

# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*AND*

*Respondent*

Deborah Harrod  
and others

Chief Constable of West Midlands Police  
and others

Police A19 Test Cases Multiple 2428

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central

ON: 11 February to 15 March 2013  
21-29 November 2013

Employment Judge: James Tayler

MEMBERS: David Buckley  
David Carter

### *Appearances*

Paul Gilroy, Queen's Counsel (Superintendants' Association Claimants)

Ian Skelt, Counsel (Federated Ranks Claimants)

John Cavanagh, Queen's Counsel (Respondents)

## JUDGMENT

The unanimous Judgment of the Tribunal is that the practice of requiring the retirement of nearly all officers in the Forces who could be required to retire under Regulation A19 of the Police Pensions Regulations 1987 was not a proportionate means of achieving a legitimate aim.



EMPLOYMENT JUDGE TAYLER

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

3 February 2014

JUDGMENT SENT TO THE PARTIES ON

5 February 2014

AND ENTERED IN THE REGISTER



FOR THE TRIBUNAL OFFICE

## REASONS OF THE EMPLOYMENT TRIBUNAL

### Introduction

1. Regulation A19 of the Police Pensions Regulations 1987 ("A19") permits Police Authorities to require a Police Officer of the rank of Chief Superintendent or below to retire if her retention would not be in the general interests of efficiency, provided she has achieved service that would entitle her to a pension of two thirds average pensionable pay ("2/3APP"). Generally, officers to whom A19 can be applied ("A19 Officers") will have served 30 years, and will be at least 48.
2. A number of Police Forces applied Regulation A19 to nearly all A19 Officers. It is admitted that this involved, prima facie, indirect age discrimination. The issue in this case is justification.
3. The claims are brought against the Police Authorities and Chief Constables of Devon and Cornwall, Nottinghamshire, West Midlands, North Wales and South Wales ("the Forces").
4. Test cases were brought by two groups of Police Officers:
  - 4.1 Federated Rank Claimants: Police Constable, Sergeant, Inspector and Chief Inspector
  - 4.2 Superintendants' Association Claimants: Superintendent and Chief Superintendent
5. Our detailed findings of facts for each of the Forces and their respective Test Claimants are set out at: Annex 1, Devon and Cornwall; Annex 2, Nottinghamshire; Annex 3, West Midlands; Annex 4, North Wales; and Annex 5, South Wales.
6. The Forces adopted strikingly similar approaches to the application of A19. We discovered during the oral evidence of Mr Haselden, Director of People and Leadership for Devon and Cornwall Police, that he had coordinated investigation of the use of A19 to remove a cohort of officers. Through his work at the Police CIPD Forum, he was central in proposing the manner in which this might be done and the possible justification for the prima facie indirect age discrimination that would result. The differences between the Forces set out in the detailed findings of fact proved to be of relatively little significance.

**General Findings of Fact**

7. Police Officers are not employees but office holders.
8. At the relevant time responsibility for policing fell to Police Authorities which had a statutory duty, under section 6 of the Police Act 1996, to maintain an **efficient and effective** Police Force for their areas.
9. Police Officers have security of tenure subject to a limited number of exceptions. Three of these appear in the Police Pensions Regulations 1987. A18 provides a default retirement age: currently 60 for ranks up to Inspector and 65 for more senior officers. A20 provides for compulsory retirement on grounds of disablement. There are also regulations that provide for the dismissal of Police Officers for misconduct and lack of capability.
10. At the relevant time A19 provided:

**A19.**—(1) This Regulation shall apply to a regular policeman, other than a chief officer of police, deputy chief constable or assistant chief constable, who if required to retire would be entitled to receive a pension of an amount not less than two-thirds of his average pensionable pay or would be entitled to receive a pension of such an amount if it did not fall to be reduced in accordance with Part VIII of Schedule B or if he had not made an election under regulation G4(1).

(2) If a police authority determine that the retention in the force of a regular policeman to whom this Regulation applies would not be in the general interests of efficiency, he may be required to retire on such date as the police authority determine.”
11. Subsequently, as a result of the Windsor Report, a third subsection was added that requires particular consideration to be given to the attributes of the officer in question. However, that provision was not in force at the relevant time.
12. A19 has been used very little in the past. It was the common evidence of the Respondents’ witnesses that they had not been aware of A19 being used to require retirement en masse. To the limited extent witnesses were aware of its use it had been used in the context of a lack of effectiveness of a particular officer.

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13. The Police Forces of Great Britain saw steady increases in their budgets for many years. This changed after the General Election on 6 May 2010, and the Comprehensive Spending Review that followed. Police Forces were faced with substantial reductions to their budgets. They were required to cut 20% from their budgets over four years. The reductions were, to an extent, front loaded into the first two years.
14. The Forces first looked at their estates of buildings, IT equipment and fleets of vehicles. They sought to make such savings from these as were possible. However, the vast majority of Police expenditure is on Police Officers and civilian staff ("staffing costs"). Police Officers account for the substantial majority of staffing costs because of their numbers and the fact that they are generally more expensive than civilian staff. PCSO's are funded by Central Government. Staffing costs are approximately 80% of budget. Having reduced other costs the Forces began to consider staffing costs. They first considered reduction in civilian staff numbers and made such savings as they could. They came to the conclusion that the budget savings required would necessitate a reduction in Police Officers.
15. The starting point for the Forces was a recruitment freeze. Mr Haselden, amongst others, thought that the use of A19 might be a mechanism to make savings. As a result, as set out in more detail in the findings of fact for Devon and Cornwall, he raised the matter at the CIPD Forum, an existing forum at which senior Human Resources professionals from Police Forces meet. 27 forces sought advice from Mr Cavanagh. Privilege in that advice was waived. Mr Cavanagh's advice was that the construction of the regulation was such that it might be used to remove a cohort of officers. He raised the possibility that there would be prima facia indirect discrimination and noted that he was not aware of the specific justification to be put forward by the individual forces. However, he suggested that it was likely that use of A19 could be justified. He put forward a number of possible factors, concentrating on the efficiency of the force and the financial cushion that is provided to officers who are required to retire at 2/3APP. Proposed subsidiary factors were the ability of those who were forced to retire to find alternative work, permitting those with less than 30 years service to complete a period of 30 years service (or such services would obtain 2/3 APP), that the use of A19 would minimise impact on moral and industrial relations, it would provide a correct profile of age and experience, it would allow limited recruitment in the future and that exempting officers from retirement would require further, unjustified, reductions in police staff.

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16. Mr Cavanagh noted that the substantial majority of Police Officers retire at 2/3APP in any event. This is a very important point. Between approximately 80 to 95% of officers retire when they have achieved 2/3APP. Although Devon and Cornwall used an estimate of 50% in some of its planning, that was an assumption. When the actual rates of voluntary retirement were considered the percentage was far higher.
17. There are a number of reasons for this high rate of voluntary retirement at 2/3APP. By retiring as soon as achieving 2/3APP the officer maximises the lump sum that may be obtained through commutation of part of the annual pension. This is because the lump sum is calculated on an actuarial assessment of the total pension that will be paid for the remainder of the officer's life. The later they retire the less the total that will be paid during their retirement, and the smaller the lump sum that can be commuted.
18. A consequence of the fact that the majority of officers retire at 2/3APP is that the recruitment freezes would result, without the use of A19, in a substantial reduction in officer numbers.
19. The financial cushion provided to officers retiring at 2/3APP is substantial. Taking the example of Devon and Cornwall: Superintendent Boulton received a commutation payment of £227,455 and an annual pension of £35,913. Detective Chief Inspector Fowkes received a commutation payment of £180,328 and an annual pension of £28,472. Sergeant James received a commutation payment of £127,225 and an annual pension of £21,225.
20. The fact that the substantial majority of Police Officers retire at 2/3APP has the consequence that it is unrealistic to treat the saving obtained by the compulsory application of A19 as being the total salary saving from all officers who retire at 2/3APP. As the substantial majority would have retired without the use of A19 their salary costs would have been saved.
21. Mr Cavanagh's advice was that the use of A19 was capable of justification. The decision to utilise A19 was for the Police Authority, although in the case of North Wales it was delegated it to the Chief Constable. However, the Police Authorities treated the opinion as a giving a green light to use A19 without the need to consider justification in much greater detail. There were a number of common features of the documentation put to the Police Authorities. They emphasised the saving that would be made through the loss of officers who reached 2/3APP with insufficient emphasis on the fact that the majority would leave in any event. There was some variation, with a little more consideration of this point in the case of Devon and Cornwall, as we set out in our more detailed findings of fact.

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22. When the Police Authorities made the decision (or in the case of North Wales the Chief Constable) the approach taken to age discrimination was that there was a possibility of indirect discrimination but it was justified by reason of the factors that had been set out in Mr Cavanagh's opinion, often paraphrased in the documentation put to the authorities. As a result there is no record of any detailed consideration having been given at Police Authority meetings to the fact that what they were proposing involved, prima facie, indirect discrimination and that there would be a requirement to justify it by establishing a legitimate aim and showing that reliance on A19 was appropriate and necessary. Although there was some consideration of possible alternatives in the documentation that went to the Police Authorities, there is no suggestion that there was any detailed discussion of those alternatives at the Police Authority meetings; or a realisation that justification might only be established if they had considered the possible alternatives. This was particularly significant in the context that the saving through the enforced use of A19 would only be in respect of the 5 to 20% of officers who would not have retired in any event.
23. This raises the significant question of whether there were alternatives. Generally, forces did not ask officers to state whether they were planning to retire voluntarily at 2/3 APP: where they did it, was after officers had been informed that there was a plan to implement A19. Once officers were told that they were at risk of compulsory retirement their willingness to volunteer decreased: telling a person that he is likely to be forced to do something is apt to engender a stubborn reaction.
24. There was little or no consideration of the possibility of asking officers with service that would provide less than 2/3APP whether they were planning to leave. There is a degree of turnover in all Police Forces, particularly from officers who decide that police work is not for them at an early stage of their career.
25. There was little or no consideration of asking officers who had already exceeded 2/3 APP when they were proposing to retire. Many stay on only for a limited period.
26. There was little or no consideration of the possibility of establishing whether any officers wished to take career breaks.
27. There was little or no consideration of whether officers might wish to move to part-time working.

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28. To the extent that these possibilities were considered, the concern was that they would not provide certainty, because those who stated that they were willing to volunteer might change their minds. Those who said they would to take a career break could come back early. Those who moved to part-time working could give 28 days notice to return full-time. Officers who said they were proposing to leave before, at or after 2/3APP might change their minds.
29. In the case of Devon and Cornwall, Mr Haselden initially agreed with the Superintendants' Association that he would ask officers about their retirement plans, but changed his mind because to do so would be to rely on an officer's word and the Force could not base its budget on "unassured and unrealisable forecasts". While it is a matter of human nature that people occasionally change their minds, one would hope, and could assume, that the majority of Police Officers would be telling the truth when they stated their intentions and would honour any commitment they gave.
30. Generally, the Forces were aware that they were likely to obtain greater savings than required by the budget cuts through the near universal application of A19. A view was taken that to select between officers who had reached 2/3APP, and so limit the number that were forced to retire to those that were necessary to achieve the budget reduction, would be risky because it could lead to some form of discrimination challenge, although what form it might take was not enunciated.
31. The Forces adopted the approach that all officers who had 2/3APP would be required to retire unless their particular skills could not immediately be replaced, in which case they might be retained for such further period as was necessary to allow other officers to be trained to take over their responsibilities. Police Forces have a high degree of resilience and must be able to continue effective operations if they lose any particular officer. Accordingly, it was believed, and proved to be the case, that it would be exceptional for any officer to be retained. The view was that such an officer would only be retained for a relatively short time.
32. This near universal application of A19 also meant that it could be predicted that more officers would leave than required so that, despite the substantial budget reduction, most of the Forces recorded under spends in the period during which they operated A19.
33. We accept that the Police Authorities and the senior officers on the Management Groups of the Forces were reluctant to see a reduction in officer numbers. It went against their previous experience of policing. Their evidence was that but for the CSR they would not have been looking to require the retirement of a substantial cohort of 2/3APP

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officers. They ceased using A19 after they considered that sufficient savings had been made, although its use was generally maintained to the end of the financial year, even after the saving for that financial year had been made, resulting in the under-spends referred to above.

34. Seven out of the twenty seven forces that had sought Mr Cavanagh's advice decided to implement regulation A19 so that nearly all officers at or reaching two thirds APP were required to retire. Twenty used other mechanisms to achieve the savings. We were not shown any evidence that their situations were significantly different to the forces that did implement A19.
35. Key to the savings to the budgets of the Forces was the fact that the lump sum and pension costs came out of a ring fenced budget of the Police Authority that was reclaimed from Central Government. If one looks at overall Government spending the saving was less significant, or elusory, because of the substantial lump sum payments and the fact that in many forces promotions were required to back-fill the roles previously held A19 Officers. On the other hand, the salary saving was only recorded in the budget for the year in which the officer left, rather than as a recurring saving year on year.

### The Law

36. The prohibition on age discrimination is relatively recent. It was introduced into Community Law by Council Directive 2000/78 EC. Paragraph 25 of the preamble to the Directive specifically refers to age discrimination and the fact that there may be social policy, such as employment policy, labour market and vocational training objectives that may allow a Member State to justify age discrimination. This approach also is provided for by Article 6(1):

“... Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim is appropriate and necessary.”

37. Age is unusual amongst the protected characteristics because it changes with time. Disadvantages suffered at one age may be offset by advantages at another. The unique features of age as a protected characteristic were recognised by Baroness Hale in **Seldon v Clarkson**,



**Wright & Jakes** [2012] UKSC 66; [2012] ICR 716, [2012] IRLR 590 at paragraphs 3-4.

3. The reasons why age may be relevant in more circumstances than the other characteristics may seem obvious, at least where this has to do with the comparative capabilities of people of different ages. A younger person may not have the same training and experience as an older person. An older person may have lost the mental or physical strength which once she had. But it will be seen from recital 25 above that the European legislators considered that age discrimination might be justified by factors which had nothing to do with the characteristics of the individual but had to do with broader social and economic policy. These factors would not justify direct discrimination on the ground of any of the other protected characteristics, so why should age be different?

4. The answer must be that age is different. As Ms Rose put it on behalf of the Secretary of State, age is not 'binary' in nature (man or woman, black or white, gay or straight) but a continuum which changes over time. As Lord Walker pointed out in *R (Carson and Reynolds) v Secretary of State for Work and Pensions* [2006] 1 AC 173, at [60], 'Every human being starts life as a tiny infant, and none of us can do anything to stop the passage of the years'. This means that younger people will eventually benefit from a provision which favours older employees, such as an incremental pay scale; but older employees will already have benefitted from a provision which favours younger people, such as a mandatory retirement age."

38. As a result age discrimination is easier to justify than other forms of discrimination. It is easier to justify indirect age discrimination than direct age discrimination: see **Seldon** at paragraph 54.
39. Where a measure is introduced by a Member State one should seek to identify the underlying aim of the measure from the general context of the measure concerned: **Seldon** paragraphs 37 to 40; **Rosenblatt** (C-45/09) [2011] 1 CMLR 1011 paragraph 58 .
40. Member States enjoy a broad margin of discretion both in relation to the aims and the means chosen to achieve them: **Seldon, Rosenblatt** paragraph 60 and **Palacios de la Villa** [2007] ECR I-8531 paragraphs 69 to 71

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41. Where a social policy is a proportionate means of achieving a legitimate aim it will not generally be necessary to go on and justify its application to an individual: **Seldon** paragraphs 42 and 65: **Hornfeldt v Posten Meddelande AB** (C-141/11) paragraph 45 and **HK Danmark v Experian A/S** C-476/11.

