if any reference (however expressed) to membership of a police force or to service or employment in a police force included a reference to—

(a) service as an officer pursuant to an appointment under section 10 of the Overseas Development and Co-operation Act 1980 or an appointment made in connection with the provision by the Secretary of State of assistance under the International Development Act 2002;

(aa) temporary service in accordance with arrangements made under section 26(2) of the Police Act 1996 or engaged on temporary service in pursuance of section 15 of the Police and Fire Reform (Scotland) Act 2012 with any person engaged in activity outwith the United Kingdom;

(ab) service in the Royal Ulster Constabulary in respect of which the provisions of section 97 of the Police Act 1996 have effect;

(b) service as an inspector or assistant inspector of constabulary appointed on or after 1st August 1964; and

(bg) service, by a person holding the office of constable, as a member of staff of the Disclosure and Barring Service;

(bfa) any of the following kinds of temporary service by a constable of the Police Service of Scotland in pursuance of section 15 of the Police and Fire Reform (Scotland) Act 2012—

(i) service as a member of the Scottish Police Authority's staff in accordance with arrangements made under paragraph 7(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012;

(ii) service in accordance with section 72(1)(b) or 73(1)(b) of the Police and Fire Reform (Scotland) Act 2012 as an assistant inspector of constabulary or, as the case may be, as a staff officer of the inspectors of constabulary;

(iii) service under the Crown in connection with research or other services connected with the police provided by the Scottish Ministers;

(iv) service with the Scottish Ministers in connection with their functions under Part 5 or 8 of the Proceeds of Crime Act 2002;

(v) service in accordance with arrangements made under paragraph 6(2) of Schedule 2 to the Police Reform Act 2002;

(vi) service as a National Crime Agency officer; or

(vii) service in the Police Service of Northern Ireland;

(bfb)service by a person (other than a constable of the Police Service of Scotland) as a member of the Scottish Police Authority's staff in accordance with arrangements made under paragraph 7(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012 who, immediately before beginning such service, is or is eligible to be a member of a pension scheme provided for under section 1 above;

(bh)service as the Chief Inspector of the UK Border Agency;

(c)central service in respect of which the provisions of section 97 of the Police Act 1996 have effect.

(ca)eligible service as a National Crime Agency officer.

(d)service as a senior NCA officer;

(e)service, by a person to whom section 100A of the Police Act 1996 applies, as a member of the staff of the College of Policing;

(2)In this Act—

“ police pension authority ” means—

(a) the chief constable of any police force maintained under section 2 of the Police Act 1996;

(b) the Commissioner of Police of the Metropolis;

(c) the Common Council of the City of London in its capacity as a police authority; and

(d) the Scottish Police Authority;

“ pension supervising authority ” means—

(a) any local policing body within the meaning of the Police Act 1996; and

(b) the Scottish Police Authority.

(2A)But—

(a)in relation to any regulations made under the Police (Overseas Service) Act 1945 and any service such as is mentioned in subsection (1)(a) above, “police pension authority” or “pension supervising authority” means the Secretary of State or the Minister of Overseas Development;

(b)in relation to any service such as is mentioned in subsection (1) (aa), (ab), (b), (bfa)(vii), (bh) or (c), (c) or (d) above, “police pension authority” or “pension supervising authority” means, subject to paragraphs (ba)to (e) below, the Secretary of State.

(ba)in relation to service of the kind described in section 97(1)(aa) of the Police Act 1996 (c. 16) or mentioned in subsection (1)(bfa)(v) above, “police pension authority” or “pension

supervising authority” means the Independent Police Complaints Commission
Independent Office for Police Conduct;

(c)in relation to any such service as is mentioned in subsection (1)(bfa)(vi) or subsection (1)(ca) above, or any service of the kind described in section 97(1)(cj) of the Police Act 1996, “police pension authority” means the Director General of the National Crime Agency and “pension supervising authority” means the Secretary of State; . . .

