

CONFIDENTIAL

19 December 1983

Prime Minister ①

R TURNBULL

TSRB PENSIONS

1. The present system for calculating judges' and armed forces pensions is silly. It will always give rise to anomalies. There is always a good day to retire for a judge or a brigadier. Thus, if Option 2 were adopted (backdating the 1 August 1983 increases to 1 April 1983 for pensions purposes) those who retired on 31 March would be poorly treated, relative to those who retired on 1 April 1983.

Therefore, Option 2 would be just as "unfair" as Option 5 (the status quo).

2. Any change from Option 5 will bring demands from MPs, doctors and dentists, reopening wounds which were healing.

3. Therefore we must stick to Option 5 (the status quo).

4. To avoid future rows of this kind, the judges' and armed forces pensions should be calculated on the same average-last-year-salary basis as the higher Civil Service. And work should immediately be set in hand to this end.

Pal.

PP FERDINAND MOUNT

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PRIME MINISTER

TSRB PENSIONS

Although the paper attached to the Chancellor's letter of 21 November sets out 5 options these have effectively been reduced to option 2 and option 5 with Chancellor, Lord Privy Seal and Secretary of State for Social Services preferring option 2 and Lord Chancellor and Secretary of State for Defence option 5.

My initial reaction was that option 5 was indefensible. The differences in pension which are permanent and affect payments for the rest of the pensioner's life seemed too great to live with. For example, a judge retiring on 31 July could have a pension £2,750 less than a judge retiring a day later. For an army officer the maximum difference is £2,425.

Reading between the lines of Peter Gregson's brief, I suspect he started with the same reaction. But on further analysis I have come to the conclusion that the position is not as outrageous as it looks. Clearly there are large differences if judge is compared with judge, but if judge is compared with civil servant the injustice is by no means so marked.

The truth is that the injustice for judges is as much relative as absolute. A judge with the same past salary as a civil servant who retires on the same day will, under option 5, get a pension at least as good as the civil servant, and possibly better, since the judge's pension enjoys the more favourable last day basis. The last day will always be at least as high and possibly higher than the average of the previous 12 months which is the basis of the civil servant's pension.

If you took the view that the smaller differences between civil servants retiring on different dates could be worn, there does not seem to be a reason for additional concern about judges and armed forces officers. Their additional disadvantage would only be by reference to their colleagues.

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The decision will to some extent be a political one, but if you were disposed to take a hard line the justification for this seems rather stronger than I had at first supposed.

Two lessons emerge from this:

- (i) there is a good case for reconsidering the basis of judges' and armed forces' pensions so that they use a system which is less vulnerable to the timing of pay increases;
- (ii) if the question of staging pay increases comes up again, no decisions should be taken until the pensions consequentials have been agreed.

AT

13 December 1983



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PRIME MINISTER

TSRB PENSIONS

BACKGROUND

Wednesday 21

You are holding a meeting on ~~19~~ December with the Ministers concerned to discuss the pension consequences of the Government's decisions on the 1983 pay award to the groups covered by the Top Salaries Review Body (TSRB): the judiciary, senior officers of the Armed Forces, and senior civil servants. The conclusions of the meeting will also affect other public officers whose pensions are linked to those of the civil service, in particular the Clerks of the two Houses of Parliament.

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2. The issues are set out in the letters of 21 November from the Chancellor of the Exchequer, 30 November from the Lord Chancellor, and 2 December from the Secretary of State for Defence. The Lord Privy Seal (letter of 24 November) and the Secretary of State for Social Services (letter of 2 December) have also commented.

3. You will recall that the following decisions were taken on the recommendations of the pay review bodies for 1983:

(i) The recommendations of the Armed Forces Pay Review Body were accepted in full, and put into effect from 1 April 1983.

(ii) The difference between the rates recommended by the Doctors and Dentists Review Body for 1 April 1982 and 1 April 1983 was awarded from 1 April 1983; the amount by which the 1982 recommendations were reduced was awarded from 1 January 1984.

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(iii) The difference between the rates recommended by the TSRB for 1 April 1982 and 1 April 1983 was awarded from 1 August 1983; the amount by which the 1982 recommendations were reduced was awarded from 1 January 1984.

(iv) Members of the House of Commons voted themselves a complicated pay settlement over the period 1983 to 1987.

4. The pensions of the TSRB groups are all related to final salary, though in different ways:

(i) Armed Forces pensions are promulgated in Prerogative Instruments which lay down pension rates for all officers of a given rank retiring within a stated period (which usually runs from 1 April to the following 31 March); the rates of pension are normally based on the salary current in that period.

(ii) Pensions of the judiciary are based on the salary on the last day of service.

(iii) Pensions of the higher civil service are based on the average salary over the last 12 months of service.