42. The concept of justification of indirect discrimination is set out in Community Law at article 2(2)(b)(i) of the Equality Directive:

“(b) indirect discrimination shall be taken to occur when an apparently neutral provision, criterion or practice would put persons having.... a particular age....at a particular disadvantage compared with other persons unless –

(i) That provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary...”

43. In UK law section 19 of the Equality Act 2010 provides:

**19. Indirect discrimination**

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, and

(c) A cannot show it to be a proportionate means of achieving a legitimate aim.

44. It is possible to have a PCP that is applied to one person: **Starmer v British Airways** [2005] IRLR 863, EAT.

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45. The general approach to justification has its origin in the decision of the European Court in **Bilka-Kaufhaus v Weber von Hartz** [1987] ICR 110 and was summarised by Lord Justice Mummery in **R (Elias) v Secretary of State for Defence** [2006] 1 WLR 3213:
- “the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group.”
46. The wording of section 19 EQuA and the Directive is such that it is the PCP that must be justified: **Chief Constable of West Yorkshire Police v Homer** [2012] ICR 704:
- “23 .... The Employment Appeal Tribunal suggested, at para 44, that “what has to be justified is the discriminatory effect of the unacceptable criterion”. Mr Lewis points out that this is incorrect: both Directive 2000/78 and the 2006 Age Regulations require that the criterion itself be justified rather than that its discriminatory effect be justified (there may well be a difference here between justification under the anti-discrimination law derived from the European Union and the justification of discrimination in the enjoyment of convention rights under the Convention for the Protection of Human Rights and Fundamental Freedoms”
47. There may be multiple and interrelated aims that justify a PCP: **Fuchs v Land Hessen** (C-159/10) [2012] ICR 93 at paragraph 43.
48. Sound management of public finances may be a legitimate aim **O’Brien v Ministry of Justice** [2013] UKSC 6; [2013] ICR 499 at paragraph 67 and **Fuchs** paragraphs 73 to 75 and 80 to 81. However, a discriminatory rule or practice cannot be justified by reference to a legitimate aim that is only the saving of cost: **O’Brien**, paragraph 69.
49. In **Woodcock v Cumbria Primary Care Trust** [2012] EWCA Civ 330; [2012] ICR 1126 the fact that an employer sought to effect a redundancy dismissal in the cheapest way possible way did not mean that cost was the only justification, the underlying justification was the circumstances that led to the redundancy. This is often referred to as “cost plus”: See also **Land Registry v Benson** [2012] ICR 627.
50. A financial cushion available to disadvantaged workers can be taken into account in considering justification: see **Seldon, Palacios de la Villa, Rosenblatt and Hornfeld**.

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51. It is not necessary that the justification is in the mind of the person at the time of its application: **Seldon** paragraph 60. However the Courts and Tribunals will treat with greater respect a policy that was carefully thought through: particularly when considering proportionality: **O'Brien** paragraph 48.
52. Once a legitimate aim for a PCP has been established it is still necessary to establish that its application was proportionate: that is was both appropriate and necessary. However, necessity does not require that the application of the PCP is the only possible way of achieving the legitimate aim – it need not be absolutely necessary: see for example **Land Registry v Benson** [2012] ICR 627. None-the-less it is for the Respondent to establish that the application of the PCP was appropriate and necessary, in the broader sense.
53. Regulation A19 can be applied in the general interest of the efficiency of a force even where a cohort of officers is required to retire and individual consideration is limited to whether the officer can put forward some exceptional reason why he should be retained: **The Police Superintendents' Association of England and Wales and others v (1) The Chief Constable of Bedfordshire Police and (2) The Secretary of State for the Home Department** [2013] EWHC 2173: It was held, when considering the public law legality of the application of A19, that pure budget saving would not be sufficient to permit the use of A19; there must be some efficiency gain. However, that did not limit the consideration to the effectiveness of the individual officer concerned.

### Analysis

54. The Claimants and Respondents consider that they have knock out blows that render any detailed consideration of the evidence otiose.
55. The Claimants contend that the application of A19 was on cost grounds alone and so cannot be justified. They accept that their alternative argument, that there can be no justification because the application of A19 to a cohort of Officers is unlawful on public law grounds, cannot run because of the **Bedfordshire Police** Judgment.
56. The Respondents contend that only A19 itself need be justified, and that it is by the social policy objectives that can be ascertained by considering the provision itself and its positioning in the legislative scheme. They rely, in particular, on efficiency and the substantial financial cushion for officers forced to retire.

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57. We consider that both are wrong. Dealing first with cost. There are three interrelated factors: effectiveness, efficiency and cost. A Police Authority is required to maintain an *effective* and *efficient* Police force pursuant to section 6 of the Police Act 1996. The retirement of a Police Officer may be required when it is in the interests of the *efficiency* of the force – even if there is no question as to the effectiveness of the officer.
58. One way of analysing efficiency is to see it as effectiveness per unit cost. It is, in a qualitative rather than arithmetic sense, the amount of effective policing provided per pound. There is no proportionate connection between the three factors. A cost increase could bring about an increase in efficiency: for example, a new computer system might at relatively low cost revolutionise analysis of evidence, so as to greatly improve detection rates, and substantially increase effectiveness. There could be an increase in cost and a decrease in efficiency: a very expensive computer system that did not increase detection rates would not substantially improve effectiveness and so reduce efficiency. There could be a reduction in costs with a decrease in efficiency: saving the cost of a vital computer system might so decrease effectiveness that it would lead to a decrease in efficiency. Accordingly, there can be cost savings that do not involve any increase in efficiency. Cost saving and efficiency are, although intimately related, not the same thing.
59. The fact that the trigger for changes that increase efficiency is a budget cut does not mean that cost is the only factor. In these cases we accept that a reduction in Police Officer numbers was seen as one of a number of means by which costs savings could be made while maintaining the effectiveness of the Forces and, therefore, increasing efficiency. Accordingly, we do not consider that the application of A19 was on cost grounds alone, even though cost was the precipitating factor. We accept that the aim of increasing efficiency was a legitimate aim.
60. While we accept that cost was not the only factor, A19 would not have been relied upon but for cost and its use ceased once the Forces felt they had made sufficient savings (even though they were generally more than necessary). Rather aptly, in the Police context, reference was made in submissions to “bad cost” and “good cost”. Such a distinction works on the assumption that if there is another factor, so that it is a cost plus case, cost ceases to be a negative in analysing justification. There is a lack of logic to that approach. If reliance on cost alone is “bad” because discrimination should not be justified by the manner in which a State assigns its budgets, where cost is one of a number of factors it still needs to be counterbalanced by other factors. The greater the role that is played by cost saving the more one may expect there to be clear and powerful justification. While we accept A19 was not applied for reasons of cost alone, cost it was a major factor. However, in this case the

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relative importance of cost as a factor has not altered our analysis of the defence of justification. Our analysis in this case does not require that cost be given special weight.

61. Next, we considered Mr Cavanagh's contention that only A19 as a legislative provision requires justification. Mr Cavanagh contends that any discriminatory impact arises solely from A19 in that it limits the power to require an officer to retire to those with 2/3APP, which is the link to age. He suggests that the justification comes from two main interlinked grounds: efficiency and fairness. He contends that these are social policy grounds that can be identified by consideration A19.
62. There are a number of permissible social policy grounds that have been established in the European jurisprudence in relation to mandatory retirement ages. Mandatory retirement ages may provide intergenerational fairness, a maintenance of the age balance in the work force and allow for the termination of employment before capability proceedings are required, therefore protecting the dignity of employees. However, those social policy factors are provided for by the default retirement age for Police Officers in A18 rather than by A19. We consider it is necessary to go further to identify the social policy objective underlying A19.
63. We consider that A19 should be seen in the context of A18 and A20. They are interlinked provisions that deal with the special status of Police Officers as office holders rather than employees. They are provided with a level of security of tenure that is greater than most, if not all, employees. Their role in upholding and enforcing the law has been considered to require that they have special protection. We can also see that such security of tenure has anti-corruption benefits. The social policy objective is that Police Officers should have security of tenure with only limited exceptions. A18 to A20 provide exceptions to that general security of tenure. A18 provides a default retirement age. Under A20 an officer who is incapable through ill health of performing her duties can be required to resign. There are separate provisions under which misconduct can lead to the termination of a Police Officer's engagement.
64. Rule A19 allows a Police Officer to be forced to retire where their retirement would be in the general interest of the efficiency of the force. It is clear that this is another exception to the general policy of security of tenure. It is also clear that a key factor is that when they are so required to retire they do so with the substantial financial cushion of their lump sum payment, should they chose to commutate, and their pension.

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65. While we accept that the **Bedfordshire Police** case establishes, as we consider is clear from the wording of A19, that while there has to be some consideration of the individual officer, the focus is on whether that officer's retirement will improve the efficiency of the force generally. Accordingly, an officer might be extremely effective, but his retirement could still be in the general interest of efficiency of the force, if, for example, the officer could be replaced, without additional recruitment, by another officer who is also effective. However, we do not consider that there is anything in A19, or its context, to suggest a specific social policy objective in applying A19 to an entire cohort of officers.
66. We consider the appropriate analysis is as follows. As Mr Cavanagh contends A19 is a *provision*. It includes within it a *criterion*: namely, that retirement can only be enforced where the officer has obtained 2/3APP. We consider that the Forces have added a *practice* that they would require all officers to retire at 2/3APP, subject to the very limited exception that those who could not immediately be replaced would be kept on for a short period while replacements were trained. Put in public law terms, A19 provides a legislative discretion in relation to which the forces have adopted a policy of applying it in all cases subject to the limited exceptions. The **Bedford Police** case is authority for the proposition that this is legal in public law. However, that does not preclude an analysis of whether the indirect discrimination that is involved is justified. We do not accept that the discriminatory impact arises only from regulation A19 itself: it also results from the practice that the Forces adopted as to its application.
67. Regulation A19 has a focus on the increasing the efficiency of the force through the enforced retirement of an officer. While the regulation may allow the enforced retirement of a cohort of officers, the regulation places emphasis on whether the retirement of the individual officers will increase the efficiency of the force. To the limited extent that A19 has been applied in the past it has been focused on individual officers. This supports our view that the introducing a policy whereby all A19 Officers will be required to retire, save for very limited exceptions, adds substantially to the discriminatory impact of A19 generally, and requires objective justification.
68. Once it is decided that all officers who have reached 2/3APP will be required to retire, save for the limited exceptions, that has the consequence that nearly the entirety of an age group is removed from the force for a period. While the substantial majority would have retired in any event, virtually none in that cohort will have the opportunity to gain promotion to the highest ranks in the force.

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69. It is clear from the preamble to the Equal Treatment Directive that a particular factor, in the case of age as a protected characteristic, is encouraging diversity in the workforce. That requires that there be a range of different ages. The adoption of this practice by the Forces meant that, for a time, one age range was almost entirely removed. Whereas the cases on default retirement ages consider the social policy of encouraging a proper range of ages within the workforce, this policy has the consequence of removing nearly all of one group of officers who are considerably younger than the age Parliament fixed for default retirement. We consider that the adoption of the policy requires justification
70. We accept that justification may lie in matters that were not in the minds of those who made the decisions. However, where there has been a careful analysis at the time, justification will be more compelling and, as Lord Justice Mummery noted in **Elias**, there is a particular problem in establishing proportionality, in the sense of the adoption of the policy being both appropriate and necessary, when the decision makers did not turn their minds to it at the time, or did not do so sufficiently.
71. We consider that there were two interrelated factors that were given insufficient weight by the decision makers. Firstly, despite some reference being made in documentation that went to Police Authorities to the fact that most of the officers concerned would be retiring in any event, this was not sufficiently focussed upon and the assumption appears to have been made by the decision makers that the saving was of the salaries of all officers who reached 2/3APP.
72. Secondly, the authorities acted as though the forces had obtained advice that use of A19 was justified: not that it was capable of justification. We do not criticise the Forces for taking legal advice. It was sensible of them to do so. However, such advice is likely to be of more assistance in considering whether the Forces' aim are likely to be held to be legitimate than in deciding proportionality. The determination of whether the application of a PCP is appropriate and necessary is essentially a factual question. The authorities clearly thought that once legitimate aims had been established the matter needed little further consideration. Justification requires more than a search for legitimate aims that can be put forward to support a decision that the Force wishes to take and to protect against legal challenge. When looking at the appropriateness and necessity of the application of a PCP it has to be appreciated that prima facie discrimination has been made out and that such discrimination should be avoided if reasonably possible.



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73. Had the decision makers had sufficiently in mind that the savings from the enforced retirements were only for the relatively small number of officers who would not retire in any event, that would have focused their minds on the possibility of finding some alternative means of avoiding the detriment to the limited group who planned to stay.
74. Insofar as consideration was given to the fact that the majority of officers would retire in any event, this was mainly seen as a reason why requiring retirement was less detrimental than it would have been otherwise. There is a lack of logic to that analysis. The officers who suffer the only, or main, detriment are the limited number who would have remained in the Forces past 2/3 APP. For them the detriment is very severe. Their careers are ended in circumstances where they had hoped to remain in the Police, for reasons ranging from their commitment to community policing to their ambition to be promoted to the highest ranks. The fact that the majority of their colleagues would have retired in any event is neither here nor there. It does not diminish the detriment they suffer. Many Police Officers join the force at or before 18. Pensionable service accrues from 18. That means that most officers obtaining 2/3APP will be 48 or thereabouts. Such officers might have had 12 to 17 years further service during which they could have been promoted.
75. To the extent that evidence as to the decision making process was put before us we see a failure by the decision makers to grapple with the fact that they were taking a decision that would lead to discrimination if it could not be justified. They did not sufficiently appreciate that not only must there be a legitimate aim but the mechanism adopted needed be both *appropriate* and *necessary*. Had they done so this would have turned their mind to the possibility of alternatives. While we accept that justification can be established by after the event evidence it is always more difficult to do so when the matter was not properly analysed at the time. The Tribunal will necessarily treat a post hoc rationalisation with more caution than one that is contemporaneous. While we accept that increasing efficiency is a legitimate aim we do not consider that on the facts of these cases the Forces have established to our satisfaction that its use was appropriate and necessary.
76. When one takes into account the relatively small number of officers who would not have retired in any event, it focuses the mind on the fact that there were a number of alternatives. To the limited extent they were considered, they were generally disregarded on the ground of certainty.
77. We take into account the fact that in the first year of operation of A19 the number of officers that would be removed was increased by the fact that it includes all those who had already remained past two thirds APP and that cost savings were front loaded into the first two years of the CSR.

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However, as set out in our individual findings of fact, we consider, taking into account the very substantial majority of officers that retire at 2/3APP, there were alternatives available to avoid the enforced retirement of all A19 Officers.

78. Asking officers their intentions was an alternative. Those of the Forces that did not ask officers whether they intended to retire at 2/3APP could have done so to ascertain whether the enforced use of A19 was necessary. While it would not provide absolute certainty, officers could be expected generally to give an honest and accurate answer to such requests. Officers should have been asked their intention before they were informed that they were likely to be forcibly retired under A19. Use of the 30+ scheme, under which Officers were permitted to take their lump sum but continue in employment, was stopped by the Forces. This reduced the number of Officer who were likely to remain past 2/3 APP. Officers who had passed 2/3 APP should have been asked when they intended to retire. Many stay on for a relatively short period. Officers below 2/3APP should have been asked if they were proposing to resign or to transfer to other forces.
79. Part-time working was an alternative. Although officers could return to full time working on 28 days notice, those who said that they wanted a prolonged period of part-time working could be trusted to be telling the truth. It is unrealistic to think that an officer who goes to the trouble of arranging part-time working, and is prepared to accept the loss of salary involved, is likely to have done so on a whim.
80. Career breaks were an alternative. Again while there may not have been absolute certainty, the vast majority would fulfil their commitment to career-breaks.
81. These possibilities seem to have been disregarded by the majority of the Forces largely on the basis that it was thought that the saving being made was the salary of the entire cohort of officers reaching two 2/3APP, and so enforced reliance on A19 was the only possible mechanism to make the saving. Irrespective of what was thought by the decision makers we consider, looking at the matter objectively, the alternatives are such that the Forces have not established that enforced reliance on A19 was necessary. The key point is that the majority of the reduction in officer numbers was achieved by the recruitment freeze.

