2021

FDA written evidence to the National Crime Agency Remuneration Review Body

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2. Introduction

The FDA welcomes the opportunity to submit written evidence to the National Crime Agency Remuneration Review Body (NCARRB). We believe that employees and the UK taxpayer benefit from an independent, evidence-based review body that has democratic legitimacy through its government remit. We hope that government respects its independence and honours credible and considered recommendations.

In previous years our submissions focused on the likely impact of planned changes such as EU exit. None of us could have anticipated the global pandemic which has caused significant distress to the current economic system in the UK and highlighted the vital role of public sector and social care workers to our common welfare.

We conducted our oral evidence sessions for the 2020 review over video and probably did not expect that nearly a year on we would do so again this year. It is a minor thing compared to the individual tragedy of every COVID-19 related death but the world of work has been knocked off the steady orbit we have grown used to and we will spend a deal of our time in the future reappraising the place work has in our lives and its true value. It is right that we should do so.

That discussion needs to focus on future ways of working for NCA staff. Throughout the prolonged periods of lockdown, women and men from the NCA have been on the frontline protecting the rest of us. Whether working from home, in workplaces or on operations we can be proud of how they responded to the drastically changed environment, their agility in maintaining operations and sadly the need to fight new challenges as criminals sought to exploit the pandemic. They are a credit to public service.

It is a matter of significant regret that the Chancellor announced a “pay pause” (Treasury, 2020) for all public sector workers outside of workers in the NHS and staff earning below £24,000pa. This threatens that the efforts of NCA staff will not be adequately recognised through their remuneration award this year.

In her remit letter to the NCARRB dated 14 January[1], the Home Secretary advised

"Whilst we will not be seeking a recommendation for pay uplifts in the remit group for 2021/22, we will shortly submit joint NCA and Home Office evidence for this group in the usual way, covering the usual factors and in line with the pay policy announced at the Spending Review. This will include setting out the operational context in which the Agency is operating, its ongoing pay strategy and longer-term plans for its workforce, on which we invite your view.

FDA argues that the programme of pay reform needs to continue now. FDA also argues that NCA staff deserve a pay increase. Whilst the Home Secretary may not be seeking a recommendation, we think believe it is right that a recommendation is made.

The NCARRB is an independent body and we encourage you to make a recommendation for a general pay increase taking account of all the evidence available to you.

We set out to counter the government's public sector pay policy in our evidence below, and submit that the NCARRB consider the TUC's response referencing commissioned research by the New Economics Foundation (NEF),[2] which shows that the cost of a public sector pay rise has been vastly overstated by government.

3. NCA context

The FDA represents senior and middle managers in leadership roles in the National Crime Agency (NCA) and across government. In addition, we provide affiliated support to the staff associations across the UK Intelligence Community (UKIC) and to our members in the Home Office with responsibility for law enforcement policy. In the context of the NCA, our members are employed as Directors, Deputy Directors and Grades 1 to 4 in varied professions.

The NCA is a pivotal law enforcement agency with national and international reach, and the mandate and powers to work in partnership with other law enforcement organisations to bring the full weight of the law to bear in cutting serious and organised crime. NCA employees are, however, civil servants subject to the civil service code. To assist them in their crime fighting role, NCA officers may be

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1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952109/Home_Secretary_letter_to_NCA_Remuneration_Review_Body.pdf

2 Fair pay for key workers isn't just the right thing to do - it's essential | TUC

designated with one or more of the powers and privileges of a constable, powers of a customs officer and powers of an immigration officer (triple warranted).

As NCA staff are civil servants we have based the evidence in this submission around the same comparators and using the same pay and economic data as we include in submissions to similar civil service review bodies. As acknowledged by the Home Secretary in the NCA Annual Plan 2020/21

"Serious and organised crime affects more of us, more often, than any other national security threat. It devastates lives and communities across the country, undermining our safety and security and costing the UK at least £37 billion per year.".[3]

The NCA delivers a prominent role in combatting this challenge to our security and therefore it is appropriate to compare the position of NCA staff with similar roles in the police and other law enforcement agencies particularly as many NCA staff will work in teams with police staff. The vast majority of NCA officers designated with powers hold 'tripartite powers' (namely, the powers of a Constable in England and Wales; the powers of an Immigration Officer; and the powers of a Customs Officer) which are collectively known as NCA Standard Powers (NCASP). A number of these officers will also be designated with the powers of a Constable (Scotland).

