

DEPARTMENTAL MINUTE

USE OF CONTINGENT LIABILITY BY THE HOME OFFICE – NATIONAL CRIME AGENCY RETENTION OF SPECIALIST SKILLS (ROSS) LITIGATION

1. It is normal practice, when a government department proposes to undertake a contingent liability in excess of £300,000 for which there is no specific statutory authority for the Minister concerned to present a departmental Minute to Parliament giving particulars of the liability created and explaining the circumstances and to refrain from incurring the liability until 14 parliamentary sitting days after the issue of the Minute, except in cases of special urgency.
2. The litigation relates to 15 claims from current NCA officers and the application of an abatement to those officers who chose to retire and return under the NCA's Retention of Specialist skills (ROSS) scheme.
3. The NCA's precursor the Serious Organised Crime Agency implemented ROSS in 2009, drawing on guidance from the Home Office. A section of the ROSS policy enabled officers, where there was exceptional need, to retire and return to their posts, whilst accessing their police pension benefits (including the lump sum element). Those officers who retired and returned under ROSS had their salaries abated to reflect the pension income.
4. The Claimants to the Employment Tribunal litigation are advancing an argument that the application of abatement, under the ROSS policy, is discriminatory on the grounds of age (direct and indirect) and therefore unlawful. They are also arguing that unlawful deductions from salary have been made.
5. The maximum value of the current claim is £2.6m.
6. The headline worst case scenario figures currently claimed between the claimants are as follows:
 - a) abatement unlawful and incorrect salary applied, £2,579,136.56
 - b) abatement unlawful but correct salary applied, £1,118,113.07 ,
and
 - c) abatement lawful but incorrect salary applied, £1,758,016.18
7. In addition, the Employment Tribunal has discretion to award interest on any financial compensation awarded. The Employment Tribunal further has discretion over the rate at which interest is awarded. Total interest payable will also depend upon the date on which the full merits hearing is commenced. As such, it is difficult to calculate the potential liability in

respect of interest with any accuracy; however, using the court rate of 8% and on a worst case scenario, potential interest to date is calculated at approximately £440,000.

8. It should be noted, that depending on the success of the current claim, the value of the contingent liability could increase to £7.8m (as set out in table 1 below). The NCA believes that the grounds of the claim can be robustly defended and has consequently evaluated that the prospect of a successful claim is less than 50% likely. Expected loss is generally calculated as the sum of probability times exposure for each option. Due to the methodology used, however, the expected loss is considered separately for each option (as set out in table 2 below).
9. The likelihood of any liability is expected to crystallise in the following years (i.e. it is most likely to be resolved in the 2020/21 financial year):
 - 1st April 2019 to 31st March 2020: 5%
 - 1st April 2020 to 31st March 2021: 90%
 - 1st April 2021 to 31st March 2022: 5%
10. The NCA estimates that it is likely there will be a £Nil liability. The Employment Tribunal litigation is likely to last until at least the 2020-21 financial year. The claim is on the basis of individual claimants, and therefore no-one but the individuals involved or their representatives would directly benefit (noting the prospect of them winning is unlikely). Authority for any expenditure required under the liability will be sought through the normal supply procedure.
11. The Treasury has approved the proposal in principle. If, during the period of fourteen parliamentary sitting days beginning on the date this letter was received, you signify an objection, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.



27 June 2019

Table 1.

Details	Total value
Total likely claim value (15 claimants)	£2,579,136.56
Total potential repercussive impact (value extrapolated)	£7,797,666

Table 2.

Loss	Description	Likelihood	Expected loss
Nil	No prospect of successful claim	80-90%	£Nil
<£0.5m	Settlement	10%	£0.05m
£1.1m	Partial claim awarded, abatement unlawful, correct salary applied	20%	£0.22m
£1.8m	Partial claim awarded, abatement unlawful, incorrect salary applied	20%	£0.36m
£2.6m	Full claim awarded, abatement unlawful, incorrect salary applied	20%	£0.52m
£4.7m	Repercussive impact: Full claim awarded, abatement unlawful, incorrect salary applied	20%	£0.94m
£7.8m	Repercussive impact: Full claim awarded, abatement unlawful, incorrect salary applied	20%	£1.56m