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82. While certainty is beneficial to budgeting, the Forces knew that they were, even on their analysis, likely to require the retirement of more officers than they needed to balance their budgets. While that might be seen as creating some further efficiency gain, the Forces were seeking to improve efficiency to make the savings required by the CSR.
83. If, after the other alternatives had been exhausted, the Forces had decided that they needed to require a limited number of A19 Officers to retire, we consider that there was no reason why they could not have selected between A19 officers. This might have been done by an analysis of their job skills.
84. While Police Authorities are under a statutory obligation to balance budgets, budgeting necessarily involves an element of forecasting. A degree of uncertainty can be provided for by projecting the likely rate of retirement. Insofar as forces, such as Devon and Cornwall, did this their figures appear to have been based on an unrealistic assessment of the proportion of officers that would retire in any event. There was the possibility of adopting a policy of wait and see: only enforcing retirement under A19 should the expected level of retirement not occur. If necessary some temporary reliance could have been placed on the Force's reserves.
85. It is important to bear mind that when one comes to the stage of justification there is already disparate impact on a group that shares a protected characteristic. That is why a defence of justification should be subject to detailed scrutiny. Such scrutiny was not applied by the decision makers in the Forces. When it is applied by the Tribunal we conclude there were a number of alternatives that meant that enforced reliance on regulation A19 was not a proportionate means of achieving a legitimate aim. While certain of the forces considered (and to a limited extent adopted) some alternatives we do not consider that they did so to nearly a sufficient extent or that they have established that their application of A19 was appropriate and necessary. The defence of justification fails.
86. While as we consider that the policy adopted by the Forces of requiring all officers who reached 2/3APP to retire, save for very limited exceptions, requires justification, we consider that the individual decision as to whether an individual officer had a set of skills that were so unique that they could not immediately be replaced, did not itself involve the application of a further provision, criterion or practice. These were one-off decisions taken in the light of the particular skills and qualifications of the officer in question. These one-off decisions do not require separate justification.

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87. The submissions focused nearly entirely on justification. In setting up these test cases it was agreed that there should be an officer who had retired prior to being required to do so under A19. Mr Boulton was selected. However, it was also agreed that the question of whether an officer would have retired at 2/3 APP in any event would be determined at separate remedy hearings, if appropriate. We consider that there is a possible interrelationship between the reason why Mr Boulton left the force before he was forced to under A19 and whether he would have left the force in any event. That is better determined at the next hearing.
88. We also consider that evidence on issues, such as mitigation, may itself reflect on the question of whether an officer would have left the force in any event. For example, it might be said that if no steps have been taken to mitigate that suggests that the officer was planning to retire. Careful consideration has to be given in each officer's case to the question of whether they would have retired at 2/3APP. As we know that the vast majority would have retired at 2/3APP it is necessary to analyse with great care a contention that the officer was determined to remain in the force.
89. During his closing submissions Mr Skelt argued that even if an officer would have retired at 2/3APP without the application of A19 the officer was subject to a detriment. We consider that the issue of detriment is one that requires further argument. There is a question whether such an officer suffers a detriment although it may be argued that being forced to do something, even if you would have done it voluntarily, is detrimental.

**Annex 1  
Devon and Cornwall**

90. The Respondent called:
- 90.1 Shaun Sawyer, Acting Chief Constable at the time
  - 90.2 Christopher Haselden, Director of People and Leadership
  - 90.3 Sandra Goscomb, Director of Finance
  - 90.4 Mike Bull, Chairman of the Devon and Cornwall Police Authority between 2009 and 2012
91. The following test Claimants gave evidence:
- 91.1 Former Superintendent Nigel Boulton
  - 91.2 Former Detective Chief Inspector Michael Fowkes
  - 91.3 Former Sergeant Kevin James
92. The Claimants called Nigel Rabbitts Chairman of the Joint Branch Board of Devon & Cornwall Police Federation
93. We were provided with a witness statement from David James Secretary of the Joint Branch Board of Devon & Cornwall Police Federation. Mr James was not available to be called as a witness. In assessing the weight to be attached to his evidence we took into account the fact that he had not been available for cross-examination.
- Former Superintendent Nigel Boulton**
94. Mr Boulton joined the Police on 10 March 1980. Mr Boulton undertook his probation period at Exmouth in East Devon. He was posted to central Plymouth in 1982 where he served in uniform and the CID. Mr Boulton was promoted to Sergeant and posted to East Devon in 1988 where he served in various posts as a uniformed and Detective Sergeant. Mr Boulton was promoted to Detective Inspector in 1994 while on secondment to the South West Regional Crime Squad which became part of the National Crime Squad.
95. Mr Boulton returned to the Devon and Cornwall force in 1998. He was promoted to Detective Chief Inspector in 1999. Mr Boulton was seconded to an international corruption and organised crime operation working in

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the UK and abroad. He returned to the Devon and Cornwall force to become this Senior Investigating officer. Mr Boulton was promoted to Detective Superintendent in 2001.

96. Mr Boulton career was mainly in the CID department. Mr Boulton had served up to the rank of temporary Detective Chief Superintendent as the Head of Crime for the Force. He was trained, accredited and acted as Senior Investigating Officer ("SIO") for Kidnap, Extortion, and Terrorism, as Senior Identification Manager ("SIM") for Mass Fatalities and as Authorising Officer for the Regulation of Investigatory Powers Act. Mr Boulton managed many significant cases within and outside Devon and Cornwall, including the review of the suspicious deaths at Deepcut Barracks.
97. During the last two years of his police service, Mr Boulton on occasions carried out the role of BCU Commander at Chief Superintendent rank. Mr Boulton was accredited and acted as a Firearms Silver Commander, as well as an advanced Public Order Commander (Silver).
98. During the latter years of Mr Boulton's service with the Devon and Cornwall Police he designed a process for Multi Agency Safeguarding Hubs ("MASH") and delivered the first in Devon between 2009 and 2010. The MASH scheme is a multi-agency approach to promote and safeguard the welfare of children. Mr Boulton was seconded to the Metropolitan Police Force in September and October 2010 to assist in their introduction of MASH. The Claimants last two years were as a uniformed officer involved in operations.

### **Former Detective Chief Inspector Michael Fowkes**

99. Mr Fowkes joined the Police on 6 October 1980 aged 18. He served his probation in Torquay. Mr Fowkes was confirmed as a Police Officer in September 1982 and moved from Torquay to Oakhampton where he worked as a uniformed patrol officer. He moved to Charles Cross in Plymouth in September 1984. Mr Fowkes moved into CID as a Detective Constable in September 1985.
100. Mr Fowkes was promoted to the rank of Sergeant in September 1988 serving as a uniformed patrol sergeant and custody sergeant. In March 1995 Mr Fowkes moved to general duties as a Detective Sergeant at Exeter. Mr Fowkes was promoted to be a uniformed patrol Inspector at Exeter in December 1995. He was posted to be a uniform intelligence and crime reduction Inspector at Totnes.

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101. Mr Fowkes was posted back into CID in May 1998 as a Detective Inspector at Charles Cross in Plymouth. From January 2001 to April 2002 he was seconded as a deputy Senior Investigating Officer to an out of force sensitive criminal investigation.
102. In March 2003 Mr Fowkes was appointed as a Detective Chief Inspector Crime Manager responsible for 100 detectives. Mr Fowkes worked as a Basic Command Unit Crime Manager. In September 2004 Mr Fowkes was appointed as a Force Senior Investigations Officer. Between September 2004 and April 2008 he was the SIO for a number of murder investigations.
103. Mr Fowkes was seconded to be acting Detective Superintendent Head of Major Crime for the force between September and December 2006 and was seconded as a Detective Chief Inspector on the Serious Organised and Specialist Crime Department in summer 2007. In April 2009 Mr Fowkes was appointed as Detective Chief Inspector in the Criminal Cases Review Unit. He was the Senior Investigation Officer for an equal pay investigation. His final role was in the Crime Department at Force Headquarters from July 2010.
104. Mr Fowkes was a firearms Silver Commander. He was a Senior Investigating Officer (SIO) and a Senior Identification Manager (SIM). Mr Fowkes had been chair of the Regional Forces Casualty Bureau & Major Incident Room Users Group and also the Family Liaison Coordinators Group.

### **Former Sergeant Kevin James**

105. Mr James joined the Police as a Cadet in 1974 at the age of 16. He became a Police Officer in 1976 and started his career in Camborne. Following his probationary period Mr James was posted to Torbay. In 1992 he was appointed as an Acting Sergeant, which he remained for the next 13 years. Mr James passed his Sergeant's exam in October 2004. He was promoted to the rank on 18 July 2005 and was thereafter a Patrol Sergeant. Mr James received a number of commendations including a Chief Constables Commendation with Star for disarming a man who was armed with explosives. He received the National Police Bravery award in relation to the same incident.
106. Mr James was a qualified Stinger instructor for the past 12 years. He was Force Lost Persons Search Manager. For 2008/2009 his Professional Development Review mark was exceptional, the highest possible. He was a qualified First Aid Instructor.

**The A19 Process**

107. Mr Haselden has worked in Human Resources for the Police since 1974. At the relevant time he was Director of People and Leadership. He told us that he had not come across the use of A19 en masse before. He accepted that that the use of A19 to require the retirement of nearly all eligible Officers at or above 2/3APP was unique.
108. By the early part of 2010 it was becoming increasingly apparent that, whatever the outcome of the impending General Election, it was likely that Police Forces would be facing significant cuts in their budgets for the first time in a generation. In this context Mr Haselden turned his mind to the possibility that Regulation A19 might be used, in the context of a recruitment freeze, to bring about certainty in the reduction of Police Officer numbers. Mr Haselden stated, in his oral evidence, that he became the national lead on the issue.
109. It was first raised at a meeting of the CIPD Police Forum Heads of Professional Group on 27 January 2010. At the meeting of the CIPD Police Forum Heads of Professional Group on 21 April 2010 Mr Haselden reported that a request for legal advice about the correct interpretation and use of Regulation A19 had now been sent (CIPD Bundle P10 at 12).
110. The General Election was held on 6 May 2010. The new Conservative and Liberal Democrat Coalition Government made it clear that a key policy objective was to reduce the United Kingdom deficit, and that to do so they would undertake a Comprehensive Spending Review that was likely to require substantial spending cuts.
111. In June 2010 a moratorium of recruitment to the Devon and Cornwall Force was introduced.
112. By the time of the CIPD Police Forum Heads of Professional Group meeting on 22 July 2010 Counsel's opinion had been obtained. Mr Haselden reported (CIPD Bundle P16 at 21):

“The advice concluded that Regulation A19 is an appropriate mechanism for compulsory retirement in order to make cash savings. The advice on how to use A19 safely was that if a force needs to select from people who fall into the category that the regulation captures, then they should try to use a similar approach as for compulsory redundancy of police staff. If this procedure is followed the force is less likely to be found to be at fault.”



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113. On 3 August 2010 Carol Grocott, a HR Business Partner, sent an e-mail to others in the HR Department, stating (Supplementary Bundle P3):

“You may recall Russ mentioned A19 at our recent SMT and whilst it is something the force can now use, a decision has not yet been made to my knowledge whether it will be used. However, over the past few months we have been considering at our workforce planning meetings the officers which will be either currently on 30 years service and above or those nearing the 30 years service.”

114. A spreadsheet was attached to the e-mail setting out the relevant officers together with a blank succession planning sheet which would enable key roles to be identified with a blank section allowing for a note to be inserted stating how the role would be filled should the officer be required to retire.

115. On 9 August 2010 Mr Haselden met with Emma Webber of the Superintendents' Association and Nigel Rabbitts of the Police Federation to discuss the Force's position in respect of Regulation A19. He set out his recollection of the meeting in a letter dated 10 August 2010, in which he stated (P168):

“I explained that, in summary, the force's position on A19 is as follows:

- The budgetary position ... is such that reductions in police officer numbers are required
- Reductions levels of future financial years will be dependent upon the central funding provision emanating from the comprehensive spending review ...
- This position takes account of the necessary balance between the i) cost of police officers, ii) the cost of police staff and iii) non-staffing costs, so as to provide the most efficient overall policing service ...
- This balance includes a reduction of police numbers ideally through natural retirements or other natural wastage (resignations, voluntary retirement etc)

We agreed a number of immediate actions that would be put in place. These were:

- To arrange for line managers to discuss soon with all officers with or approaching 30 years service their intention around retirement irrespective of A19. I emphasise again this is not part of the A19 process ...

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- To continue to utilise other regulations for officers to legitimately leave the service, such as A20 where this is appropriate
- To suspend any further use of the 30+ scheme whilst the current situation pertains
- To continue to closely manage the approval of career breaks through the People Gold Group

116. The suggestion of canvassing Officers about their retirement plans was not taken any further. Mr Haselden states at paragraph 44 of his witness statement:

“In the course of the meeting, the Superintendents’ Association suggested that the Force canvass all Superintendents about their retirement plans. Initially I said that we would think about this. However, on reflection I rejected this course of action and explained this to the Superintendents’ Association. Such a course of action relied on people’s word and the Force could not base its budget on unassured or unrealisable forecasts.”

117. Regulation A19 was considered at the CIPD Police Forum Heads of Professional Group on 12 August 2010 where it was recorded (CIPD Bundle P25):

### “SUMMARY OF LEGAL ADVICE OBTAINED

Chris Haselden provided a brief summary. Essentially A19 can be used to make cash savings but the important thing is the selection process used. Any justification must be built around provisions of A19, i.e. efficiency of the Force. However, there is no clarity on what that means.

### THE EXTENT TO WHICH FORCES WISH TO USE A19

Following a discussion on this area, it was clear that Forces were divided with some planning to form a “leading group” with an intention to use within 12 months, some considering use in the future and some not planning it at all at the current time. ...

### SELECTION

Chris Haselden confirmed Counsel's advice that it is safest to use similar processes to redundancy. It was agreed that every selection would need to be linked to the efficiency of the Force. Some Forces have previously used voluntary A19, however there were some

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concerns about the implications for employee relations with police staff.

A number of Forces plan to use A19 for all officers but delay some exit dates due to the critical nature of skills ...

### OBJECTIVE JUSTIFICATION

It was agreed that efficiency/budgets should be considered first in any justification. It should also refer to officers in terms of length of service, for instance, fairer to those with less service or part of public interest in terms of job flow. Members considered that it could contain something around lateral development and internal churn, i.e. to create a balanced workforce and enhance skills and development. It was also suggested that diversity issues may form part of the justification."

118. A meeting of the Chief Officers Group was held on 23 August 2010. A Workforce Planning Briefing Paper was considered, which included the following (P177):

Officers affected by the invocation of A19 are predominantly older White British males. This may lead to a challenge on grounds of age and/or even race discrimination.

The current recruitment freeze effectively means that there will be no newly qualified constables completing probation until spring 2015 at the earliest. Together with the enforced retirement of a significant number of experienced constables under A19, the force could be presented with significant challenges in relation to skills gap, (both generic and specialist), experience and geographic resilience."

119. In the minutes of the meeting it was recorded (P184):

"A detailed piece of work needed to be undertaken to look at the financial and succession planning of the workforce, with the emphasis on articulating the vision in light of the budget. The Chief Officer Group agreed:

1. A message is to be published which outlines where the Force currently stands, highlighting that no decision has yet been made, but emphasising consideration needs to be given to all options available, including A19 and also highlighting the support available to those facing the prospect of leaving the organisation, be it through compulsory retirement or redundancy."