Unlike other civil servants, NCA officers with powers are prevented from taking industrial action. We recognise the importance of national security and the contribution made by our members in its defence. However, these restrictions on officers with powers, exercising a right to withdraw their labour, emphasises their uniqueness in the civil service context. This should be factored into NCA pay reform not only by the employer but by government by allowing for meaningful pay reform.

As in previous years, the FDA is mindful that we do not create a two tier pay system for employees working in the same grade for the same. We flag here again our concern from last year's evidence that the Agency's "differentiated" approach to pay reform, focusing on relatively small numbers of staff in selected professions, may begin to undermine that aim especially given the pace of that programme.

4. Fiscal context and affordability

The Treasury's Evidence to the Review Bodies dated 11 December 2020 highlights the impact of COVID-19 on the "fiscal position" and argues that a freeze on public sector pay "will allow us to protect public sector jobs and investment in public services". [4]

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[3] NCA Annual Plan 2020/21
[4] The Treasury's Evidence to the Review Bodies dated 11 December 2020

At the Spending Review the Chancellor proclaimed that over 2020-21 and 2021-22, day-to-day departmental spending will rise at “the fastest growth rate in 15 years”[5], with a cash increase of £14.8 billion in 2021-22. The Home Office settlement provides a £881 million cash increase in core resource funding from 2020-21 to 2021-22, delivering a 4.9 per cent average real terms increase per year since 2019-20. [6]One of the 4 priority outcomes from the settlement was to reduce crime. It is a concern that given that the allocations have been known for some time, the full settlement for the Agency is not known. As much as the pay strategy needs to be sustainable in subsequent years it also needs to be fit for purpose.

The NCA baseline Pay Bill, including overtime, is estimated to be £222m for 2020/1. The cost of last year’s differentiated pay award of 2.5%, was modelled at a cost of £5.55m. The cost of each 1% rise for NCA officers including additional pension and national insurance contributions, would be affordable set against the additional resource spending allocated for 2021-22.

5. Earnings data

In September to November 2020, the rate of annual pay growth was positive 3.6% for total pay and positive 3.6% for regular pay.[7]

The rate of total and regular pay growth had stood at 2.9% in December 2019 to February 2020 immediately prior to any impact from the coronavirus (COVID-19) pandemic was seen; it then slowed sharply in April to June 2020 to negative 1.3% for total pay and negative 0.1% for regular pay before some increase between July and November. The lower percentage growth figure for total pay reflected many bonus payments being cancelled or postponed.[8]

In real terms, total pay is now growing at a faster rate than inflation, at positive 2.8%, and regular pay growth in real terms is also positive, at 2.8%. Partially this growth is caused by the loss of lower paid jobs in some sectors due to the pandemic. Despite this the finance and business services sector saw the highest estimated growth in total pay, at 5.4%.[9]

In her Remit Letter to the NCARRB the Home Secretary asserts “Public sector pay was already 7% ahead of the private sector before Covid-19 and it has been shielded from the pandemic’s economic effects.”[10] The Treasury’s evidence to the

[5] https://www.gov.uk/government/speeches/spending-review-2020-speech
[6] https://www.gov.uk/government/publications/spending-review-2020-documents/spending-review-2020
[7] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours
[8] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours
[9] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours
[10] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952109/Home_Secretary_letter_to_NCA_Remuneration_Review_Body.pdf

Pay Review Bodies states that "public sector remuneration remains generous relative to the private sector" and that "in the interest of fairness we must exercise restraint in future public sector pay awards, ensuring that in the medium-term public sector pay growth retains parity with the private sector".

In fact, ONS analysis indicates that if overtime and bonus pay is included, "average" earnings in the public sector have been lower than that in the private sector since 2014.[11]

This analysis is based upon broad averages and is significantly influenced by the fact that most of the lowest paid workers in the economy are in the private sector. In the same study, the ONS finds that the gap between private and public sector earnings is even larger in "knowledge-intensive services" and that the public sector "premium" is negative even before overtime and bonus pay is included.

