

POLICE ADVISORY BOARD FOR ENGLAND AND WALES
109th Meeting
10.30am, 26 October 2017
Home Office, 2 Marsham Street, London, SW1P 4DF

Present:

Elizabeth France – Independent Chair

PABEW Secretariat

Zahra Torabi

The Association of Special Constabulary Chief Officers

Ian Miller

Police Federation of England and Wales (PFEW)

Andy Fittes

Andy Ward

Rick Nelson

Alex Duncan

Police Superintendents' Association of England and Wales (PSAEW)

Dan Murphy

Victor Marshall

Rob Atkin

Chief Police Officers' Staff Association (CPOSA)

Gareth Wilson (by telephone)

Shabir Hussain

Unison

Ben Priestley

Home Office

Harriet Mackinlay

Peter Spreadbury

Simon Glenville

Rupert Bailey

National Police Chiefs' Council

Francis Habgood

Stella Brooks

Metropolitan Police – Trade Union Side

Valerie Harris

College of Policing

Sam Peach

Independent Police Complaints Commission (IPCC)

Kathie Cashell

Observers/ in attendance

Diane Mulligan -- Department of Justice (Northern Ireland)

Mariam Conway – PFEW

Karen Pinfold - PFEW

Kevin Courtney – NPCC

Mike Gilligan – Home Office Sponsorship Team

Welcome and apologies

1. The Chair welcomed members to the meeting. In particular, she welcomed Mike Gilligan (Home Office) who she explained was the lead sponsor for PABEW, as an arms length body. Apologies had been received from the Metropolitan Police and the Association of Police and Crime Commissioner.

Minutes of the 108th meeting – 26 July 2017

2. Minutes were agreed without any further amendments. Secretariat to arrange for a final version of minutes to be uploaded to the webpage, in addition to circulating a final version to members. **Action point: Secretariat.**

Matters arising and action log

3. Members discussed the action log which was updated.
4. Stella Brooks (NPCC) advised that action 4 had been covered in discussions but they would not be ready to share an example document yet.
5. In relation to action 7, Harriet Mackinlay (Home Office) advised that a further data meeting had taken place, chaired by Stella Brooks. Members who had attended the meetings agreed they were happy with the direction of travel and they intended to hold a further series of meetings to agree a Workforce Data Strategy for policing.

Matters outstanding from previous meetings

6. In the context of action 12, the Chair informed members that the Home Office would be looking at options for where to host the GAD calculator.

Police Pensions

7. The Chair explained that the last pensions meetings were held on the 9 October.

Scheme Advisory Board

8. The Chair advised that the Pensions Regulator (TPR) would be circulating their governance survey shortly. She noted that the response rate the previous year had not been as high as it should have been and that there had been some concerns around who had filled in the responses. She said she would be sending out her quarterly letter to all scheme managers and pension board chairs soon, encouraging a 100% response.
9. The Chair also informed members that the SAB had been consulted on the 'Treatment of Past Service Costs in GAD v Milne' and the 'Assumptions' to be used for the new pension scheme valuation; Members had provided comments, which the Home Office and GAD were reviewing.
10. Kevin Courtney (NPCC) advised that NPCC were arranging a series of seminars alongside the Fire SAB to provide awareness of pension tax issues, mainly aimed at those dealing with the pay and pensions of senior officers, to enable them to identify next steps and actions.
11. Shabir Hussain (CPOSA) raised the issue of the importance of early change to the regulations governing 'Voluntary Scheme Pays' and suggested that the board might write to Ministers for their support. He pointed out that the PABEW could be proactive on this issue, while SAB could only provide advice to Ministers on request. He also stressed the 31 January 2018 tax deadline.
12. Peter Spreadbury (Home Office) said that he understood the request. He explained that in policing there was a range of secondary legislation to be put through and this was a prioritisation exercise. He said that Ministers had recently confirmed they wanted officials to proceed with the Statutory Instrument which included facilitation of the regulation changes on Voluntary Scheme Pays, therefore it would be going for consideration at the new gateway with Ministerial support.
13. Shabir Hussain said that this was helpful and in the light of the reassurance he withdrew his suggestion. The Chair said she was happy to do a note to the Minister at a later stage if Members considered that would be helpful.
14. Peter Spreadbury explained more generally, for the benefit of Members, that the usual process had been that any secondary legislation required relevant Departmental Ministerial agreement before it was laid before Parliament. However, as a result of the high volume of business arising from withdrawal from the European Union, the Government had put in place a gateway process, where, following Departmental agreement, each department had to put its bids for secondary legislation to a small group of senior Ministers, who would