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120. A message from the Chief Constable was placed on the Devon and Cornwall Police intranet on 25 August 2010, stating (P192):
- “As a part of the ongoing work to examine how the Force can best prepare for anticipated budget cuts, Devon and Cornwall was amongst the many forces that sought legal advice on Regulation A19 ...
- We have now received this legal advice, which states that it would be possible to use A19 to retire officers with 30 years’ pensionable service or more. ...
- It appears at this time that the budgetary position is such that reductions in police officer numbers will be required. Some reduction in officer numbers will take place through natural wastage, e.g. resignations, voluntary retirements and the recruitment moratorium. However we anticipate that this natural reduction may not be enough and therefore it does seem likely that the use of A19 will be necessary.”
121. On 30 September 2010 a spreadsheet was drawn up in which the relevant officers were considered including notes as to whether they could be immediately replaced (Supplementary Bundle P1).
122. A meeting of the CIPD Police Forum Heads of Professional Group was held on 21 October 2010 (CIPD Bundle P28 at 31). The minutes recorded:
- “Chris Haselden mentioned that forces are to be mindful of two issues in particular; the sex discrimination challenge and the age/service related challenge.”
123. On 19 November 2010 Mr Rabbitts of the Police Federation wrote to Mr Bull, the Chairman of the Devon and Cornwall Police Authority arguing against the compulsory retirement of Police Officers stating:
- “Devon and Cornwall Constabulary will still have a budget in excess of one billion pounds over the next four years. Our members ask that this be directed in the maintenance of the maximum number of fully sworn officers and that the Police Authority send a clear and transparent message to both Police Officers and the public we serve that they really care about the service and protecting everybody from harm.”

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124. On 22 November 2010 a Planning Update Paper was produced for the Chief Officer Group. It referred to a requirement to reduce Police Officer numbers by 700 over the next four years and the need to make a cut in expenditure of £44 million. It was stated (P270):

“Counsel has advised that it is lawful for a Police Authority to decide to arrange for the compulsory retirement of an officer or a group of officers, under A19, even if the immediate trigger for the decision is the need to save costs. The decision to make compulsory retirements must however be capable of justification on normal public law grounds, in that it must be *Wednesbury* reasonable, i.e. that is not irrational, and that the Authority has taken into account all relevant considerations and has not taken into account irrelevant considerations. This is not a high hurdle to overcome.

Counsel has however flagged up the fact that the use of A19 would amount to a breach of the Employment Equality (Age) Regulations or the age provisions of the equality directive in that a rule of policy which means only those with 30 years service or more are considered for compulsory retirement is *prima facie* indirect discrimination on the grounds of age because it means in practice that only those who are 48 or over will be considered for compulsory retirement. It follows then that the key question is whether the *prima facie* indirect discrimination is lawful, because it is objectively justified i.e. because it is a proportionate means of achieving a legitimate aim.

Whilst Counsel indicates that it is not possible to advise with certainty on this issue as there is no direct authority on the point and courts and tribunal have a wide discretion in the application of such matters he indicates that it is likely that a court or tribunal would find the use of A19 is objectively justified, on the basis that it is fair and it meets the operational needs of police forces. ...

It is proposed that the objective justification argument will be set out in writing at the time the policy is decided upon, in other words in advance of the next Police Authority meeting when the issue will be considered further.”

125. On 1 December 2010 a consultation meeting was held with the Police Federation and Superintendents Association. The minutes recorded (P298):

“Chris Haselden outlined the purpose of the meeting and explained that it was intended to be an open discussion, beginning the process for agreeing as far as possible the arrangements for

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implementing Regulation A19, but this would not preclude the Police Federation and Superintendents Association from making a formal challenge at a later date. He also confirmed that this meeting was the commencement of formal consultation in relation to the implementation of A19. He advised, that for the avoidance of doubt, COG had last week confirmed that if the funding from the Government is as expected the force will need to implement A19"

126. A further consultation meeting was held on 3 December 2010 (P325). Mr Rabbitts gave his view that A19 was originally intended to be applied on an individual basis.
127. A further consultation meeting was held on 8 December 2010 (P327). David James complained about the speed with which the consultation was taking place and the fact that papers were not being received sufficiently in advance of the meetings. The representatives of the Police Federation and Superintendents' Association contended that they were being forced into agreeing a process for the implementation of Regulation A19 in 10 days, which they felt was unacceptable.
128. A Police Authority Meeting was held on 10 December 2010.
129. In the lead up to the Police Authority meeting on 10 December 2010 a Workforce Planning Briefing Paper was prepared. A number of tables were attached. These were based on projections that had been made on 31 July 2010 in which Mrs Goscombe had assumed that 50% of officers would retire voluntarily at 2/3 APP. That was out of kilter with other police forces. By 15 November 2010 the analysis of the actual number of officers who were retiring showed that it was inaccurate. In the summary of the Workforce Planning Briefing Paper it was suggested that 649 officers were likely to retire voluntarily in the period to 31 March 2015 whereas 743 officers would leave should regulation A19 be compulsorily applied to all officers reaching 2/3 APP. Mrs Goscombe's evidence was that her budget sought a reduction of 700 officers. She was cross examined on the basis that the difference between the number of officers the force was seeking to reduce the establishment by and those that they predicted would leave in any event over the four year period of the Comprehensive Spending Review was 51. She agreed. She accepted that this suggested an average loss of 12.25 officers per year but made the point that the first year would involve a loss of a great number of officers because it would remove all of those who had already worked beyond 2/3 APP. She stressed her wish to obtain certainty. It is clear from the Workforce Planning Briefing Paper that the force was anticipating that the enforced retirement of officers would lead to 43 more leaving the force than they were seeking. This was not reflected in the briefing paper for the Police Authority meeting. While there was a

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reference to the fact that most but not all of the officers would retire in any event the rationale document anticipated a saving of 3.4 million that was based on the July assumptions. Those figures were not correct in that they suggested a requirement to lose 79 officers in the first year, whereas their more recent projections were suggesting that the requirement was for 51 over the entire period of the CSR.

130. A paper was produced for the Police Authority (P 330), in which it was stated:

“Legal advice has been obtained from senior Counsel, both on the general use of Regulation A19 and on some specific aspects of its application. A full exposition of the main points and the rationale and justification to counter prima facie discrimination issues is provided at Appendix 1.

Whilst Counsel indicates that it is not possible to advise with certainty on this issue as there is no direct authority on point and courts and tribunals have a wide discretion in the application of such matters he indicates that it is likely that a court or tribunal would find the use of A19 is objectively justified, on the basis that it is fair and it meets the operational needs of police forces.

Since the budgetary position requires all potential retirements of police officers to take place, whether voluntary or compulsory through A19, the question of selection processes to choose who to compulsorily retire from the non-voluntary retirement pool does not arise. This also reduces potential discrimination challenges. ...

It is possible, however, that for a certain number of compulsory retirements replacement officers will not be immediately available due to the fact that some officers to whom A19 would apply to perform highly specialist tasks and have unique skills which means they cannot easily be replaced. In these few instances it is proposed that the compulsory retirement of incumbent officers be deferred (but not cancelled) for a minimum period until such time as suitable replacement officers are available.

There will also be an appeals process ...”

131. The paper sets out a recommendation:

“To agree to invoke the use of Regulation A19 within Devon & Cornwall Constabulary on the basis of the latest financial forecast which reflects the budgetary constraints imposed upon the Force,

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and subject to final confirmation once the budget settlement has been formally received.

Agree the provisions for extending compulsory retirement service beyond 30 years pensionable service in exceptional cases where suitable replacement officers are not immediately available; and to exclude officers in externally funded seconded positions outside the force.

Agree the review of the application of A19 on an annual basis as part of the annual business and budgetary planning process.”

132. The Rationale Document provided (P557):

“The current financial crisis in public sector budgets means that Police Forces and Police Authorities are subject to budgetary pressure which mean, in turn, that cost savings must be achieved. This budgetary pressure is unprecedented in the public sector and Police Forces and Authorities throughout the country are considering all possible options in making the savings that are necessary in order to balance their budgets. ...

The most recent planning assumption, as at 19 November 2010, indicate a shortfall of £47 million over a four-year period. ...

When these projected savings (non staff budgets, police staff reductions and police officer reductions) are combined, they will not meet anticipated required savings of £14.3 million in 2011/12

Accordingly the only remaining option for the Authority in terms of a mechanism to make the necessary savings to balance the budget is the use of Regulation A19 to arrange for the compulsory retirement of officers with 30 years pensionable service

Applying A19 will save £3.4 million from the 2011/12 budget. Without this savings, the budget will not balance by £4.2 million based on the latest CSR projections.”

133. The Rationale Document went on:

“The decision to use A19 is therefore taken in the general interests of efficiency of the Force, it is not a decision that has been taken in isolation but rather it has been taken against the background of a range of funding decisions, and in light of the prior prioritisation of various spending needs. It is therefore, part of a decision making process aimed at maximising the general efficiency of the Force. ...



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The Constabulary along with many other Police Forces in England and Wales have taken legal advice from Queen's Counsel. That advice indicates that it is lawful for a Police Authority to decide to arrange for the compulsory retirement of an officer, or a group of officers, under A19 when the immediate trigger for the decision is the need to save costs. ...

On the basis of the rationale set out in this document, Counsel is of the view that the decision to compulsorily retire officers with 30 years' pensionable service or more is objectively justified and therefore lawful, as it is fair, and meets the operational needs of the Force.

### Justification for the use of A19

There are several reasons why it is considered that the use of A19 to balance the Authority's budget is a proportionate means of achieving the legitimate aim of ensuring the efficiency of the Force. The considerations that are relevant are as follows:

- i. It is fairer to compulsorily retire officers who have 30 years' pensionable service than it would be to make officers with shorter service redundant. This is because those who have 30 years' pensionable service and who are compulsorily retired will qualify for the maximum pension, namely an immediate payment of a pension equivalent to two-thirds of final salary. This means that they will benefit from a substantial financial cushion when they are required to retire.
- ii. Moreover there will be no barrier to officers that compulsorily retired under regulation A19 supplementing their pension by finding alternative employment in the open labour market, as many of the officers that are subject to A19 will be at an age where they have a good prospect of finding another job.
- iii. Furthermore, it is fair to allow officers with less service to complete their 30 years' service, than to allow officers who have achieved 30 years to continue in service. The use of regulation A19 means that most officers are able to enjoy a full 30 year career and further that officers will be able to approach their career in the police service with certainty that they have a guaranteed 30 years in the Force.

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iv Whilst it is recognised that there will be considerable anxiety on the part of those officers that are currently subject to regulation A19 it is also felt that the use of the Regulation will assist with morale and industrial relations, as given the budgetary pressure that the Authorities under, it is inevitable that there will be job losses, and therefore limiting the pool of officers who are compulsorily retired to those who have already had the chance to serve as police officers for 30 years will help with morale and industrial relations.

v The limitation of compulsory retirement to those with over 30 years' pensionable service will help to ensure that the Force has the right profile of age and experience in its officers. It also fits with the career arc upon which police service is based, namely the working assumption that most officers will work for 30 years in total. ... retiring those officers with 30 years' pensionable service will create opportunities for those that remain to progress and extend their careers both vertically in the organisation by means of promotion and laterally by means of exploring new disciplines and skills ...

vi While at the present time there is currently a recruitment freeze in place, the use of Regulation A19 to compulsorily retire officers who have completed 30 years' pensionable service may allow (at some point in the future) for modest recruitment.

vii In simple financial terms it is fair and of less detriment to compulsorily retire police officers with 30 years' pensionable service than making police staff redundant

viii Throughout the deliberation over the use of A19 there has been extensive dialogue and consultation with the staff associations for those that will be affected by the use of A19

ix The budgetary pressure that the Authority is currently facing means that the Regulation must apply to the group of officers who currently serve in the Force and meet the criteria namely all of those officers who have completed 30 years' pensionable service. This is the only way that the budget can be balanced. Selecting groups or pools of officers from the broader group would not allow the necessary savings. There may however be one or two exceptional cases where notwithstanding the fact that an officer has completed 30 years' pensionable service it is felt that their compulsory retirement from the organisation would have such a detrimental impact on the ability of the Force to operate efficiently that their continued service is essential. This may be the case where an officer has a unique skill set or expertise which cannot be

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immediately replaced within the organisation. Accordingly a mechanism will be adopted for looking at each exceptional case to determine if it is in the interest of the efficiency of the Force for that particular officer to be compulsorily retired, or to remain serving until a suitable replacement can be found from the pool of officers who do not have 30 years' pensionable service. This means that in exceptional cases the force will retain very competent and experienced officers who have skills that are in short supply.

x Given the financial pressure placed upon the Authority and the fact that the authority has determined that the use of A19 is the optimum way to preserve the efficiency of the Force the use of A19 is necessary in the sense that it is the only real and practical solution available to the Authority in balancing the budget."

134. In the rationale document it was suggested that selection between police officers who would be eligible for enforced retirement under A19 should be avoided to reduce the risk of discrimination challenges.
135. The Police Authority Meeting took place on 10 December 2010. We were provided with a transcript of a Webcast of the public part of the meeting. The Rationale Document was discussed. The Director of Legal Services, Mike Stamp, stated:

"Counsel's advice is that A19 applies to only those officers who have 30 years of pensionable service, and not younger in service officers. And therefore the regulation only applies to officers who are about 48, or over, subject to the age at which they joined the service. And immediately it would be apparent that therefore there is a possibility of indirect age discrimination. Counsel's advice however, is that it is lawful if it can be objectively justified. And essentially what that means is that if there is a proportionate means of achieving a legitimate aim behind the use of the regulation, and here for us, given that current budgetary pressure, that would be the balancing of books, or ensuring the efficiency of the force. So, this document sets out the objective justification arguments relied on in support of the use of the regulation ... I would just conclude by saying on the basis of those points, in paragraph 19, 1 to 10 the use of the regulation can be objectively justified, because, and therefore it's lawful, because it is considered fair to use regulation, and it meets the operational needs of the Force.

136. Mr Bull, the chairman of the Police Authority, stated:

“can I just say to members I have actually been privileged to have the opportunity to read the Counsel’s opinions. I can't say it's an easy or a quick read, but I can say that the advice of counsel is very clear, in relation to it. And I daresay were I not to have been a lawyer, I would've probably run out concentration powers long before I got to the end of it. But I found it fascinating, but it was extremely articulate and clear, and emphatic so I am confident in the advice which Queen’s Counsel has given.”

137. There followed a closed session in which legal advice was discussed. At the conclusion of the meeting it was agreed that Regulation A19 would be implemented subject to final confirmation once the budget settlement had been formally received.

138. Mr Bull at the Police Authority meeting took the line that Counsel’s opinion provided justification for the decision to apply a policy of requiring all 2/3 APP officers to retire, rather than pointing out that such justification was possible. There was no detailed consideration of indirect discrimination and the need to justify it. Mr Bull stated that the advice from Counsel was categorical. He saw it as being categorical in providing a green light to go ahead with the use of regulation A19. There was no detailed discussion, assessment of possible justification or consideration of alternatives. The relatively small number of officers that they were seeking to require to retire, in addition to those that would be expected to retire in any event, can be seen in the context of the fact there had been recruitment in of 42 officers April and in July 2010. No request for volunteers from those at 2/3 APP or below was made before the A19 process started. No request was made for officers who might wish to take career breaks or change to part-time working. To the extent that these issues were considered at all they were rejected on certainty grounds. The authority had an under spend of approximately 2.2 million immediately prior to the decision to implement A19.

139. A further consultation meeting was held on 13 December 2010 (P375) at which Mr Haselden discussed the possibility of a deferral of the retirement of a limited number of officers:

“Chris Haselden did state there was the exception condition to the Police Authority agreement for A19. This would apply where an officer in a critical position could not adequately be replaced immediately and their compulsory retirement would be deferred. Of course, they could still voluntarily retire at any time. Senior management have been provided with a list of officers so that the operational implications could be fully considered and planned for,

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but to date no request for any extensions of A19 officers have been received."