6. Pay comparability

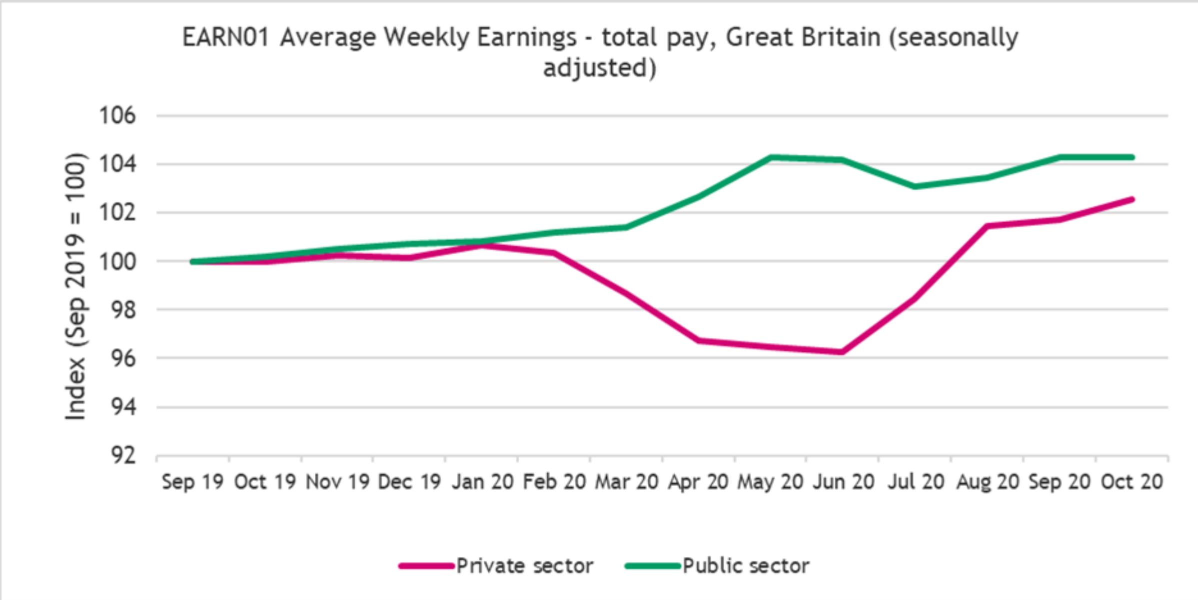
The Home Secretary's remit letter to the NCARRB claims that "in the six months to September, the private sector has seen a pay cut of nearly 1% compared to last year, yet public sector earnings were up by almost 4%"[12]. In the government's evidence to the Review Bodies, the claim is repeated that "in the six months to September, private sector wages fell by 0.8% compared to the same period in the previous year, as compared to a 3.9% increase in the public sector".

This appears to be based on the ONS survey of average weekly earnings which show that average "total pay" in the private sector fell sharply from February 2020, before recovering to something like the previous trend in September, while average "total pay" in the public sector rose from March to a peak in May, falling

[11] https.www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earnings and workinghours/articles/

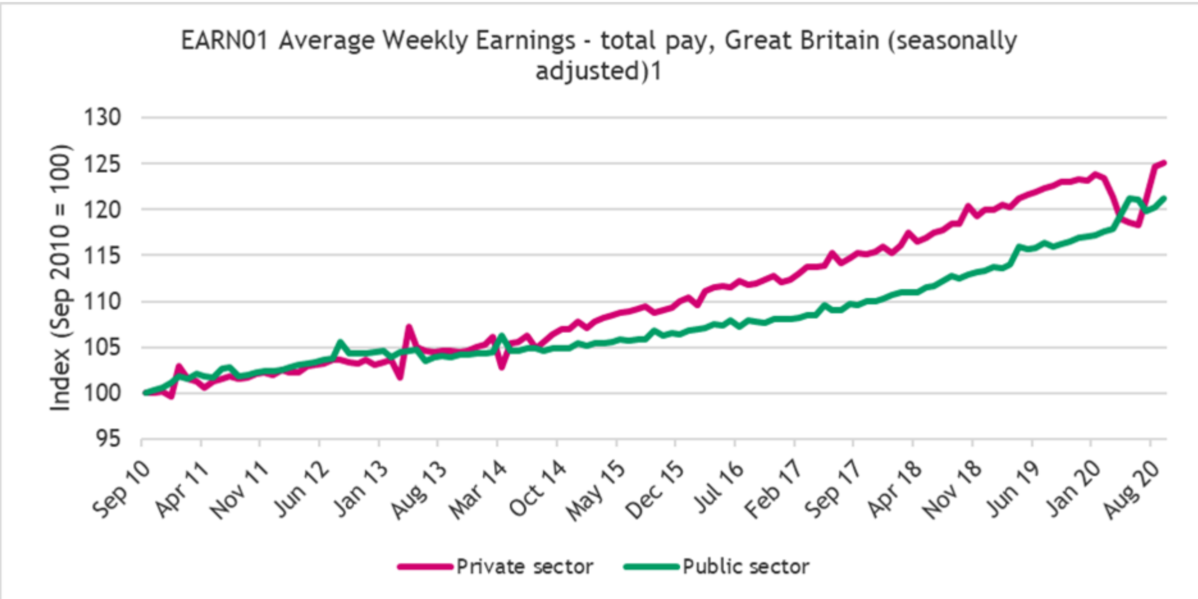
[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952109/Home_Secretary_letter_to_NCA_Remuneration_Review_Body.pdf