decide whether the legislation could be taken forward. If the Department was given a legislative time slot it would be important to be ready to use it, and so timing of comments and responses to consultations would be important.

15. Andy Fittes asked whether there would be a process for giving feedback, if a legislative slot was not given. Peter Spreadbury said that the Home Office would be informed if something was not going forward but could not confirm whether it would be something they would be able to share, as they were just beginning the process.
16. Francis Habgood (NPCC) highlighted that people were worried about tax implications in advance of changes to regulations on Voluntary Scheme Pays and were thinking they might need to retire; there could be real operational resilience issues if they were not progressed. Gareth Wilson (CPOSA) confirmed that CPOSA had concerned members who did not want to retire or who were being put off from applying for certain roles. Francis Habgood said he could provide the Home Office with some examples of this and it was agreed that would be helpful.
17. Andy Fittes said that the current consultation on amendments to the 1987 and 2015 regulations, relating to voluntary exits, included a bundle for information on amendments to determinations. (Annex DA of the Police Pension Regulations 2003). He said that PFEW was intending to provide a single response to both sets of amendments but wanted to first check whether the Home Office planned on consulting separately on the determinations. Peter Spreadbury said that he would consider and come back on this question.
18. Simon Glenville (Home Office) informed members that the consultation on the Voluntary Exit Scheme had gone out, and the Home Office would welcome responses by 4 December. He also confirmed to Andy Fittes that he would come back to him on his question (raised with Peter Spreadbury under paragraph 17). **Action point: Home Office.**

UK Police Pensions Consultative Forum

19. The Chair informed members that there had been discussion at the UKPPCF on the pension calculator and where it might be hosted. She also advised that the forum had a look at opt-out data from forces. On the topic of opt-out data, Shabir Hussain highlighted the importance of informing individuals of the benefits of joining the pension scheme.
20. The Chair also advised that the forum had looked at the portability of pensions, which had been raised at the last PABEW meeting. Members of the forum had agreed to keep an eye on developments within the workforce reform which might impact pensions.

21. Kevin Courtney explained that NPCC would be deferring their survey on the challenges facing scheme managers until after TPR's survey to avoid any confusion

PABEW Discipline Sub-Committee

22. The Chair said she was grateful to the Home Office for sending through a response to members' comments made at the Sub-Committee meeting on 13 October on the former officer amendment regulations and police barred list and advisory list regulations, in advance of the meeting. She asked the meeting to focus on any points on which they still needed clarification and to identify anything they wanted the Chair to include in a formal response.
23. Andy Ward (PFEW) thanked the Home Office for their response. He advised that the Police Federation still considered the proposal to place individuals on a public facing barred list for a minimum period of three years, with removal thereafter only potentially available through an appeal process, to be wholly disproportionate for cases of unsatisfactory performance or attendance. They remained concerned around this. In addition, on the proposal to modify regulation 17 – Interviews during Investigation, he questioned whether the provision for former officers to attend an interview made the interview voluntary or not.
24. Victor Marshall (PSAEW) said that the Police Superintendents were grateful to the Home Office for their response and acknowledged that the regulations were challenging. He said that there were two areas which remained a concern; the first was in relation to the Federation's point (see paragraph 23) on the barred list and issues on performance and he was grateful that was going to Ministers for review. He also remained concerned on regulation 17A regarding interviews and felt that the provision was out of kilter with other regulatory bodies, in its emphasis on the role of interviews. He considered it would be better to have a provision which applied where no response had been forthcoming. As currently drafted there was a likelihood that retired officers would not engage. Victor Marshall said he accepted that they were not in agreement on everything and was keen for the regulations to be laid.
25. Ben Priestley (Unison) said that there were 3 areas of concern; the first was in relation to special constables who were also police staff members. Any members of police staff dismissed as special constables would also be dismissed from their staff role. He said there were approximately 1000 members of police staff who were also special constables, therefore this could potentially have a big impact on operational activity. Ian Miller (ASSCO) agreed that this was a major issue for them as well and said that ASSCO had questioned the Home Office's interpretation of the law. The interpretation from their barristers had been different. The second concern held by Unison was in relation