140. On 13 December 2010 a letter was sent by the Police Superintendents' Association to Mr Haselden in which it was stated (P 379A):

"Our view is whilst the police authority does have efficiency grounds to use A19 the formal consultation should have included the decision-making around this - in this case the force is only consulting over the HOW (the process) and not the IF (the decision) - our view is that it should have been both ...

The Superintendents' Association Branch Executive fully understands and appreciates the financial situation the force/police authority finds itself in, and therefore the reason for taking the decision to implement A19. However, the ongoing negotiation must, in our view, allow sufficient time for the appropriate consultation with our national office, lawyers and members."

141. In an e-mail exchange of 15 December 2010 it was highlighted that Mr Boulton's skills were such that his retirement could lead to there being a skills gap (Supplementary Bundle P34).

142. A consultation meeting was held on 23 December 2010 it was noted (P394):

"It is essential that the officer is clear that an appeal cannot be made on the grounds of A19 alone, but it must be the particular critical/special circumstances of the officer."

143. A message from the Chief Constable was placed on the intranet on 28 December 2010 (P397):

"As we are awaiting the final details of the Comprehensive Spending Review and how this will impact on our budget, it is not yet clear whether we will be invoking regulation A 19. However, with anticipated cuts in the region of £44 million over the next four years, it is becoming increasingly likely that we will."

144. On 29 December 2010 Mr Boulton requested permission to undertake a business activity while a serving officer (P 738):

"I am working on the premise that I will be required to retire on 31 March 2011 (Regulation A19). I have outstanding annual leave and back rest days and as a result my last effective working day will be 13 January 2011.

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I've recently set up a Limited Company for which I am the director and sole shareholder. The company will be providing consulting expertise concerning Multi Agency Safeguarding Hubs, safeguarding partnership working practices and information sharing and the wider issues of Harm management. I will be working predominantly with law enforcement and local authorities in the UK.

I Have secured a contract to consult the Metropolitan Police and they are keen for me to commence in the last week of January 2011.

In view of the fact I am still technically a serving Police Officer in this force until the end of March 2011 I request permission to carry out my business activity while still serving."

145. A consultation meeting was held on 5 January 2011 in which it was again emphasised that any exceptions to compulsory retirement would involve only an extension period at the end of which the officer would retire, either voluntarily or compulsorily (P414).
146. A Regulation A19 Compulsory Retirement -- FAQ Sheet was produced which provided (P436):

"Q1. Why is the force doing this?

A1. As a result of the Government's Comprehensive Spending Review, initially announced on 20 October 2010 with more detail received on 13 December 2010, the force faces a major financial challenge and needs to make very significant savings. Savings need to be made across the board including the cost of police officers.

Q4. Why target those with 30 years service?

A4. ... At that point police forces are able to require officers to retire '*in the general interests of efficiency*'. The budget cuts required and the timeframe we have to achieve them mean that the use of A19 has become essential.

Q5. Not many other forces are using A19 so why are we doing it?

A5. ... However, there are a number of reasons why we have to do this compared with others and all of them come back to the way our budget is made up and how we are best able to generate the savings needed to balance the budget."

147. After a consultation meeting on 10 January 2011 It was recorded (P432):

"The force needed to show and provide a decision based on an individual basis. Nigel Rabbitts said the Police Federation still believe each officer should be considered individually and their legal advice on A19 part of regulations confirm there is expectation will be treated in a similar way to A20 .

Trevor Dicks said that there is a significant difference in the sense that each individual being considered under A20 will have different medical conditions leading to retirement under A20, whereas those considered under A19 will have the same backcloth in terms of Force efficiency, although there may be some individual issues which we may need to consider in terms of skills. Our exceptions process will enable us to identify any there may be. Chris Haselden explained the Police Authority will be informed of each officer's retirement on an individual basis from the statement the force will provide. The Force will make clear that each individual case has been given scrutiny by the Commanders and Heads of Department. The Police Authority will consider and approve each officer on an individual basis.

Nigel Rabbitts acknowledged and was pleased to hear how the matter will be dealt with by the Police Authority. He did say that the Federation view was that the A19 regulation was not written for mass retirement but was intended for individual cases"

148. Mr Boulton issued a notice of his intention to retire from the Force on 31 March 2011. In his evidence to the Tribunal Mr Boulton stated that he did so in the interests of his own well being, believing that it had been made clear to him in a discussion with Mr Sawyer that he would inevitably be forcibly retired under Regulation A19. He said that he wished to be in charge of his own destiny.
149. A step-by-step guide to the process for the compulsory retirement of officers under Regulation A19 was issued on 13 January 2011 (P460).
150. The Police Authority met on 14 January 2011 (P466). The decision to use Regulation A19 was agreed and resolutions were passed to delegate the consideration of the application of Regulation A19 to individual officers to the Police Pensions Regulation Sub-Committee and to

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delegate authority to hear appeals to the Devon and Cornwall Constabulary.

151. On 18 January 2011 an Equality Impact Assessment was produced (P490). It is not a finalised version as it includes comments such as "suggest this paragraph is removed". In the section dealing with Equality Impact it was recorded:
- "Age - it is known that A19 is age discriminatory but this process is considered justifiable by D&C as it has explored other cost-saving methods and without this process it is impossible to meet the budget cuts applied by the government."
152. The equality impact assessment was only produced after the decision had been taken to implement A19. It was not finalised.
153. The Police Federation wrote on 19 January 2011 suggesting that alternatives should be considered such as offering extended unpaid career breaks, extended unpaid leave of absence, reduced hours and/or fixed reduced hour shifts to meet operational demand (P513).
154. The Police Pensions Regulations Sub-Committee met on 21 January 2011 and considered a list of officers who it was proposed would be required to retire. They gave approval for the retirement of each of them (P519).
155. 26 January 2011 Sergeant James and Inspector Fowkes were given notice of their retirement on 30 April 2011 (P769). Neither of them appealed against the decision that they be compulsorily retired under Regulation A19.
156. The letter sent to officers who were required to retire emphasised the fact that it was triggered by the comprehensive spending review (p769) stating:
- "You will be aware of the extreme financial constraints placed on the Force following the announcement of the Government's Comprehensive Spending Review. Already the Force has made great efforts to reduce non staff costs but Officer/Police Staff costs account for more than 80% of the Force budget. Significant cuts to Police Staff numbers have been taking place for some time now and another 300 posts are due to be cut. Additionally a recruitment freeze for Police Officers has been in place since the middle of 2010."



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Even allowing for these actions and the anticipated natural turnover of Police Officers that leave the force for other reasons, including retirement, the force will not be able to meet the scale of savings without compulsorily retiring officers with 30 years pensionable service under regulation A19 of the Police Pension Regulation 1987. ...

The force wishes to reassure you that this decision was taken in the face of very significant financial constraints and in no way reflects on your individual performance or commitment."

157. At meeting of the CIPD Police Forum Heads of Professional Group was held on 13 April 2011 Mr Haselden stated that he was in the process of finalising a "best practice" document in relation to the application of Regulation A19. In the document he subsequently produced he stated (CIPD Bundle P58):

"A more detailed objective justification should be prepared to set out the arguments in full so as to support the decision to use A19, to be included in the submission to the police authority, to set out clearly the rationale for officers and to help counter any challenges. The precise details of the objective justification will vary across forces to take account of the particular budgetary situation, the numbers and balance of police officers and police staff and the budget savings plans. Appendix 1 describes elements that might be included in an objective justification statement."

158. Mr Haselden also noted (CIPD Bundle P58):

"One particular point that a number of forces have had to stress is that, unlike redundancies, A19 does not increase the number of leavers (retirement) -- all the officers will have retired at some point, many at 30 years. Latest figures suggest that forces have had between 50% and 80% of officers retiring at 30 years. A19 is essentially about the timing of the retirement, bringing forward the retirement of some officers."

159. It was the evidence of the Devon and Cornwall Police that but for the Comprehensive Spending Review the use of A19 en masse would not have been considered. Cost was the trigger for its use.

**Annex 2  
Nottingham**

160. The Respondent called:
- 160.1 Jon Collins, Councillor and Leader of the Nottingham City Council and former Chair of the Nottinghamshire Police Authority
  - 160.2 Margaret Monckton, Assistant Chief Officer (Resources)
  - 160.3 Ian Ackerley, former Assistant Chief Constable (Strategic Change)
161. The following test Claimants gave evidence:
- 161.1 Former Chief Superintendent David Wakelin
  - 161.2 Former Detective Sergeant Andrew O'Hagan
  - 161.3 Former Detective Chief Inspector Stuart Kinton
  - 161.4 Former Police Constable Anthony McDonald
162. The Claimants called:
- 162.1 Malcolm Spencer, Manager and Advisor Nottingham Police Federation Joint Branch Board
  - 162.2 Kevin Walker, Secretary of the Nottinghamshire Joint Branch Board Manager and Advisor

**Former Chief Superintendent David Wakelin**

163. Mr Wakelin joined the police on 1 December 1981 at the age of 18. He started work as a Response Officer. Following promotion to Detective Sergeant he worked for a number of years within the Criminal Investigation Department leading investigations tackling serious crime. He was promoted to Inspector as a uniformed officer in Mansfield, where he remained until he was promoted to Chief Inspector. He was for a period Acting Superintendant and was seconded for two years to the National Youth Justice Board of England and Wales as a policy advisor on youth crime prevention.

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164. Mr Wakelin was involved in the Sherwood project from 2004 to 2005 dealing with drug related offenders across the county. The project won two national criminal justice awards in 2005. For a period he led the force Corporate Development Department helping the force move out of HMIC Intervention. He was promoted to Chief Superintendant in March 2009. He was made overall Chief Superintendant in December 2010. He holds Bsc first class honours in Policing and Policing Studies from Portsmouth University.

### **Former Detective Sergeant Andrew O'Hagan**

165. Mr O'Hagan joined the police on 12 June 1980. After completing basic training he was posted to the inner-city areas of Hyson Green and Broxtowe as a uniformed Patrol Officer. Mr O'Hagan was involved in policing during the miners' strike from 1983 to 1984.
166. Mr O'Hagan then became involved in drug enforcement. He became a Field Intelligence Officer in 1992. In 1996 he was appointed as a Trainee Detective, qualifying in 1997 as a Detective Comfortable.
167. Mr O'Hagan was promoted to the rank of Detective Sergeant in 2002. He was trained to field test controlled drugs and was involved in many drug searches. In 2006 he was transferred into the Serious Organised Crime Unit.
168. Mr O'Hagan was appointed as Substance Misuse Expert Evidence and Training Officer in 2010 and was a Police International Drug Expert. He undertook work with the Dutch police. In 2006 he attended the Expert Evidence for Drug Trafficking Course. Mr O'Hagan was the Force Lead Drug Expert.

### **Former Detective Chief Inspector Stuart Kinton**

169. Mr Kinton joined the Police Cadets in 1979 when 16 years old. Mr Kinton joined the regular force in March 1981. He was formally confirmed as a Police Constable in 1983. Mr Kinton spent his first two years in Retford gaining experience as a uniformed Patrol Officer. He moved to the inner-city area of Hyson Green in 1983 and was involved in policing the miners' strike from 1983 to 1984.
170. Mr Kinton passed the Sergeants' exam in 1986 and the Inspectors' exams in April 1987. He moved to the CID in 1988 and was an Acting Detective Sergeant. He then moved to the Force Intelligent Bureau in 1990 being formally promoted to Sergeant in 1991.

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171. Mr Kinton was then a uniformed Sergeant, including being a Custody Sergeant, a Response Sergeant and Team Leader for special projects.
172. Mr Kinton was appointed as a Detective Sergeant in 1994. In 1996 he was appointed as a Detective Sergeant on the Major Crime Unit.
173. In April 2002 Mr Kinton was transferred to the Mansfield CID Serious Crime Team. He returned to the Major Crime Unit in September 2002 to be involved in murder investigations.
174. From December 1996 to March 2002 Mr Kinton perform the role of deputy Senior Investigating officer and Acting Detective Inspector. Mr Kinton was appointed as a Detective Inspector in 2008 and was the Deputy Senior Investigating Officer working in the Major Crime Unit/Homicide Unit. Mr Kinton was trained as a hostage/crisis negotiator in 2009. In late 2010 he qualified as a Senior Investigating Officer.

### **Former Police Constable Anthony McDonald**

175. Mr McDonald joined the Police on 2 February 1981. He started his career at Worksop as a beat officer. He was involved in policing the miners' strike. He then was a Police Constable in a number of locations. In 2006 he was appointed as the Retford Town Centre Beat Manager. He worked with a full-time PCSO. He revamped the Pub Watch scheme and introduced a Shop Watch scheme. He started and sat on the Safer Neighbourhoods Group. He co-ordinated a cleanup campaign with the assistance of a church youth group leader. He arranged for youths who had been involved in graffiti to take part in a cleanup. He introduced a bike passport scheme. He was awarded Community Officer of the Year. We were provided with a bundle of clippings from the local paper that clearly demonstrated the extremely high regard in which he was held by the local community.

### **The A19 Process**

176. At a Force Executive Group meeting, held on 5 August 2010, it was noted that a recruitment freeze was in place, that the 30+ scheme was to be reviewed and that advice was being obtained nationally on Regulation A19, it being recorded (P468):

"There is a meeting planned next week on how the advice from Counsel is executed."
177. On 15 September 2010 a paper was drawn up about the use of Regulation A19 (P480), in which it was stated:

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"Queen's Counsel advice is available to provide an advisory steer on how this Regulation may be applied. From this advice the general conclusion is that with a qualified exception of Rank and some geographical criteria, it is recommended that Regulation A19 be applied to all officers within its scope until the desired establishment is reached. In addition, Regulation A19 should be applied to all officers as they reached 30 years service until the desired reduction in establishment is reached. ...

Whilst limited in scope Regulation A19 may be applied to support the Force in meeting its expected budgetary shortfall."

178. A Staff Council meeting was held on 5 October 2010 (P484) at which it was noted that ground work was being undertaken in respect of the possible application of Regulation A19 but that nothing would be implemented until the budget settlement was known.

179. On 9 November 2010 a Managing Workforce Reductions document was produced (P493), in which it was stated:

"Given the anticipated scale and duration of the budget reductions it is also possible that the application of Regulation A19 will need to continue beyond the 2010/11 financial year. ...

However, the requirement to apply the regulation will need to be reviewed at appropriate stages in future years. Depending on circumstances at the time of each review, the Force may be able to address its future budget requirement without continuing to utilise A19. ...

Current thinking on the proposal, therefore, is that should the regulation need to be applied, then it is best invoked at a point in time and applied across all affected officers."

180. We were provided with a handwritten note of a meeting held on 16 November 2010 between a Police Federation representative and Mrs Monckton (P521A), in which it was recorded:

"I am told by the ACC and Margaret that they do not intend to use A19 yet, but they are seeking permission from the EA, in case they need to in the future. If + when will depend on whether or not they keep the grants ..."