June then rising again in August and September.[13]



The Home Secretary's remit letter also claims that "if we carried on with rises across the board, the existing gap between public sector reward and the private sector would widen significantly". This is far from clear.

Indeed, if a longer view is taken of exactly the same data series, we find that private sector earnings growth has outpaced public sector earnings growth for several years, and that this was only temporarily inverted during this year's unusual conditions.



13 https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsearn01

Source: Prospect analysis of ONS Average Weekly Earnings data[14]

The Treasury's claim in its evidence to the Pay Review Bodies that "long term average wage growth for both the public and private sector has been the same since the 2008 recession, at 2% for both sectors" [15]depends on the inclusion of the second and third quarters of 2020 which are clearly unrepresentative of the long-term trend. The same figures show that, at March 2020, average annual earnings growth since July 2009 had been 1.97% in the private sector and 1.76% in the public sector; since March 2014 growth had been 2.42% in the private sector and 1.85% in the public sector.

It is in any case misleading to suggest that these figures show a divergence in pay settlements between the public and private sectors over the past year. As a measure of earnings per worker, these figures are affected by changes in the number of hours worked and in the composition of the workforce. In the unusual period we have been through, it is likely that the public sector average will have been significantly inflated by extra hours worked by many public sector employees (for example in health and social care). Meanwhile, the private sector average is likely to have been depressed by reduced hours available to those employed in the leisure and hospitality sectors, and the significant number of private sector workers furloughed on less than full pay. While this represents a real loss of earnings for those workers, for many the impact on their incomes will be temporary and reversed upon their return to work, and so not comparable to a pay cut that would set a reduced baseline for all future pay awards.

Data on pay settlements show that the impact on private sector salaries has been significantly less dramatic than total earnings figures suggest. According to Incomes Data Research, at the end of 2020 the median pay increases for the private sector were running at 2%, with interquartile ranges at between 0.5% and 2.8%.[16] Moreover, IDR data indicates that the impact of the COVID-19 pandemic has been to effect only a marginal correction to longer term trends.

The Treasury's evidence to the Pay Review Bodies quotes XpertHR data which is not publicly available, but on the government's own account this also shows that

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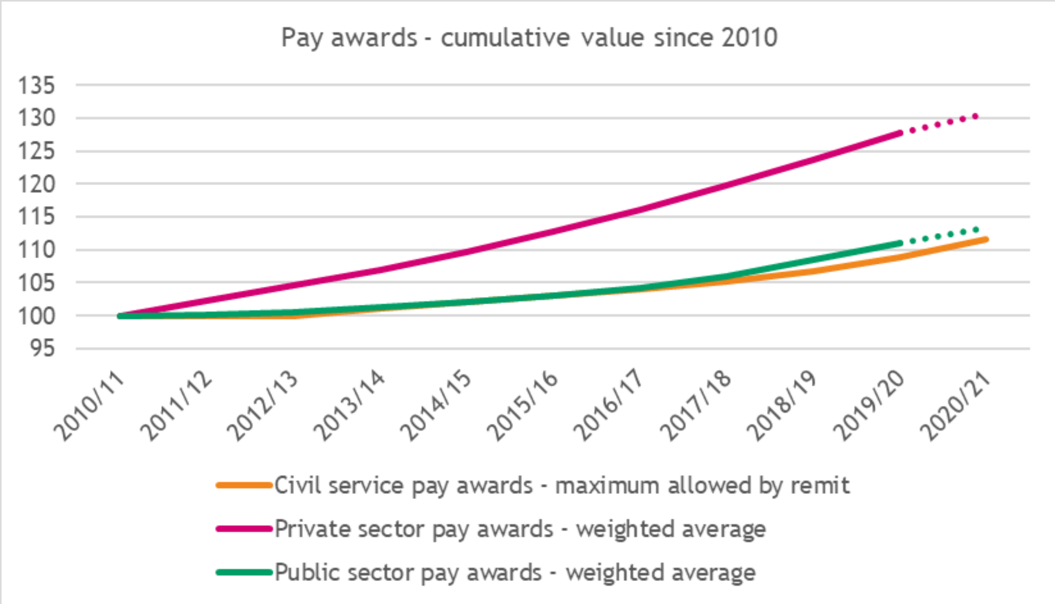
[14]https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsearn01