5. Pensions are also affected by uprating, ie "pensions increase". In general, public service pensions are uprated annually in line with State retirement pensions; pensioners who have been retired for less than one year receive 1/12th of the uprating for each month for which they have been retired. The Armed Forces system, however, is rather different. All those of a given rank who retire under a particular year's pension code initially receive the same pension, which includes an amount for prospective pensions increase: under the 1982 code this was 1.6 per cent for those who retired after the November 1982 uprating and before 1 April 1983.

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6. It follows that in the absence of special action all members of the TSRB groups will receive smaller pensions than they would have done if the rates payable from 1 January 1984 had been payable from 1 April 1983; and that this applies particularly severely to those retiring between 1 April 1983 and 1 August 1983. Because pensions increase is related to the time of retirement, those retiring later receiving less than those retiring earlier, they may receive smaller pensions than some of those who retired before 1 April 1983. Because the pensions of the judiciary and members of the Armed Forces are either explicitly or in effect based on pay on the last day of service, the differences between those retiring at different dates are particularly marked. In the case of the Armed Forces there is the further difficulty that because the AFPRB award, implemented from 1 April 1983, effectively wiped out the salary differential between two-star officers and their immediate subordinates, two-star officers retiring before 1 August 1983 will receive no higher pension than those subordinates.

7. The note attached to the Chancellor of the Exchequer's letter of 21 November explains the problems in more detail and identifies 5 options for dealing with them. The Chancellor of the Exchequer favours 'Option 5' (taking no special action); he is supported by the Lord Privy Seal and the Secretary of State for Social Services. The Lord Chancellor and the Secretary of State for Defence favour 'Option 2' (deeming the 1 August increase to be effective for pension purposes from 1 April).

MAIN ISSUES

8. The main issue before the meeting is simply what, if any, special action should be taken to mitigate the effects of the phasing of the 1983 pay award on the pensions of the TSRB groups. It may be helpful to keep the following points before the meeting:

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(a) All those concerned are among the relatively better paid and pensioned members of the community. The case is not therefore being argued on hardship grounds. What is at stake is however not just forgoing a pay increase for a few months, but, for those who happened to retire during that period, a permanent reduction in income for the rest of their lives.

It has therefore been accepted on several occasions in the past that modification of pay awards, which may be necessary for short-term economic or political reasons, should not have permanent effects on pensions. The question is whether the Government wishes to follow this precedent on this particular occasion or whether it would be better on general policy grounds to get away from it altogether.

(b) Although, as explained in paragraph 6, there are some particular problems of relative treatment in the case of the judiciary and the Armed Forces, this is largely a consequence of the peculiar generosity of their pension arrangements. If pension is based on the rate of pay on the last day of service, that obviously makes the date of retirement more critical than if pension is based on average salary over the last 12 months of service. But it is inherently a more generous system than the averaging which applies in the civil service. For example, a judge retiring on 31 July 1983 is treated no worse than a Permanent Secretary retiring on the same day. The problem arises from the fact that a judge retiring on 1 August is treated so much better than his colleague who retired the day before, whereas a Permanent Secretary retiring on 1 August does not have this advantage over his colleague who retired the day before.

(c) It is more likely to aggravate than to solve the problem if different groups are treated with different degrees of

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generosity. Any solution should apply to all groups, unless differences are clearly based on differences in the existing pension schemes.

(d) The pensions increase problem - someone receiving a smaller pension than someone retiring earlier from an equivalent grade or rank - can in principle arise whenever pay increases take place at longer than yearly intervals, or prices rise faster than pay. It would be unwise to accept it as an anomaly which must necessarily be put right.

The Options

9. The main points about the five options are as follows:

Option 1 (backdating both the 1 August 1983 and the 1 January 1984 increases to 1 April 1983 for pensions purposes)

This is the most generous option. The main objection is that it would lead to claims from the doctors and dentists for similar treatment for their 1 January 1984 increases. Both the Lord Chancellor and the Secretary of State for Defence now acknowledge that this is not an acceptable option.

Option 2 (backdating only the 1 August 1983 increase to 1 April 1983 for pensions purposes)

This would satisfy the Lord Chancellor and the Secretary of State for Defence. It would be possible to resist any concessions to the doctors and dentists since the 1 January 1984 increase would not be affected. Indeed the doctors and dentists would still have an advantage over the TSRB grades since their first instalment was effective from 1 April for pay as well as for pensions purposes. If however the

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Government wishes to avoid basing pensions on notional salary on general policy grounds, this option is unacceptable.

Option 3 (as Option 2 but applied only to those retiring voluntarily during April to July 1983)

This is an unsatisfactory compromise which, while still open to objection on general policy grounds, fails to deal adequately with the problem. There is the additional objection that it would involve difficult decisions over the motive for a retirement, frequently a grey area.