(bg)in relation to any service such as is mentioned in subsection (1)(bg), “police pension authority” or “pension supervising authority” means the Disclosure and Barring Service;

(h)in relation to any service such as is mentioned in subsection (1)(bg), (bh), (bi), (bj) or (bk) above, “police pension authority” or “pension supervising authority” means the Scottish Police Services Authority.

(i)in relation to any service such as is mentioned in subsection (1)(e) or any service of the kind described in section 97(1)(i) of the Police Act 1996, “police pension authority” or “pension supervising authority” means the College of Policing.

; and

(j)in relation to any service such as is mentioned in subsection (1)(bfa)(ii), (iii) or (iv), “police pension authority” and “pension supervising authority” means the Scottish Ministers.

(3)In this Act, except so far as the context otherwise requires, “ police force ” means any police force within the meaning of the Police Act 1996 or the Police Service of Scotland, and, in respect of—

(a)any person such as is mentioned in section 1(1) of the Police (Overseas Service) Act 1945; and

(b)any person engaged or employed in any service such as is mentioned in subsection (1)(a), (aa), (ab), (ba), (bb), (bc), (bd), (bf), (bg), (bfa), (bfb) (bh), (b) (c), (d) or (e) above;

any body in or with which that person is serving or, in the case of service such as is mentioned in subsection (1)(bh) or (d), the department of the Secretary of State.

(4)This Act shall have effect—

(a)as if commissioners and assistant commissioners of the metropolitan police force and commissioners of the City of London police force were members of those forces respectively; and

(b)in relation to any person who on 5th July 1948 was or had been the surgeon of the City of London police force or a clerk or other person employed in or in connection with that force, as if such surgeons, clerks or other persons employed in or in connection with that force were members of that force;

and references in this Act to membership of a police force shall be construed accordingly.

(5) Except so far as the context otherwise requires, in this Act—

“central service ”—

(a) means relevant service within paragraph (aa), (b), (c), (cf) or (d) of section 97(1) of the Police Act 1996, or

(b) “injury ” includes disease;

“pension ”, in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a lump sum or a gratuity so payable and a return of contributions; and

“pension rights ” includes, in relation to any person, all forms of right to, or eligibility for, the present or future payment of a pension to or in respect of that person.

“senior NCA officer” means—

(a) the Director General and Deputy Director General of the body known as the National Crime Agency;

(b) the officers of that body who report directly to the Director General or Deputy Director General; and

(c) the Head of the National Cyber Crime Unit in that body;

(6) References in this Act to the Director General of the National Criminal Intelligence Service and to his service have effect only in relation to cases in which the person in question was a serving police officer for the purposes of section 6 of the Police Act 1997 (c. 50) immediately before his appointment to that office took effect.

(7) References in this Act to an inspector or assistant inspector of constabulary, and to service as such, do not have effect in relation to cases in which the person in question—

(a) was appointed on or after 1st January 1999, and

(b) did not serve as a member of a police force at any time before his appointment took effect.

(8) References in this Act to the Chief Inspector of the UK Border Agency, and to service as such, have effect only in relation to cases in which the person in question—

(a) has held the office of constable, and

(b) immediately before the appointment as Chief Inspector took effect, was serving as a member of a police force (whether or not as a constable).

(8A) References in this Act to a senior the NCA officer or a member of the staff of the College of Policing, and to service as such, have effect only in relation to cases where the person in question is (immediately before beginning that service) a member, or eligible to

be a member, of a pension scheme provided for under section 1 above or section 25(2)(k) or 26(2)(g) of the Police (Northern Ireland) Act 1998

(9) A person's service as a National Crime Agency officer is "eligible service" for the purposes of this Act in any of the following cases.

(10) The first case is where—

(a) the person's service as a National Crime Agency officer is—

(i) service as the Director General, or

(ii) service that is designated for this purpose by the Director General, and

(b) the person is (immediately before beginning that service) a member, or eligible to be a member, of a police pension scheme.

(11) The second case is where—

(a) immediately before beginning the service as a National Crime Agency officer, the person—

(i) is serving as a member of the staff of the Serious Organised Crime Agency, and

(ii) by virtue of that service is, or is eligible to be, a member of a police pension scheme, and

(b) the person becomes a National Crime Agency officer by virtue of a scheme under paragraph 2 of Schedule 8 to the Crime and Courts Act 2013.