[15] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954610/Economic_Evidence_to_the_PRBs_FINAL.pdf

[16] https://www.incomesdataresearch.co.uk/resources/viewpoint/chancellor-runs-risks-with-rationale-for-public-sector-pay-freeze

"private sector median settlements" were at "2% in the three months to October"[17].



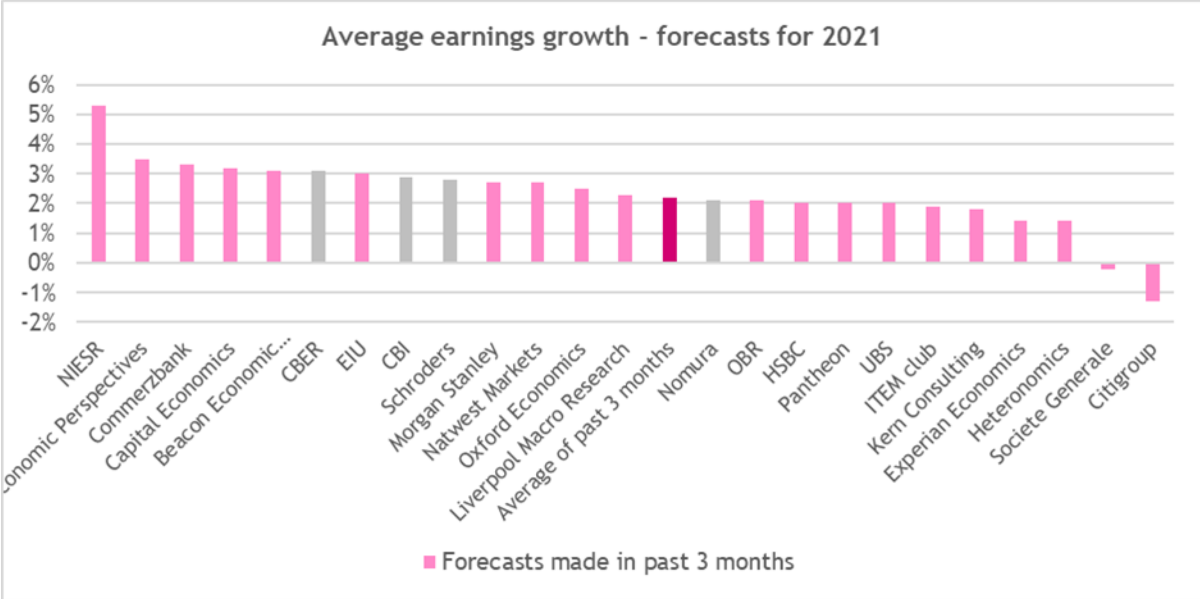
The future path of pay settlements in the private sector is of course particularly uncertain at the moment. The government's evidence to the Pay Review Bodies notes that "the OBR expect some bounce back in wages in 2021/22 as the economy recovers, although both of these factors are highly uncertain and subject to wider developments".[18]

In fact, many forecasters expect a stronger bounce back in earnings than the OBR. The HM Treasury average of the past 3 months' independent forecasts points to average earnings growth across the economy of 2.2%, with some significantly higher - Capital Economics forecast 2021 earnings growth at 3.2%, Commerzbank at 3.3%, and the National Institute for Economic and Social Research at 5.3%.[19]

[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954610/Economic_Evidence_to_the_PRBs_FINAL.pdf

[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954610/Economic_Evidence_to_the_PRBs_FINAL.pdf

[19] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944626/Forecomp_December_2020.pdf



The official forecast of the Office for Budget Responsibility is for average earnings growth across the economy to recover to 2.2% in 2021-22.