Option 4 (continue the 1982 Armed Forces pension code for armed forces officers retiring during 1 April to 31 July 1983)

This avoids the anomaly that those retiring between 1 April 1983 and 1 August 1983 would actually have lower pensions than those who retired between November 1982 and 1 April 1983. The anomaly particularly affects senior armed forces officers because of the very special arrangements for dealing with pension uprating in the armed forces described in paragraph 5. It would give those retiring in April to July 1983 the same 1.6 per cent increase received by those retiring between November 1982 and April 1983. It also does something to restore the pensions differential between two-star officers and their subordinates retiring in the April-July period. The Secretary of State for Defence regards this option as an inadequate response (a 1.6 per cent pensions increase rather than around 7 per cent). The major objection is that it would do nothing for the judiciary and the senior civil servants and would probably thus increase their sense of grievance.

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Option 5 (no concession)

This has the advantage of sticking to the principle of relating pensions to actual pay. But the Government would have to be prepared to resist the pressures from the groups affected.

The choice is therefore primarily between Option 2 and Option 5. There appear to be no compromise solutions which are worthwhile and would not create more problems than they would solve.

Hard cases and "public faith"

10. The doctrine of "public faith" states that if someone is misled by a person in a position of authority and consequently embarks on a particular course of action, he should not be made to suffer for it. We understand, for example, that some public servants claim to have been given misleading information by their Establishment Officer and to have decided in consequence to retire on a particular date. Under any of the options such cases can be considered on their merits, and if compensatory action is justified it can be taken. But the doctrine does not apply to those who choose to assume that the Government will undertake a particular course of action, such as awarding a pay increase from one date rather than another. Although there may be other and wider reasons for taking a more generous line than Option 5, "public faith" is not among them.

Presentation and announcements

11. The Government's decisions will no doubt become public knowledge; it may well be desirable to make a low key announcement of them to ensure that they are best presented. If the meeting should favour Option 5, the public justification will presumably be that the Government sees no reason for departing from the normal practice of basing pension on actual pay. If Option 2 is preferred,

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it would probably be best to stress that the decision to give no pay increase at all from 1 April was unusual and could not have been easily anticipated by those concerned, and that the Government thinks it right, given the long term effects of the decision on pensions as opposed to pay, to treat the TSRB groups in the same way as the doctors and dentists. For reasons given earlier in this brief it would be undesirable to suggest that there is any question of public faith having been pledged.

Future work

12. The Chancellor of the Exchequer has proposed that there should be a review to see whether anything can be done to avoid similar problems in future. You will no doubt wish to encourage this. The difficulties have been aggravated in the case of the judiciary and the armed forces because, unlike the civil service, pension is not related to average salary over the previous twelve months. In the case of the armed forces the special arrangements for pension uprating have created further complications.

HANDLING

13. You will wish to invite the Chancellor of the Exchequer to open the discussion. The Lord Chancellor and the Secretary of State for Defence could then be asked to outline their views. The Lord Privy Seal and the Secretary of State for Social Services will be able to comment on possible repercussions among the groups for which they are responsible.

CONCLUSIONS

14. You will wish the meeting to reach conclusions on the following:



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(i) Whether and, if so, what special action should be taken to mitigate the effects on the pensions of all or any of the TSRB groups on the phasing of the 1983 pay award;

(ii) Whether the Government's decisions should be formally announced and, if so, how?

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Plg

P L GREGSON

13 December 1983

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13 December 1983

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PRIME MINISTER

TSRB Pensions

I have very little to add to Mr Gregson's brief of 13 December for your meeting on 21 December.

2. I would only add, in relation to paragraph 10 of his brief, that I am not aware of any case in which an aggrieved pensioner could argue that public faith had been pledged. I am aware, however, of one or two cases of people who, between April and August, retired prematurely because their jobs have disappeared as a result of the Open Structure review, and who will feel a sense of grievance if, in addition to being obliged to retire, find their pensions less high than they would have been if the Government's decisions on the TSRB recommendations had been implemented from 1 April rather than from 1 August.

RA

ROBERT ARMSTRONG

20 December 1983

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10 DOWNING STREET

From the Private Secretary

Prime Minister

You went through these papers at the weekend. The only new papers are the notes from RTA and Policy Unit.

You might, however, like to look at options 2 and 5 in the paper attached to the Chancellor's letter, - Flag A; and the Annex which quantifies the "losses" suffered by particular groups -
Flag B.

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10 DOWNING STREET

From the Private Secretary

5 December 1983

TSRB Pensions

The Prime Minister has agreed that a meeting should be held under her chairmanship to try and reach agreement on the pension awards to be made for the different TSRB groups. This has been arranged for Monday 19 December at 1600 hours.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Nick Evans (Ministry of Defence), Steve Godber (Department of Health and Social Security), David Heyhoe (Lord Privy Seal's Office), and Richard Hatfield (Cabinet Office).

MR. A. TURNBULL

John Kerr Esq
HM Treasury.

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