to 'definition and scope'; they felt this was a grey area. Ben Priestly said they would welcome guidance, as suggested in the Home Office's response letter. The third concern was in relation to 'other bodies that must consult the police barred list' and Unison hoped that they could have reassurance from the Home Office and agree a full list of which contractors could be added.

26. Rupert Bailey (Home Office) said that he would not go into detail on the performance issue raised by the PFEW and PSAEW as the letter explained that they had gone to Ministers and were awaiting the outcome. In regard to regulation 17A, he advised this was added to provide additional flexibility and they felt this was an important part of investigations in having the opportunity to interview. The regulations in respect of serving officers show they must attend an interview if requested. There needed to be something in place to ensure an interview happened, where reasonable.
27. Victor Marshall advised that the practical effect may be that the former officer would turn up and read out the written response they would have sent. Therefore, they would have complied with the obligation. He suggested that interviews were not necessarily the best way of getting information.
28. With regard to special constables and police staff, Rupert Bailey said that the Home Office had set out their position. They had meetings with representatives for special constabulary who put forward their views. The Home Office then went to employment lawyers for a legal view and were abiding by the advice they had been given. He appreciated the difference of opinion and said Ministers had been sighted on interpretation and impact.
29. Ian Miller said he thought this would end up in court and forces would then have to pick up the cost. Rupert Bailey advised that from a policy perspective there would be a wider risk. The purpose of the barred list was to prevent individuals from re-joining and it would place forces at risk if they continued to employ an individual who had been a barred person. There would be a reputational and public confidence risk if someone continued to be employed regardless of their barred status.
30. The Chair questioned whether an individual who was dismissed as a special constable for not doing enough hours, would lose their job as a police staff member. Francis Habgood advised that NPCC had examples of such cases. It was not currently an automatic presumption that they would then lose their role, and forces might lose police staff members with valuable experience. The Chair noted that the NPCC concern had not been reflected in discussion at the Discipline Sub-Committee meeting and was an important additional view on this matter. Valerie Harris (MPTU) pointed out that within the Metropolitan Police, part of the role of special constable involves receiving free travel, therefore they might end up losing people as police staff

members because they would not be able to afford the drop in income. Rupert Bailey explained that in terms of a decision being made at misconduct hearings, part of this would involve looking at impact.