Source: Office for Budget Responsibility, Economic and Fiscal Outlook, 25 November 2020

This would mean that while in 2020-21, the maximum civil service pay award was around 1.5 per cent above growth in average earnings, next year's pause will mean the maximum civil service pay award is 2.2 per cent below average earnings growth.

7. Inflation and income reduction

The government's evidence to the Pay Review Bodies states that "we have entered the 2021/22 pay round from a position of relative strength" and that "public sector settlements were relatively generous in 2020/21".[20]

The FDA has consistently argued that RPI should remain the basis for evidence-based pay bargaining, as this is the most accurate reflection of the real inflationary pressures our members face including housing costs.

RPI inflation has been estimated at 1.5% for 2020-21 by the Office for Budget Responsibility.[21] Civil service pay awards of 2.5% therefore represented a modest real-terms pay increase. However, this was the first above-inflation pay award civil servants had seen in a decade, and effected only a very marginal correction to the real devaluation of their salaries over that period. Between 2010-11 and 2019-20, the cash value of civil service pay awards in line with central remit guidance had amounted to a real-terms cut against RPI of around 18 per cent.

The OBR's central economic scenario of 25 November forecasts 1.4% RPI inflation for 2021-22.[22] Against this background the proposed freeze for 2021/22 will more than cancel out the modest real terms pay increase of 2020/21,

Moreover, the OBR's inflation projection for next year is at the lower end of the range of current expectations. The Treasury review of independent forecasts points to significantly higher RPI inflation ahead, with those made in the past three months averaging at 2.6%.[23] This would make the real terms cut effected by a cash freeze to salaries even more severe.

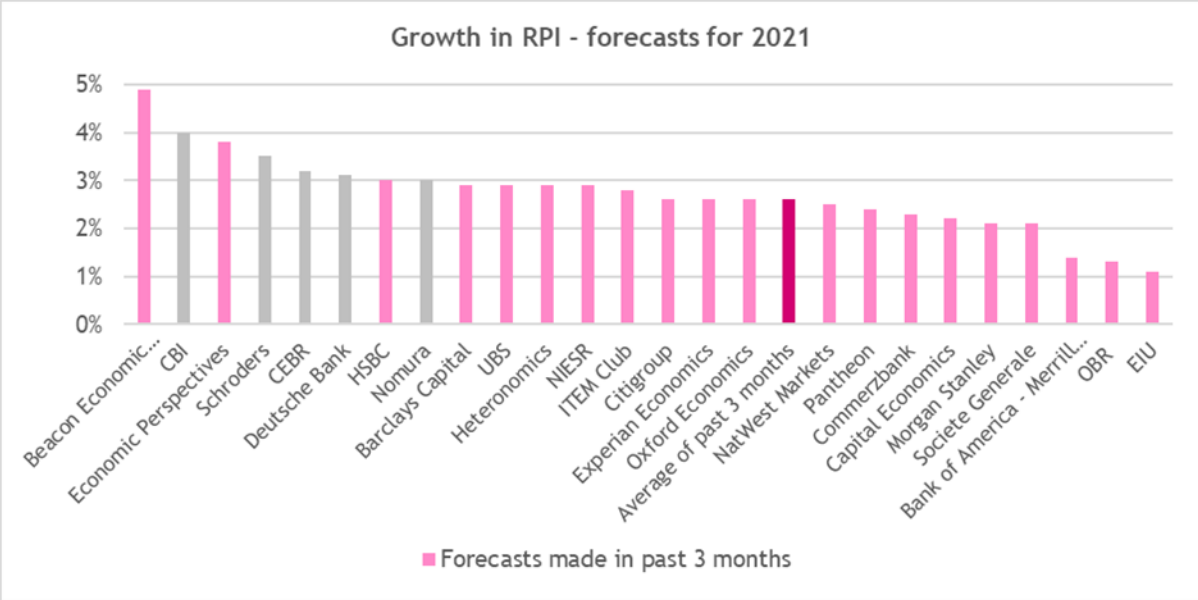
In light of our evidence, we invite the NCARRB to recommend a pay bill increase of 1.5%.