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181. A Workforce Briefing PowerPoint presentation was produced on 16 November 2010 in which it was noted, in reference to Regulation A19, that it (P525):
- "Underwrites' the number of officers who are not 'leavers' - many officers retire at 30 years"
182. A Force Executive Group Meeting was held on 16 November 2010, in the minutes of which it was recorded (P532):
- "A balanced-budget will be jeopardised if key decisions around A19 and voluntary redundancy are not made."
183. A meeting of the Police Authority was held on 24 November 2010. It appears from the minutes that no reference was made to the possible application of Regulation A19 (P539).
184. On 24 November 2010 the Chief Constable wrote to officers informing them that the Police Authority was to consider the use of Regulation A19 (P 544).
185. On 28 November 2010 Mr Kinton attended a Regulation A19 Initial Welfare Meeting at which he was asked what his intentions were. It was recorded as intending to continue to serve with the Nottingham police (P1423FF).
186. A Force Executive meeting was held on to December 2010 at which a Finance update was given. There was no reference to Regulation A19 (P546).
187. On 7 December 2010 the Chief Constable sent a letter to officers stating that a detailed report would go before the Police Authority on 15 December 2010 and that the force would ask members to approve the use of Regulation A19 (P552).
188. On 10 December 2010 Police Federation Representatives met with Mr Collins and indicated that they believed that many of the officers who might be affected by the application of Regulation A19 would be likely to retire in any event. They sent an e-mail to the relevant officers within the Federation asking for an indication of the likelihood that they would retire (P554).
189. A meeting about Regulation A19 was held with representatives of the Police Superintendents' Association and Police Federation on 13 December 2010. They were informed that a recommendation would be

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put to the Police Authority for the application of Regulation A19 to all eligible officers. They were provided with a draft procedure.

190. On 13 December 2010 a Change Programme Board was held at which Mrs Monckton provided a Business Case including the rationale for the use of Regulation A19.
191. On 14 December 2010 there were email exchanges in which the Police Federation Representatives indicated that they thought the majority of officers who might be affected by Regulation A19 would be retiring in any event and noted that there were seeking information from a significant number from whom they had yet to hear back (see PP 565, 565A, 1219E)
192. A Workforce Change document was produced for presentation to the Police Authority on 15 December 2010 (P568) recommending the application of Regulation A19. It suggested full year's savings by the implementation of Regulation A19 of £5,334,764 through the loss of 86 officers. This did not take into account those who would have retired in any event. Under the heading "Policy Implications" it was recorded:
- "Likewise the consequence of a compulsory redundancy programme and the implementation of Regulation A19 will also be subject to equality impact assessments. Should A19 be applied to officers who fall within its scope up to 31st of March 2011, initial equality assessments demonstrate there would be no adverse impact in respect of the make up of the Police Officer establishment (in respect of gender, ethnicity and recorded disability). ...
- It should be noted that a range of options for the potential implementation of the Regulation have been considered by the Chief Officer Team. These have included application to supervisory ranks only (Sergeant and above) to better align the rank structure, staggered arrangements, deferral in some cases and the provision of exceptions based on skills requirements and succession planning. Each has some merit but all are difficult to administer without the risk of legal challenge."
193. At the meeting of the Police Authority on 15 December 2010 it was resolved (P585):
- "That the application of Regulation A19 be approved in principle to all officers who if required to retire would be entitled to receive a pension of an amount not less than two thirds of their average pensionable pay; and subject to discussion with the staff associations, authorises the Chair of the Authority and 2 Vice-

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Chairs in consultation with the Chief Constable and Treasurer to agree the details and appropriate implementation arrangements."

194. On 15 December 2010 Chief Constable wrote to officers (P1423HH):

"On Monday the government announced our budget settlement for the next two years. Our funding allocation for the next financial year will be £8.2m less than it was this year and in 2012/13 it will fall by a further £9m.

These reductions in our budget have been anticipated but they still present us with some tough challenges to continue our impressive performance of driving crime down and making Nottinghamshire a safe place ...

The authority has also approved the use of Regulation A19 - the compulsory retirement police officers with 30 years' pensionable service on the grounds of efficiency."

195. The Chief Officer group met on 22 December 2010. They noted that the Police Authority had approved the use of Regulation A19 and recorded (P588B):

"It is important, for overall efficiency and in pursuit of legal compliance, to establish both a legitimate overall business purpose for the use of A19 and to use a fair procedure to reach specific decisions to require officer(s) to retire."

196. It was noted that the Police Federation wanted one senior manager to conduct all of the initial consultation meetings. There was a discussion as to whether A19 should be applied to all ranks and specialisms, it being noted:

"Applying A19 to all ranks and specialisms will generate the highest possible level of savings for Nottinghamshire Police and puts us in a stronger position to achieve a balanced budget. I consider that it is fairer to apply Regulation A19 across all ranks and specialisms (excluding Chief officers) and feel that this approach will also further reduce the risk of legal challenge."

197. In respect of diversity and equality it was noted:

"An initial equality impact assessment has been undertaken in accordance with the Force EIA process. Overall there will be a slight increase in the percentage of female and BME officers as a result of Regulation A19 being applied. There is an adverse impact



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on the age profile due to the pensionable service requirements of A19. Legal advice has been obtained from senior Counsel, both on the general use of A19 and some specific aspects of its introduction. The advice provides rationale and justification to counter prima facie discrimination issues."

198. In January 2011 a Business Case was produced (P609) that emphasised savings would be made by the implementation Regulation A19. It was stated that its application to all applicable ranks and specialisms would generate the highest level of savings, putting the Force in a stronger position to achieve a balanced budget. It was said to be fairer and reduce the risk of legal challenge. The risk of losing operational skills could be offset by career planning. The savings set out did not make any reduction for those officers that would have retired in any event.
199. On 5 January 2011 an Extraordinary Meeting of JNCC was held at which it was agreed that the suggestions that Regulation A19 provided scope for officers to progress vertically and horizontally and that it would improve succession planning would be removed from the rationale for its use.
200. On 12 January 2011 a meeting was held at which the Chair and two Vice-Chairs of the Police Authority, the Chief Constable and Assistant Chief Constable and Treasurer agreed that Regulation A19 would be applied across all ranks and specialism (P657A).
201. Consultation meetings were held with the Police Superintendants' Association and the Police Federation on 17 January 2011 and with the Police Superintendants' Association on 31 January 2011.
202. The evidence of the extent to which indirect age discrimination was considered at the Police Authority meeting on 15 December 2012, or on 12 January 2011, when it was decided that A19 would be applied across all ranks and specialisms, is striking. During the evidence of Mr Collins, the Chair of the Police Authority, it quickly became apparent that he was not aware of the type of claims that were being brought by the Claimants. He had understood that there was some general challenge to the legality of the use of A19 to require the retirement of a cohort of officers. He did not appreciate that the claims that were being brought were of age discrimination. It is clear that at the time he did not appreciate the indirect discrimination claims that might be brought or understand that there was a requirement for the treatment to be justified if it was not to be discriminatory. Mrs Monkton did not appreciate the distinction between direct or indirect discrimination and appeared to take the position that the legal advice that had been obtained was such that it was legal to proceed on the basis that all officers would be required to retire at 2/3 APP. There

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had been a recruitment exercise in August 2010 and 15 officers transferred into the force. During the relevant period between 2010 and 2012 the force had recruited 56. Officers below 30 years service were not asked whether they might wish to retire or transfer on a voluntary basis. There was no consideration of part time working or career breaks. Mrs Monkton stated that she would have preferred to use a redundancy approach, but that was not possible because you could not be selective in the use of A19. That was a misconception. In documentation provided to the Police Authority the approach was taken that any question of selection would risk legal challenge. The Workforce Change document raised issues of discrimination but did not refer to age (P568/574). Mrs Monkton could not recall whether there was a specific discussion about age discrimination at the meeting of 15 December 2010.

203. On 17 January 2011 and 31 January 2011 there were consultation meetings. Mr McDonald was written to about the possible application of A19 on 13 February 2011. On 14 February 2011 Mr O'Hagan and Mr Kinton were written to about the possible application of A19. Mr Kinton and Mr McDonald attended meetings to discuss the possible application of A19 on 14 February 2011. Mr O'Hagan attended a meeting on 21 February 2011. He made a detailed submission as to why he should not be required to retire. Mr McDonald and Mr Kinton also made submissions as to why they should not be required to retire. On 4 March 2011 Mr McDonald, Mr O'Hagan and Mr Kinton were informed of the outcome that they would be required to retire on 10 March 2011.
204. Mr Kinton appealed on 17 March 2011. Mr McDonald appealed on 31 March 2011. Mr McDonald was informed that his appeal was unsuccessful on 15 April 2011. Mr Kinton was informed that his appeal was unsuccessful on 7 June 2011. Mr McDonald, Mr O'Hagan and Mr Kinton retired on 12 June 2011
205. Mr Wakelin was written to about the application of regulation A19 on 13 July 2011. He made a submission against his enforced retirement at a meeting on 13 July 2011. He was informed that he was to be retired under A19 on 19 July 2011. He appealed on 15 August 2011. He was subject to compulsory retirement on 30 November 2011.
206. The compulsory use of A19 ceased in March 2012 at the end of the financial year. Mrs Monkton's evidence was that although by January or February 2012 it was appreciated that any cost saving require had been made she did not give any consideration to stopping the use of A19 as she felt it more prudent to wait until the end of the financial year.

**Annex 3  
West Midlands**

207. The Respondent called:
- 207.1 David Thompson, Deputy Chief Constable of West Midlands Police
  - 207.2 Christopher Rowson, Head of Human Resources
  - 207.3 Jean McEntire, a former independent member of the West Midlands Police Authority
208. The following test Claimant gave evidence:
- 208.1 Former Chief Superintendent Deborah Harrod
- Former Chief Superintendent Deborah Harrod**
209. Mrs Harrod joined the Police on 13 April 1987, aged 27. Mrs Harrod had 10 years' service in the Army, having achieved the rank of Staff Sergeant.
210. Mrs Harrod joined West Midlands Police and, following her basic training, she was posted to M1 sub division (Coventry City Centre). Within 12 months she was recruited into the Criminal Investigation Department.
211. Mrs Harrod successfully passed the Sergeant's exam at the first opportunity in 1990. In 1995 Mrs Harrod was successful at the first attempt in being promoted to Sergeant. In 1996, Mrs Harrod was posted as a Detective Sergeant to the Birmingham office of the Midlands Regional Crime Squad.
212. In 1998 Mrs Harrod was appointed as a temporary Detective Inspector in Rugby. In late 1998 Mrs Harrod applied for promotion to Inspector, and was again successful at her first attempt. Mrs Harrod then became a sector Inspector in Hillfields, Coventry. Mrs Harrod qualified as Public Order Bronze and Silver Commander. In October 2000 Mrs Harrod was selected to become the Detective Inspector at Coventry, M1 Operational Command Unit. Mrs Harrod completed the Senior Investigating Officers (SIO) course. Mrs Harrod qualified as a Firearms Silver Commander. Mrs Harrod completed the Senior Investigating Officers (SIO) course. Mrs Harrod Graduated in February 2002 with a Masters degree in Business Administration from the University of Leicester.

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213. Mrs Harrod applied for promotion to Chief Inspector in 2003 and was successful again at her first attempt. In July 2003 Mrs Harrod returned to Coventry as the Detective Chief Inspector Crime Manager and within 6 months was promoted to the rank of Superintendent. Mrs Harrod represented the region at the ACPO Anti Corruption Advisory Group (ACCAG).
214. Towards the end of 2005 Mrs Harrod was posted to the F1 OCU (Operational Command Unit) as the Operations Manager. In early 2006, she was appointed Temporary Chief Superintendent of F1 and became the temporary F1 Operational Command Unit Commander. Mrs Harrod formed the Forces first Senior Women's Network.
215. Mrs Harrod was appointed to the substantive rank of Chief Superintendent on 10 April 2007. She was then posted to M2 Coventry South OCU
216. In September 2009 Mrs Harrod attended Bramshill Police College and completed the Senior Police National Assessment Centre and was selected to attend the Strategic Command Course. Between January and April 2010 Mrs Harrod attended the Strategic Command Course at the Police College Bramshill and successfully passed the course.
217. Mrs Harrod returned to the West Midlands Police and worked on a number of project areas which required strategic leadership. Mrs Harrod successfully passed the Strategic Firearms Commander course.
218. In or around September 2010 Mrs Harrod applied for two Assistant Chief Constable posts, one in Warwickshire and one with West Midlands Police. However, in November 2010, her husband, Steven, became critically ill having suffered a major brain stroke. Mrs Harrod withdrew from the two selection processes.

### **The A19 Process**

219. On 2 August 2010 a Memo was produced (B4) for an Organisation Change Programme Board. It was noted that planning was taking place for budget reductions likely to be in the region of £100 million to £125 million and that 80% of budget was driven by payroll costs. Under the heading Regulation A19 it was recorded:

“A number of forces, including West Midlands Police have sought legal opinion on the application of A19 and an attempt is being made to deliver a service wide (coordinated) approach to the implementation of the regulation. ...

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A19 can be used in situations where budget reductions are required, in order to maintain the efficiency of the force and allows the funding of required policing priorities under Programme Paragon ... The process should be structured and consistent to minimise the risk of discrimination claims particularly in relation to age.

Barrister's opinion is that justification for application of the regulation, to rebut age discrimination claims, could include:-

- That compulsorily retiring officers with more than 30 years service preserves the operational resilience of the workforce because those (younger) officers who remain will provide the force with longer service in future. Therefore the necessary age profile will be preserved.
- At an individual level officers with more than 30 years service have already benefitted from being able to serve for this period of time and have built up pension entitlements which mean that in the event of compulsory retirement they will be financially less affected."

Whilst the legal opinion is confident that these justifications will be sufficient to rebut any age discrimination challenges they have not been tested at Employment Tribunal."

220. The paper suggested that use of Regulation A19 would produce savings in the order of £10 million.
221. There were discussions with the Police Superintendants' Association and Police Federation about the possible implementation of Regulation A19. On 8 September 2010 there was a meeting with Police Superintendants' Association representatives (E5). It was suggested that any process should be "straight edged" in that there should be no exceptions to it.
222. On 4 October 2010 there was a final intake of 7 new student officers, 67 in total having been recruited in the 2010/11 financial year.
223. On 10 September 2010 Derek Smith, Director of Resources, produced a report to the Command Team on the possible application of A19 (C9). Mr Smith recorded that it was expected that there would need to be reductions in the budget of between £100million and £120million over the four years of the CSR period. He suggested that the advice was that A19 could involve indirect age discrimination but that it would be lawful if it could be objectively justified. He noted that most officers retired at or close to their retirement dates. The evidence of Mr Thompson was that

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approximately 95% of A19 Officers retired at 2/3 APP in the West Midlands.

224. In considering the use of A19 Mr Thompson stated at paragraph 25 of his report:

“Although historically significant numbers of officers have volunteered to retire, reliance on officers volunteering would not provide the certainty that was required if the Force was to reach optimum efficiency. Given the economic climate it was very unclear whether those who would seek to stay on beyond 30 years would increase in future”.

225. This rationale is, no doubt, why it was not thought appropriate to ask those at or under 2/3 APP whether they were planning to retire.

226. Mr Thompson refers to an overall loss of 987 officers over the CSR period although this would appear not to take into account those that would have retired in any event. Consideration was not given to asking officers their intentions for retirement below or at 2/3 APP.

227. Mr Smith went on at paragraph 5.3:

“Our current guidance is that we should be clear and transparent. That would reduce the risk of a legal challenge in that all ranks and groups would be treated the same and then ongoing application of the Regulation as officers reached 30 years service. That would suggest a single date if possible, so that we do not incur a risk of discrimination in our subsequent approach.

228. He recommended to the Command Team that they should consider the implications arising from the proposed application of Regulation A19.

229. On 20 September 2010 there were consultation meetings with the Police Superintendants' Association and Police Federation.

230. The Police Authority met on 30 September 2010 and resolved that the Chief Constable should develop the details and implementation arrangements of the application of Regulation A19, with a decision to be taken on its application at the next Police Authority meeting on 2 December 2010. Staff were informed on the decision that day and it was stated (E8)

“The decision about whether there will be a need to actually implement Regulation A19 was deferred to the Authority's next meeting in December, when the results of the Government's

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Comprehensive Spending Review are known and the force and Police Authority have a clearer picture around the extent of the cuts for the force being proposed.”