31. Ian Miller asked whether the person was dismissed would automatically go on the barred list. Rupert Bailey advised that was the current interpretation. Ian Miller reiterated that he felt this did not seem proportionate. Ben Priestley agreed with this point and said that the individual could take a claim to employment tribunal for unfair dismissal, which would then place the Chief constable in a difficult position. The Chair agreed that she would reflect these points in her formal response to the Minister.
32. Victor Marshall emphasised that this provision was set out in primary legislation and was therefore a 'done deal.' The Chair agreed that the regulations could not impact this part of the legislation and it was a matter of interpretation, to be tested. It could mean that guidance would need to be amended.
33. In relation to Unison's second concern, Rupert Bailey advised that the Home Office would look at guidance. On the third point, Rupert Bailey explained that there were restrictions on any form of legislation. A power was put in the Act to consider what bodies would be added to the barred list and they would be added in due course. He could not give a precise indication of timing, but explained that the primary legislation did cater for new contracts. At the time of the Bill going through, the decision was taken to include it because it would be difficult to do it retrospectively.
34. Ben Priestley said that new contracts would be the subject of this and questioned how the client would be able to demand the checks were carried out. Francis Habgood explained that there was a safeguard, in that it would be picked up in vetting if it was not done initially.
35. The Chair also raised the College's concern about reviews and noted that she was concerned around what would happen if the College decided not to undertake any reviews. Sam Peach (College of Policing) stated their view was they did not consider they should be responsible for these. Rupert Bailey said the interpretation of the primary legislation was that the review could only be conferred on the College. The lawyer who was involved in drafting the primary legislation had confirmed that to be the correct interpretation. He understood that the College was taking legal advice and would await further discussion.
36. Andy Fittes pointed out that should the College decide not to use its powers to conduct a review of the lists there was a danger of ending up in litigation. The Chair reiterated that they could only point out the concerns as this was about interpretation of the primary legislation. She expressed some surprise that the College did not pick this up during the passage of the Bill. She said she would highlight the areas

in her letter to the Minister where members still had concerns and the Secretariat would send a draft round for members to comment. **Action point: Chair/Secretariat.**

Outstanding regulations and determinations

37. Harriet Mackinlay (Home Office) referred to the new secondary legislation process which had been mentioned earlier. She said they were still looking at where various pieces of legislation sat in terms of priority and therefore had not produced a full list yet, but advised they would do shortly once the SI priority list had been confirmed. **Action point: Home Office.**
38. She reminded members that they had discussed at the last meeting how to take the Capability Dismissal regulations forward and that lawyers had agreed that a pre-consultation draft, would be ready to send out to stakeholders from 13 November. She advised they would give members a reasonable amount of time for consideration given the length of the draft provisions and would endeavour to set up a working group which would feed into the development of a final draft for formal consultation.
39. Andy Fittes noted that at the last meeting Francis Habgood had advised that there was no appetite among Chief Officers to apply the 'X factor' reduction. This had been discussed at the Chief Constables' Council and he would follow this up in correspondence.. Francis Habgood advised that there had been no interest in using this provision.

An update from the College on the 'Workforce Transformation Timeline'

40. Sam Peach reminded members that Rachel Tuffin had circulated a draft of the College's workforce transformation timeline at the last PABEW meeting. Some members had provided feedback and the College were grateful for this. Sam Peach explained that they had been to a number of forums to seek feedback and acknowledged it to be an evolving document, taking on board feedback and making changes. The College's next steps would be to finalise the narrative and produce the graphic design. They were hoping to complete this by the end of November, with a view of publishing in December. This would then be available on the College website, as a living document which would be kept up to date.
41. Andy Fittes said it was a useful starting point and it would be helpful to know how the timeline was going to be made available and accessible to those who needed to see it. He advised that PFEW still had concerns over the role that the Police Transformation Oversight group was expected to undertake including identifying the appropriate forum to consider changes to members' terms and conditions and the need for regulatory changes.. He questioned whether members of the

Oversight Group had the detailed knowledge and level of expertise to undertake this task and to consider any wider implications that individual project managers may not have identified. Andy Fittes further stated that PFEW continued to have concerns about the operation of the College's engagement and consultation processes. For example, as General Secretary of PFEW he expected to be consulted on changes to members' terms and conditions and yet a consultation conducted in the summer was issued by the College via three different distribution lists, none of which he was on. He suggested that the PABEW was a useful group which could help the College identify the appropriate forum through which changes to members' terms and conditions should be considered.