[20] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954610/Economic_Evidence_to_the_PRBs_FINAL.pdf

[21] http://cdn.obr.uk/CCS1020397650-001_OBR-November2020-EFO-v2-Web-accessible.pdf

[22] http://cdn.obr.uk/CCS1020397650-001_OBR-November2020-EFO-v2-Web-accessible.pdf

[23] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944626/Forecomp_December_2020.pdf



8 Budget increase to fund pay reform

We welcome the willingness of the NCA to innovate reward structures. It is a real pity that external pressure has stifled these efforts because of directions not to breach pay caps and political sensitivities. This year sees no change to the central prescription on pay remits that overrides the needs of the Agency

In their 2020 recommendations the NCARRB noted

"*We are concerned about whether reform is proceeding fast enough to deliver what the NCA needs and observe that a pay reform strategy spanning a total of seven years is too long. The rate of progress is constrained by affordability and we suggest that successful reform needs proper investment. We question why, given the Agency's key role within UK law enforcement, it has not been able to secure the resources it needs to accelerate the pace of change*"[24]

Once again, any aspiration for a funded, comprehensive reform strategy is derailed by a failure by government to appreciate the difference between cost and investment.

Pay reform comes at a cost. It is not realistic to insist that pay reform is funded from within already constrained Agency budgets. It requires an injection of

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24 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902434/CCS0520653768-001_NCARRB_6th_Report_WEB.pdf

external investment. New money must be found. In our view, the NCA must be granted adequate public sector funding to realise universal pay reform. We welcome the NCARRB's recognition of that fact and ask that the NCARRB address this in their recommendations this year.

It is simply not viable to propose to fund pay reform from within existing budgets. We do not see it as feasible for the Agency to find sufficient scope for achieving efficiencies that can in themselves find the funding necessary to achieve the reforms that are needed.

If the Home Secretary wants the NCA 'to be relentless in the disruption of organised crime', government must address the fundamental issues with NCA pay.

9 Spot Rates/pay progression

In 2020, the NCA expanded capability-based pay by introducing Spot Rates for eligible G1-G3 roles. The Spot Rate structure now covers eligible roles across G1-G5 grades.

Whilst the NCARRB remit is to make recommendations for the reward of NCA staff with powers, it will nevertheless be familiar with the long-held position of all parties to retain a single pay structure across the Agency. We note the Agency ambition to introduce the Spot Rate structure based on eligibility but the limited funding available means that in reality this is not going to deliver fair pay progression for all staff.

We note the comment of the NCARRB from their 2020 report;

"The spot rate mechanism is designed to offer pay progression based on capability, although we question whether a two- or three-point scale – based on the expectation that most officers would only progress as far as the proficient rate – can realistically be viewed as a mechanism to reward long-term progress and development."[25]

We recognise that continuing the development of spot rates remains central to the continuing pay strategy for NCA and note their proposals for extending the number of roles that fall to be eligible in their proposal for thus year.

We welcome the intent to be more transparent with staff on how they select roles for spot rates and clear on the qualifying factors, the skills in the role, the attraction and retention in that role and how the organisation currently compares with competitors.

The pace of introduction falls short of what is necessary. This does little to improve the pace of progression for many staff in the Agency and the Agency needs to determine how it is going to respond to that challenge.

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25 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902434/CCS0520653768-001_NCARRB_6th_Report_WEB.pdf

For staff in FDA grades the position on pay progression remains unsatisfactory as can be seen in the table below

GRADE	Q1	Q2	Q3	Q4	TOTAL
G1	50	8	9	4	71
G2	110	98	26	8	242
G3	422	83	58	16	579

Despite the introduction of spot rates, 72% of G3, 81% of G1 staff, 85% of G2 staff in senior and middle management roles remain below mid-range. If anything, the position on progression is getting worse. As we have argued in previous submissions, such a pace of progression is not sustainable and will leave the Agency vulnerable to critical staff losses.