231. On 12 October 2010 Mrs Harrod was informed by letter of the possibility that Regulation A19 might be applied to her (G1).
232. A consultation meeting was held with the Police Superintendants’ Association on 12 November 2013.
233. On 16 November 2010 a Memorandum was produced for the Command Team that stated (C33):
- “The Policy is underpinned by an Objective Justification for application of the Regulation (appendix 2). This is subject of advice to ensure that it is sufficiently robust and able to withstand legal challenge. Essentially this demonstrates the steps the force has taken to avoid the need to apply A19 and that it is effectively a measure of last, rather than first resort.”
234. An objective justification document was produced for the Police Authority (D69). It referred to the need to save approximately £120million. In dealing with alternatives it stated at paragraph 2.5 :
- “Other measures have been considered, including developing opportunities for greater flexible working by Police Officers. However this measure is considered unlikely to achieve the financial savings required, given under Police Officer Regulations, the entitlement of Officers to remain on full hours (if they wish) and to return to full time working at any time (with appropriate notice). In these circumstances there is no assurance that the necessary financial savings could be achieved. A voluntary leaving scheme for Officers with less than 30 years pensionable service was also considered. However under Police Regulations the Force has no power to offer financial incentives to individuals to leave on this basis, and it was therefore considered unlikely that this option would produce the necessary financial savings.”
235. As with the other force of the approach taken by West Midlands was based on achieving certainty of the savings rather than asking Officers their intentions and projecting forward the likely consequences on Officer numbers with the possibility of some reliance on reserves in the short term, if necessary, if the expected number of officers did not leave. The document placed considerable emphasis on the cushion for officers retiring under A19. It was noted at paragraph 3.1(b):

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“Approximately 95% of Officers who have achieved 30 years pensionable service leave the force at this service date, or within a few months of having achieved it. This reflects a personal planning of Officers and generally their intention to leave the force on or around this service date. Applying Regulation A19 in these circumstances will not therefore be to the detriment of this group of Officers, given that it is likely to fit with the vast majority of personal decisions”.

236. The West Midlands Police took the approach that because the majority of Officers would be retiring in any event this suggested that there was no significant detriment. As set out in our general findings we consider in looking at the detriment we have to place emphasis on the limited group of officers who were not planning to retire. It is they that suffer the only, or main, detriment. For them it is very substantial.
237. At paragraph 3.1(c) the report emphasised that after achieving 30 years service officers could retire with 28 days notice. However, this is rare in practice. Officers who have stayed past 2/3 APP generally plan their departures to fit the requirements of the force.
238. A document headed Managing Workforce Reduction Application of Workforce Regulation A19 was produced for the Police Authority meeting to take place on 2 December 2010 (D53). It noted again the need to make savings in the order of £120million over the CSR period. It noted the measures that did not involve a reduction in the workforce that had been taken to seek to reduce costs. It suggested there should not be a focussed application of A19 to any limited group of officers. At paragraph 8 it was stated:
- “Options considered include staggered or rank specific application and or the identification of exceptions, based on skill requirements. These options have merit but may be open to challenges on equality grounds.”
239. The document did not set out what the nature of any such challenge might be. In dealing with the financial implications there was some attempt to separate out the savings from A19 as against the savings that would occur through natural wastage when officers retired at 2/3 APP. It was suggested that there would be an additional saving over the CSR period of 9.6million of which 8.6million was in 2011/12. The provision for natural wastage was made by predictions based on previous natural wastage rather than seeking to ascertain from officers what their intention for leaving were either by retirement at 2/3 APP or thereafter, or resignation to move to other forces or otherwise prior to achieving 2/3 APP. The document suggested at paragraph 22 that the need to make



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savings, against the background of other measures which had been introduced to make savings, and increased efficiency should provide justification for the use of A19. The recommendation was to apply Regulation A19 to all officer ranks with effect from 31 March 2011 and thereafter on an ongoing basis.

240. The Equality Impact Assessment (D79) suggested that A19 would involve indirect discrimination on age grounds and went on to recommend the need "to objectively justify A19 in view of the unfair application". It was suggested that an Equality Impact Assessment should be carried out.
241. The Police Authority was held on 2 December 2010 (D8). There is no record of a detailed discussion of justification or of the alternatives that might be available to the use of A19. The decision to apply Regulation A19 was deferred pending external legal advice.
242. While we accept the evidence of the Respondent's witnesses that there was an awareness of the risk of the application of A19 involving indirect discrimination, we consider that they were of the view that the documents put to the Police Authority provided such justification. We accept that they did consider whether alternatives had been investigated and implemented that did not involve reductions in Police Officer numbers. However, we do not accept that there was a detailed consideration, in the context of accepting that there was a need for reduction in Police Offer numbers, of whether A19 had to be enforced to achieve the reductions or whether there were alternatives such as seeking statement of intentions from those at, above or below 2/3 APP as to whether they were planning to retire; providing career breaks and allowing officers to move to part-time working. These matters were not considered in any detail by the authority.
243. The matter returned to the Policy Authority on 16 December 2010. There was a relatively brief discussion after which approval was granted for the application of A19 to all A19 officers. The decision was relayed to the officers in a message of the day.
244. A letter was sent to Mrs Harrod on 17 December 2010. She was told that A19 would be applicable to her, subject to her putting forward reasons why she should not be subject to compulsory retirement. On 12 January 2011 Mrs Harrod produced a detailed report suggesting that she should not be required to retire, particularly because of the effect her retirement would have on female representation at the higher ranks of the Respondent's force. Her representations were considered at a Corporate Panel meeting on 10 February 2011. Mr Thompson wrote to Mrs Harrod and informed her that she would be required to retire under

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A19 giving her the opportunity to appeal limited to the grounds that there was a fundamental breach of process, that regulation A19 did not apply to her or that the regulation should be deferred. Mrs Harrod appealed on 15 February 2011. On 8 March 2011 she was informed that her appeal had failed.

245. On 1 December 2011 a report was produced (D 189) in which it was noted at paragraph 11:

“The number of officers leaving under Regulation A19 is closely aligned to the numbers originally forecast and previously reported to Members. However, the number of other leavers has been higher to date than anticipated. A total of 89 officers have either left, or confirmed their intention to leave the Force, as at the end of November. This number includes officers retiring on medical grounds, those transferring to other Forces and the retirement of officers with more than 25 years but less than 30 years pensionable service who are aged 50 and over. To date a total of 16 officers have transferred to other Forces (the majority of which have transferred to West Mercia), which is higher than projected. In addition, there has been an increase in the number of ill health retirements and a higher than predicted number of officers retiring on superannuation grounds (i.e.) with less than 30 years service.

This higher than expected turnover means that at this stage, the Force is exceeding the reduction in offer numbers originally projected. However, there remain a number of variables which may impact on this position. The projected leaver numbers are expected to reduce based on continuing uncertainty in the local and national economy with a consequent impact on employment opportunities”.

246. The continued use of A19 was considered at a Police Authority meeting on 16 February 2012 (P194). Ms McEntire noted at paragraph 50 of her statement that a total saving in 2011/12 the savings from reductions in Officer numbers had been £5 million more than expected. Rather than this focussing the authorities mind on the fact that there were alternatives to the compulsory use of A19, it was decided that its use should continue. The basis was the certainty in savings that would be provided. Even with the front-loading that was achieved in the first year of the use of A19, as it would remove all those officers that had already exceeded A19 Officers the figures therefore show that at most there was an additional £3.6million saving in the context of a Force with the budget of half a billion pounds. This emphasises the fact that alternatives were

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available to the enforced use of A19 on the limited cohort of officers who would not have retired in any event.

**Annex 4  
North Wales**

247. The Respondent called:
- 247.1 Terry Kellaher, Superintendant and Head of HR
  - 247.2 Mike Parkin, Director of Finance and Resources
  - 247.3 Mark, Polin, Chief Constable
248. The following test Claimant gave evidence:
- 248.1 Former Detective Superintendant Peter Chalinor

**Former Detective Superintendant Peter Chalinor**

249. Mr Chalinor joined the police on 14 April 1980. Mr Chalinor served with Merseyside Police until he transferred to North Wales Police in 2004. He worked principally in the CID but also in uniform and for Special Branch, the Serious Crime Units, the Major Incident Team, Plain Clothes Units and Specialised Units. He led the Merseyside Civil Litigation Unit, conducted internal investigations into other forces and worked as lead investigator on many IPCC investigations. He led corporate projects and was a diversity champion for the Force in respect of age discrimination. He was an SIO for over 10 years, leading over 50 murder inquiries and investigations into serious crime.
250. Mr Chalinor received 15 commendations during his police career, including 7 in the last 7 years of his service. He was a Police Negotiator for over 10 years and, via the Foreign Office, undertook such work, including training other officers, in several countries. His final full time posting was as a Detective Superintendent in Crime Services in charge of level 2 policing, Financial Crime, Hi-tech Crime and as a Senior Investigating Officer.

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251. A Financial Strategy and Medium Term Financial Plan for the period 2010/11 to 2014/15 was produced for the North Wales Police Authority on 16 December 2009 (P86). It was noted that over a number of years significant savings had already been made by reorganisation of the force. For example in the year 2006/7 £2 million had been saved through reduction of Police Officer numbers and police staff. This had been done without the use of Regulation A19. It was noted (P113) that there were uncertainties in terms of funding and cost for future years and that tough

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times were ahead as a result of the Comprehensive Spending Review. However it was noted:

“The Force is in a strong position in that it is not currently overspending, has healthy/sufficient balances and is not currently using balances to prop up the budgets.”

252. In March 2010 a freeze on recruitment was introduced. At a Force Executive Board held on 4 July 2010 it was recorded (P239):

“The meeting was advised that guidance regarding A19 was expected the week commencing 5<sup>th</sup> July 2010. It was noted that if A19 was not agreed, the projected loss of police staff loss might have to increase. Eileen Price advised that options such as early retirement and voluntary redundancy would need to be looked at as soon as possible.”

253. Consideration was given to putting promotions on hold (P242).

254. A Chief Officer’s meeting was held on 6 September 2010 (P247). It was suggested that 248 Officers would attain 2/3 APP over the next four years. There was a reference to natural wastage of 12 per year. This does not appear to include those that would have retired at 2/3 APP in any event. It was noted that A19 had not been used on a group basis previously and that:

“Up until this point, this regulation has not been widely tested across the UK Police Service and given the advent of the age discrimination legislation in October, 2006 with the known risks, it was universally considered amongst the National HR Police Forum that advice from counsel was required to protect Chief Constables from potential litigation on two points below.

255. The potential justification provided by counsel was then set out. It was suggested that there was a possibility of indirect age or sex discrimination but that:

“However, despite this discrimination can be justified provided that it is a proportionate response to support a legitimate aim (ie the stated business rationale and selection process). If this is in place the risk to the force of a successful claim is regarded as LOW.”

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256. A summary of the advice was given:
- “Counsel’s advice leads Corporate HR to form the opinion that it would be potentially lawful to compulsory retire an officer with 30 years (and above) service even if the main driver is simple ‘costs savings/efficiencies’.”
257. Consideration was given as to whether A19 should be applied to all A19 Officers. It was recorded:
- “At this stage the ‘bulk’ approach is not favoured by FEB members.
- Individual business rationale would need to be provided for each officer and the requirement to consult (using the 3 stage approach) heightens. But it would permit the force to retain specialist skills for a given period if required.”
258. At this stage it was suggested that A19 would be operated by setting out a business case in respect of each officer it was proposed to retire.
259. A Force Executive Board took place on 13 September 2010 (P244). It was suggested that there was a requirement to use Regulation A19 providing for a loss of 251 Police Officers over the next 4 years. This does not appear to have taken into account those who would have left in any event. The decision was taken that the Police Authority should be asked to delegate power to the Chief Constable to implement A19.
260. A letter was sent to A19 Officers on 13 September 2010 (P252). They were told:
- “The purpose of this message to you is to confirm FEB’s decision today which is this. Subject to the agreement of the Police Authority, it is intended to use Reg. A19 as part of the force’s strategic aim in reducing the force’s salary costs.”
261. Mr Chalinor sent an email on 24 September 2010 to Helen Edwards of HR, referring to the letter he had received about the application of A19 (P566), asking that the Force should specify what it was relying on as objective justification for the application of A19.
262. A Police Authority was held on 30 September 2010 (P274). The authority was asked to delegate staffing matters to the Chief Constable including the operation of A19. It was stated that the Chief Constable considered that it might be necessary to use A19. It was recorded the Chief Constable confirmed that if a full delegation were vested in himself, he intended to formally consult with the staff associations to agree on a

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fair and transparent selection criteria. Following consultation, the procedure would be presented to the authorities' resource committee. Some concern was raised about the diversity implications. It was resolved that all staffing matters including determination under A19 were delegated to the Chief Constable. There was no detailed discussion of the prima facie indirect age discrimination that would arise from the use of A19 or of the importance of not only establishing potential justification but showing that the use of A19 was appropriate and necessary in the circumstances of the Force. At this stage it was suggested that selection criteria would be adopted, rather than an en masse application to all officers, with very limited exceptions for those that could show that their skills could not immediately be replaced.

263. A Force Executive Board was held on 1 October 2010 (P280) at which it was noted that the process for A19 was in consultation. An initial consultation document was produced on 27 October 2010 (P290). It was stated:

"The selection criteria used to determine whether or not a police officer is to be compulsory retired, and at what date, will be based around an assessment of what particular skills and expertise are/will be required to enable the force to deliver its operational requirements in line with the needs of the public. The main area applicable to an individual officer will be his/her skills and expertise, assessed against the force's operational requirements".

264. On 29 October 2010 Mr Chalinor sent an email again contending that the force had failed to put forward its objective justification.

265. A process document was produced on 1 December 2010. It was stated (P369):

"The intent of the regulation is therefore not aimed at individual evaluation or assessment of particular worth, value and/or performance from an individual police officer. Decisions made in line with Reg A19 will therefore be based purely on an assessment of Force Efficiency."

266. The document set out a rationale for objective justification largely based on the factors that had been put forward by Counsel. It provided for limited exceptions to the operation of A19 where there was expertise or skills that were essential on an ongoing basis. It was stated P372:

"It is recognised that the objective justification for any such "targeted" use of A19 will, by necessity, have to be more robust than for more generic use across all ranks, because of its selective

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and divisive basis and will need to satisfy the principle criteria of how any such decision is in the general efficiency of the force.”

267. An Equality Impact Assessment was produced on 3 November 2010 (P285). It was noted that the application of A19 would adversely affect older age groups. It was recorded:

“It is proposed that an individual assessment, justification and decision are recorded to protect the force and ensure that officers are not overtly discriminated against based on grounds of their age only.”

268. On 23 November 2010 the federation wrote to Mr Kellaheer suggesting the document that had been produced did not represent a full Equality Impact Assessment. He stated:

“In relation to age, the commentary accepts that the policy adversely affects those older than 49. It states “The force would need to objectively justify using it in order to mitigate against a discrimination claim”. The Force appeared to interpret “mitigation” as applying solely to the risk of claims against them, which is not acceptable.

It is also proposed that decisions are recorded to “ensure that officers are not overtly discriminated against based on grounds of their age only”. The use of “overtly” and “only” are unfortunate, as they might be thought to imply that discrimination that was not overt, or discrimination that was not “only” on the grounds of age, would be acceptable, which I hope is not the case.”

269. The documentation demonstrated that the Force was looking for a means of justifying a action that it wished to take rather than appreciating that applying A19 to nearly all A19 officers would involve prima facie indirect age discrimination and that they would need to show not only that they were pursuing a legitimate aim but that the means by which they were doing so was appropriate and necessary. The force was not seeking to avoid discrimination but to obtain legal protection.
270. On 26 November 2010 the Chief Constable reported to the Police Authority (P351). The effects of the Comprehensive Spending Review were noted. It was suggested that the effect of the reductions in Officer numbers had no impact of diversity (P355).
271. The Police Authority met on 10 December 2010 P361. A workshop was held on 15 December 2010 (P364).