(12) The third case is where—

(a) immediately before beginning the service as a National Crime Agency officer, the person—

(i) is serving as a member of a police force, and

(ii) by virtue of that service is, or is eligible to be, a member of a police pension scheme, and

(b) the person becomes a National Crime Agency officer by virtue of a scheme under paragraph 2 of Schedule 8 to the Crime and Courts Act 2013.

(13) In subsections (10) to (12) "police pension scheme" means a pension scheme provided for under—

(a) section 1 above, or

(b) section 25(2)(k) or 26(2)(g) of the Police (Northern Ireland) Act 1998".

Appendix B

Paragraph 2 of Schedule 8 to The Crime and Courts Act 2013

“2(1)A staff transfer scheme is a scheme which provides—

(a)for—

(i)a designated member of the staff of SOCA,

(ii)a designated constable in an England and Wales police force,

(iii)a designated member of the civilian staff of an England and Wales police force, or

(iv)a designated member of the personnel or staff of any other person,

to become an NCA officer and, accordingly, to become employed in the civil service of the state;

(b)for a designated member of the staff of the NPIA to become employed in the civil service of the state—

(i)as an NCA officer, or

(ii)in the Home Office;

(c)so far as may be consistent with employment in the civil service of the state, for the terms and conditions of the designated transferee's employment to have effect as the person's terms and conditions of employment as an NCA officer or in the Home Office;

(d)for the transfer to the NCA or the Secretary of State of the rights, powers, duties and liabilities of the employer under or in connection with the designated transferee's contract of employment;

(e)for anything done (or having effect as if done) before that transfer by or in relation to the employer in respect of such a contract or the designated transferee to be treated as having been done by or in relation to the NCA or the Secretary of State.

(2)A staff transfer scheme may provide for a period before a person became employed in the civil service of the state under a staff transfer scheme to count as a period during which the person was employed in the civil service of the state (and for the operation of the scheme not to be treated as having interrupted the continuity of that period).

(3)A staff transfer scheme may provide for a person who would otherwise become employed in the civil service of the state under a staff transfer scheme not to become so employed if the person gives notice objecting to the operation of the scheme in relation to the person.

(4)A staff transfer scheme may provide for any person who would be treated (whether by an enactment or otherwise) as being dismissed by the operation of the scheme not to be so treated.

(5)A staff transfer scheme may provide for a person to become employed in the civil service of the state despite any provision, of whatever nature, which would otherwise prevent the person from being employed in the civil service of the state.

(6)A staff transfer scheme may provide for a person's secondment to SOCA or the NPIA to continue as a secondment of that person to the NCA.

(7)In the application of this paragraph to the transfer of a constable—

(a)a reference to employment (other than employment in the civil service of the state) is a reference to service as a constable;

(b)a reference to a contract of employment is a reference to the terms and conditions of service as a constable;

(c)a reference to the employer is a reference to the chief officer of the police force, and the policing body for the police force, in which the constable serves”.

Appendix C

Section 61 Equality Act 2010

“Non-discrimination rule

- (1) An occupational pension scheme must be taken to include a non-discrimination rule.
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—
 - (a) must not discriminate against another person (B) in carrying out any of A’s functions in relation to the scheme;
 - (b) must not, in relation to the scheme, harass B;
 - (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.
- (4) The following are responsible persons—
 - (a) the trustees or managers of the scheme;
 - (b) an employer whose employees are, or may be, members of the scheme;
 - (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.
- (5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.
- (6) An appointing function is any of the following—
 - (a) the function of appointing a person;
 - (b) the function of terminating a person’s appointment;
 - (c) the function of recommending a person for appointment;
 - (d) the function of approving an appointment.
- (7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement).
- (8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown.
- (9) An order authorising the use of rules, practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.

(10)A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7).

(11)A duty to make reasonable adjustments applies to a responsible person”.