In their 2019 report the Review Body wrote:

"We continue to be concerned by the lack of any mechanism to allow officers not on spot rates to improve their relative position on the pay ranges and move towards the target rate for the job. Having the ability to progress towards a target range mitigates the risks relating to the Equality Act 2010."[26]

This has been a concern to the FDA. Similar to 97% of the civil service, aside from the Spot Rates, the NCA has no formal pay progression mechanisms in place to move from the minimum to the maximum of the pay range within a grade. Unlike other public sector bodies, whether local government, the NHS or other law enforcement bodies across the UK, the NCA ended time served pay progression and therefore it can currently not offer the prospect that the rate for the job, the maxima, can be achieved within a reasonable period.

Critically, the pay pause announced in the Spending Review highlights the disparity of treatment of NCA staff as pay progression mechanisms are not fully restricted by the pause so a focus limited to staff on spot rates can only result in other colleagues on standard ranges falling further behind colleagues on spot rates and their wider law enforcement and public sector comparators.

[26] https://www.gov.uk/government/publications/national-crime-agency-remuneration-review-body-report-2019

The NCARRB will know from previous years evidence that we accept the need for a structure allowing pay progression based on demonstrating and developing competency within a role. However, this approach should be universal.

To be able to deliver effective reform, the NCA must address progression from the minima to the maxima of a grade in a realistic timeframe. The development of twin speed progression, dependent on which profession is eligible for spot rates, is not a fair approach for an organisation where every contribution is valued.

10. Working hours

Staff in FDA grades have the same conditioned hours as colleagues but in reality, there is an expectation that they will work excess hours. In a recent FDA survey a number of respondents reported working more than 10 hours a week unpaid hours.

We would prefer staff not to have to work excess hours to that extent but recognise that there are times when working over contracted hours is unavoidable and given the twin pressures of COVID and EU Exit the impact on working hours is perhaps inevitable.

Senior staff do not qualify for overtime. We do think that there needs to be some mechanism that provides the opportunity for staff to be rewarded for this time. Members report that whilst they have a flexi time system in practice, they have not been able to take time due with one member citing having 21 days due. None of the respondents reported that anything was being done to curb the excess hours worked.

11. Future ways of working

COVID-19 presented the Agency with the challenge of meeting its operational commitments whilst having a significant number of its employees forced to work from home, often home schooling and learning to cope without the family and external support systems they had become reliant on. Many staff will have been required to attend workplaces and continue live operations.

The NCA will have learned a great deal from the pandemic both in terms of the effectiveness of their business continuity planning, the opportunity to take a review of how and where people work, how IT enabled different ways of working.

Our view is that the pandemic put rocket boosters under changes that were already occurring to how people want to work. People's assessments of how they want to work and what is possible will have changed due to their experience of the past year. There is also evidence of a marked generational shift in the value of greater flexibility in how and where people work that will be a key determinant in where the current generation choose to work.[27]

Flexible working is here to stay and we urge the NCA to embrace it and look to how they can grow from the pandemic experience to provide the IT and management innovation that allows staff greater choice on how they work whilst retaining the collaborative culture that will sustain the Agency. Whether they have powers or not, staff have family and other commitments and deserve to have the ability to blend these with how they work.

Civil Service departments are looking at blended working and HMRC has included an offer of a minimum of 2 days working from home as part of its long term pay offer.

We ask the NCARRB to consider how greater use of flexible working can enhance the overall reward package.

12 Summary

The FDA recognises the constraints that have dictated the NCA approach to pay. It is crucial that the momentum for pay reform is supported by the Government and delivered with sufficient funding to secure the long-term future of the agency to put it in the best position to respond to the changing challenges posed by serious and organised crime.

We have restated our vision for a more comprehensive version of reform, one that embraces all employees so that they gain tangible benefits from that reform. The Agency has chosen to pursue a differentiated approach which is not comprehensive nor inclusive.

We ask the NCARRB to balance the Home Office requirement for affordability and sustainability with the pressing need to allow the Agency to adequately reform its pay structure to secure its ability to recruit and retain the skills needed and motivate its workforce.

To summarise we ask the Review Body to consider the following when making their recommendations

- **The need for a general award of a consolidated salary increase of 1.5%**
- **The current system of pay progression and how this can be improved**
- **The payment of excess working hours for staff not eligible for overtime**
- **How innovation on flexible working can enhance the overall reward package**

[27] https://workforceinstitute.org/wp-content/uploads/2019/05/Meet-Gen-Z-Hopeful-Anxious-Hardworking-and-Searching-for-Inspiration.pdf

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