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272. On 31 December 2010 Mr Shannon wrote an email indicating he felt sadly that A19 should be invoked. He stated (P382A):
- “I would note that the use of A19 being in the interests of the efficiency of the Force does not equate to it being absolutely essential; as if we made more police staff redundancy; screwed non-staff costs (large scale disposal of police stations and moved from gold or silver kit to bronze or tin) and we did not recruit until 2015 then we could survive without the use of A19.”
273. On 3 January 2011 an email was sent setting out the amount of overtime, indicating some £3.6 million of overtime in 2011 up to 16 December payroll (P382B).
274. On 4 January 2011 the Chief Constable decided to implement A19. Rather than use of a selection method matching skills of the individual officers to the skills required by the Force it was decided that there would be a general application of A19 subject to very limited exceptions where the officer could not be replaced in which case they might be retained until a replacement could be trained.
275. An email was sent by Mr Polin 4 January 2011 stating that a decision had been made to implement A19. That meant that officers with 30 or more years service would be required to leave the force. It stated that it would affect 57 officers up to 30 September 2011, although this did not make provision for those that would have retired in any event. Mr Polin said that the reluctant decision was made to allow the force to work towards achieving the £15 million saving required over the next 4 years (P413).
276. A further Equality Impact Report was produced on 10 January 2011 (P414A). The assessment still stated:
- “It is proposed that an individual assessment, justification and decision are recorded to protect the force and ensure that officers are not overtly discriminated against based on grounds of their age only”.
277. It was suggested that there should be monthly monitoring. It was noted (P414C):
- “The Chief Constable is aware that the invoking of Regulation A19 could attract a claim of age discrimination from any of the officers but is content that his objective justification as outlined in the

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various business cases produced will be sufficient to defend such a claim.”

278. Those documents emphasised that steps other than reduction in Police Officer numbers had already been undertaken. In respect of Police Officers, the emphasis was on establishing the legitimacy of the aim and the appropriateness of the process particularly through the financial cushion rather than necessity when considered as against other mechanisms by which Police Officer numbers might be reduced, particularly taking into account the large proportion that leave at 2/3 APP.
279. A report by the Chief Constable was made to the Resources Committee on 11 March 2011. It was stated under the heading “Diversity”:
- “Little impact as the force has a strong diverse ethos. There are control measures in place to ensure that all decisions taken around redundancies and compulsory retirement are done by a panel chaired by a ACPO member with support from PSG to ensure that no particular group is favoured (or otherwise) in granting voluntary redundancy or making officers compulsory retire.”
280. The reference to voluntary redundancy was to Police staff. There was no specific reference to the inherent prima facie indirect age discrimination and the need to establish a legitimate aim, appropriate means and necessity.
281. On 6 April 2011 Mr Chalinor was written to and informed of the intention to invoke A19 (P583). Only in this context was he asked if he proposed to voluntarily retire.
282. On 8 April 2011 (P585) Mr Kellaheer wrote to Mr Chalinor complaining that he had made a private discussion, in which he had suggested that there was little prospect of an appeal against selection under A19 being successful, public.
283. On 27 May 2011 P594 Mr Chalinor was invited to a management panel meeting. On 1 June 2011 Mr Kellaheer sent an email offering that the panel be postponed until his return from France. Mr Chalinor replied (P601) stating that he was visiting war graves in France, that he did not intend to retire voluntarily, but not seeking a postponement of the meeting. The meeting went ahead in his absence on 7 June 2011 (P604). It was decided that he would be required to retire under A19. The outcome was provided by a letter dated 17 June 2011 (P602). Mr Chalinor appealed on 26 June 2011 (P609). The decision dismissing his appeal was sent on 24 June P619 (see P614 and P616). Mr Chalinor retired on 30 September 2011.

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284. The use of A19 ceased on 12 October 2010. In his witness statements Mr Kellaher placed considerable emphasis on the certainty established by the use of A19. He stated at paragraphs 31 to 32:

“Once it had been shown that it would be beneficial to reduce the number of police officers to improve the efficiency and effectiveness of the Force, the proposal to activate A19 was made because this was the only way in which the Force could reduce police officer numbers with certainty.

While costs were a factor in the background to this decision, they were not the sole, or even the main, consideration when deciding whether to use A19.”

285. At paragraph 21 he noted that part-time working was offered.
286. At paragraph 46 he noted that 40 officers had left the force but had been re-engaged between 1 January 2010 and 31 July 2012. He suggested that the use of A19 from 4 January to 30 September 2011 was estimated to have resulted in a saving of £3.3 million, 57 officers meeting A19 criteria during the period. That did not exclude those that would have retired in any event. At paragraph 133 he noted that officers were asked of their intentions as to retirement. However, that was only after they had been informed that they would otherwise be required to retire under A19. While there was some offers of par-time working, career breaks were not used nor were officers yet to reach 2/3 APP ask whether they were planning to leave the force in the near future.
287. Mr Parkin stated at paragraph 77:

“While it was recognised that many officers who had achieved thirty year’s service would retire in any event, as I have explained this was an imprecise method of achieving the Force’s organisational objectives and it left the future planning and continued efficacy of the organisation in the hands of individual officers rather than the organisation itself.”

**Annex 5  
South Wales**

288. The Respondent called:
- 288.1 Mark Milton, Director of Human Resources
  - 288.2 Cerith Thomas, Deputy Chief Executive

289. The following test Claimant gave evidence:

- 289.1 Former Superintendent, Martyn Jones

**Former Detective Superintendent Martyn Jones**

290. Mr Jones joined the police on 30 January 1984. He was posted to the Port Talbot Police Division where he performed a number of community related roles. In 1989 he was transferred to the Central Traffic Sector based at Bridgend. In 1990 Mr Jones transferred to the Criminal Investigation Department at Bridgend. In 1992 he was promoted to Sergeant and returned to community based duties at Port Talbot.
291. In 1994 Mr Jones returned to detective duties as a Detective Sergeant at Bridgend. In 1998 he was promoted to Detective Inspector and appointed Head of Bridgend Criminal Investigation Department. In 2003 Mr Jones was promoted to Detective Chief Inspector with responsibility for all operational matters regarding criminal investigation in the City and surrounding communities of Cardiff.
292. In 2004 Mr Jones was promoted to Detective Superintendent and shortly thereafter appointed as Deputy Head of Crime for the force. He was accredited as a Senior Investigating Officer and Authorising Officer.
293. In 2005 he was approached by the then Chief Constable and invited to pursue a personal development programme for promotion to Assistant Chief Constable. He gained national accreditation as a Gold Firearms Officer and a Public Order Commander.
294. In 2007 Mr Jones was transferred back to the Central Crime Department and made Head of Public Protection as a Detective Superintendent. In 2008 he succeeded in passing the assessment at the National Senior Careers Advisory Service in Ryton. There after he was transferred to the Force Communications Department to take responsibility for a workforce modernisation programme.

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295. In 2010 Mr Jones was transferred to the Professional Standards Department where he investigated corruption allegations against a suspended senior officer. Mr Jones obtained a degree in Policing Studies at Portsmouth University.

**The A19 Process**

296. A Police Authority Planning Seminar was held on 18 January 2011. It was noted that the Force was to suffer a substantial loss in funding which would necessitate cuts in police staff and Police Officers. Mr Milton, who had recently joined as the new Director of Human Resources, referred to the possible use of A19 to reduce officer numbers.
297. A Police Authority meeting took place on 14 February 2011 (P96). A paper was produced (P86) seeking approval to apply A19 as part of a cost reduction mechanism to meet the budget reduction. It was suggested that there was an inevitable requirement to reduce both staff and officers. It was stated (P86)

“As one essential strand of activity we propose to direct that most officers with more than 30 years service shall retire. Regulation A19 of the Police Regulations provides for this direction. Not to run such a scheme would create significant risk of not achieving our financial targets.”

298. Mr Milton stated at paragraph 6 of his statement:

“Simply keeping a recruitment ban in place, which I refer to below, would not have in all likelihood achieved the reduction in Police Officer numbers swiftly enough. The rate of natural retirement of Police Officers in the year preceding the A19 implementation, 2010, was 81. This was a reduction by some 20% of the number for 2009, which was 100. The voluntary retirement figure was not significantly different from the number that the force needed to reduce. However, the use of A19 provides a considerable degree of budgetary certainty in relation to officer numbers which voluntary retirement, by its very nature, simply does not. Aside from A19, an Officer could not be compelled to retire if he chose not to do so. The significant drop in the number of voluntary retirements indicated to me that Officers saw voluntary retirement after 30 years service as less attractive than they previously had. This may have related to a perception of the wider economic circumstances, and I was concerned that the Force could not assume that a sufficient number of Officers across the spread of ranks would voluntarily retire.”

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299. On this evidence the maintenance of a retirement level equivalent to the previous year was, in fact, likely to achieve the total reduction in police officer numbers required. This emphasises the opportunity that was available to ask officers their intentions.
300. The paper for the Police Authority stated:
- “Whilst natural turnover does take place which has the effect of reducing Officer numbers (assuming no recruitment), the rate is such that it will not do so at a rate consistent with the finances of the force. We estimate there to be 120 Officers who over the next 2 years will have more than 30 years service, should they not retire of their own volition”.
301. The implied suggestion that all, or a substantial proportion, of the A19 Officers might not retire voluntarily was unrealistic, as the statistics show that the substantial majority do.
302. Under the heading Strategy it was stated:
- “Application of the regulation would be made selectively to ensure that the force does not impinge upon its effectiveness or efficiency. A process which identifies appropriate groups of officers and then selects from them is an important feature of the scheme.”
303. It was suggested under the heading “Selection” that there would be a first stage of selecting a pool of those to be assessed. The pool would be based on the efficiency of the force. The two principal factors would whether the officer’s rank, using HMIC Value for Money Assessment data, was disproportionately represented in the force and whether they held a role in a function which would be dissolved under the reform or any other budgetary saving programme. After such a pool had been assessed, individuals would be selecting on the criteria of whether they occupied a role in which their specialist skills were not easily replaceable, whether it was a role into which they could transfer officers and whether the officer possessed skills for which they were accredited to train other officers. It was noted:
- “Once agreed these assessment measures cannot be changed or modified.”
304. Accordingly, in South Wales it was proposed that there would be a limited pool of A19 officers from which selection would be undertaken, rather than applying A19 to all officers reaching or above 2/3 APP, with an opportunity to establish exceptional reasons why they should be retained for a limited period.

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305. The paper referred to risks because A19 was new and uncertain legal territory and suggested that the application would be monitored to ensure that no diversity issues arose. The paper did not specifically refer to indirect age discrimination or explain the importance of not only establishing that a legitimate aim was pursued by the application of A19 but that its use was proportionate, in the sense of being both appropriate and necessary.
306. In the minutes of the Police Authority meeting there is nothing to suggest that there was any consideration of the indirect age discrimination involved, the only reference being to there being little legal precedent for the use of A19, the fact that Counsel had given advice, that courts and tribunals had a wide discretion, but that other forces had already obtained approval to use A19. There was no detailed consideration of alternatives such as part-time working, career breaks and asking officers whether they were intending to leave the force before, at or above 2/3 APP. The authority approved the use of A19 on the basis of the paper that suggested selection from a limited pool of A19 Officers.
307. On 15 April 2011 Mr Jones was written to and told of the possible application of A19 to him. It was suggested that the application of the Regulation would have to be made selectively.
308. In the Chief Constables update of 18 April 2011 it was suggested that A19 would be applied to all eligible officers. He stated (P120):
- “However, the force has the capacity to retain, by renewable service extension any officers whose loss in terms of skills or experience would cause a loss of operational efficiency or effectiveness. It is open to all officers who are subject to the regulation to apply, within a set period, for retention against set criteria. Any such application then enters an assessment procedure which is being consulted on with the Staff Associations.”
309. Accordingly, there was a change from the pool scheme which had been put to the Police Authority. There is nothing to suggest that the Police Authority had agreed this change.
310. A meeting was held with Mr Jones on 18 April 2011. He was told that the force had decided to implement A19 and that he was being put at risk.

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311. On 13 June 2011 (P635) Mr Jones put forward representations as to why he should not be forced to retire. These focussed on the fact that he had transferred his Armed Forces Pension to the Respondent, which was the reason that he came within the 2/3 APP criterion without 30 years service in the Polcie.
312. On 14 June 2011 Mr Jones was informed that he would be required to retire on 30 September 2011(P639). It was stated (P640):
- “I can say that whilst you are now in a ‘pool’ of officers who are subject to Regulation A19 Compulsory Retirement, there will be an opportunity for you to apply for continuation of your service past the above date and for the force to consider whether your skills, qualifications and/or experience are appropriate for your service to be extended for a further reviewable period on the grounds of the efficiency of the force. That said, you should be aware that such service extensions will be very much the exception rather than the norm.”
313. That again demonstrates that while it had been suggested to the Police Authority that a limited pool of A19 officers would be identified from which selection would be made, the process that was implemented was on all fours with the other Forces.
314. On 27 June 2011( P641) Mr Jones was informed that the issues that he had raised in his submissions were not such as to prevent his retirement on the grounds of the efficiency of the force. However he was reminded that he could apply to extend his service. It was stated (P642):
- “We are bound by the Regulation to ensure the consistency of implantation.”
315. This suggests that a similar view was taken by South Wales to the other forces that there was some risk of discrimination complaints, or other challenge, should there be a selection amongst A19 Officers.
316. Mr Jones appealed against the decision to subject him to compulsory retirement. That appeal was rejected on 28 September 2011 on the basis that he had not made a case for retention on the grounds of efficiency of the force.
317. On 21 November 2011 a Revenue and Capital Monitoring Paper was produced. It noted that for the period 1 April 2011 to 31 October 2011 125 officers had left the force. It was recorded (P206):



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“This number of leavers has meant that the force has exceeded its target reductions for this year and has made considerable in-roads into meeting next year’s target. This puts the force in a better position to be able to meet the financial challenges for 2012/13. This accelerated reduction results in a forecasted year end under spend of £1.5M, and is net of the additional costs associated with a higher than forecasted Ill Health retirements.”

318. This demonstrated that the Force could have achieved the reduction of Officer numbers it was seeking without the use of A19.
319. The paper was put to the Police Authority meeting of 13 January 2012. It was noted that the force was in the process of recruiting 50 police constables. It was noted that modelling suggested that the Force would meet its target for the 2013 financial year without the use of A19, but there was a risk that targets in future years would not be met without its use. It was agreed that a modified A19 process would be used. It was noted that A19 had not been successfully challenged legally. Under financial consideration it was noted:

“Running a scheme will not cost the force since officers will leave on their existing pension which had been provided for in planned funding.”

320. At the Police Authority meeting it was recommended that a modified version of the scheme be adopted, focussing on supervisory ranks. The Police Authority resolved to continue with the existing scheme until 31 March 2012, although the savings required had already been made, and thereafter to adopt an amended A19 scheme.
321. At a Performance Monitoring Group meeting it was noted in respect of Police Officer pay/pensions for the period 1 April to 31 December 2011 (P 249):

“The forecast reductions will exceed the target reductions for this year putting the force in a better position to be able to meet the financial challenges for 2012/13. This accelerated reduction results in a forecast year end under spend of £1.0M, this includes meeting the costs of the increased ill-health retirement through the use of A20 regulations.”

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322. In a Finance Report for the year from 1 April 2011 to 31 March 2012 it was noted (P755):

“The actual reductions exceeded the anticipated levels for the year and this accelerated reduction contributed around £1.4 million to the year end under spend after meeting the costs of increased ill-health retirement through use of A20 regulation.”



EMPLOYMENT JUDGE TAYLER

REASONS SIGNED BY EMPLOYMENT JUDGE ON

*3 February 2014*

REASONS SENT TO THE PARTIES ON

*5 February 2014*

AND ENTERED IN THE REGISTER



FOR THE TRIBUNAL OFFICE