42. Sam Peach said she was aware of the concerns and emphasised that the College was committed to improving and ensuring consultations went to the appropriate people. She hoped that the workforce transformation group, combined with the College Regulatory Consultative Group, could be where issues would be flagged up early.
43. Ben Priestley said he was pleased that the College attended the Police Staff Council. Valerie Harris reminded the College that the Metropolitan Police Trade Union were not part of the Police Staff Council, therefore it would be good for someone from the College to meet with PSCO's.
44. The Chair informed members that she met with Sam Peach the previous day and they had agreed that even if there was no direct interest from PABEW in terms of regulatory change, keeping them informed would be positive. That way, if members noticed anything significant they would be able to flag early on.

Business Secondments Guidance, including the approach to consultation with PABEW on the 'Professional Placements guidance.'

45. The Chair explained that the Federation had written to her in relation to the Business Secondments Guidance drafted by the College of Policing. Sam Peach said that she had not been able to discuss this with her colleague at the College who had been involved in this. She did however advise that a meeting had been arranged for the 21 November with volunteers from PABEW. She believed the approach now was for the College to have a separate toolkit, which was meant to be complementary to the PABEW's guidance. The Chair advised she did not mind how the working group was branded, as long as the right people were represented. She suggested the final document could make clear that while it was produced by the College it had been seen and endorsed by the PABEW.
46. Andy Fittes said it was useful to know that the purpose of the ad hoc November meeting was to look at a toolkit drafted by the College rather than the PABEW guidance. He noted that it may still be necessary for the PABEW to review the secondment guidance to take

account of business secondments. The Chair said that the toolkit might not require a change to the guidance, but agreed that if it did, it would need to come to PABEW. Sam Peach said that the College wanted to work together with the right people to create something beneficial. The Chair concluded that they should wait and see what the product was when it comes out, and she would rely on members to feedback in January, after attending the meeting in November. **Action point: Secretariat.**

Amendments to Annexes BA and C – qualifications for appointment and probationary periods

47. The Chair advised that the Federation's letter, dated 18 August 2017 in response to the College's consultation on 'Amendments to Annexes BA and C – qualifications for appointment and probationary periods' had been circulated to members before the meeting. Andy Fittes had asked for the letter to be circulated because PFEW believed that as a result of proposed changes to probationary periods at constable rank, it was necessary for the Discipline Sub-Committee to consider the use of police regulation 13 – discharge of probationer. Sam Peach said that the College went through a consultation period on the amendments and received helpful feedback. She said they were waiting on changes that were with Home Office lawyers to be updated. The College had produced a response document which outlined how they had responded to the feedback and advised that this would be issued as soon as possible to the College Regulatory Consultative Committee, and would also be circulated to the Discipline Sub-Committee for any views on the probationary period.

48. Andy Fittes said he understood that the College was not proposing to make any changes to regulation 13, but it was the application of regulation 13 that was a concern. This was also relevant to other entry routes into the service for example direct entry and investigative entry.

Any other business

49. Sam Peach explained that the College were developing new policing professional profiles and there was a question around whether this should come to PABEW. She agreed with the Chair that she would deliver a presentation at the January meeting to provide members with an update on this. **Action point: Secretariat.**

50. Ben Priestley advised that given the number of police staff profiles in the mix, there was a question mark over timing and resources to respond as they would need to consult a number of people in their branches. Sam Peach said that the College would be publishing the profiles in phases, by putting them up onto a new professional development platform as working documents. She pointed out that these were still very much being piloted, with a view to being tested

over a six month period with feedback coming in as they were used and revisions being made over a six month period.

51. Andy Ward asked about the 'Indicative Sanctions Guidance.' He was aware this document had been published, but noted that the Federation had raised issues during consultation and had direct dialogue with the College, however he had not seen a response to the consultation. Sam Peach said she would take this away.
52. Kathie Cashell (IPPC) advised that Michael Lockwood had been appointed as the new Director General for the IOPC and would be in post from January. She noted that there was a set of regulations (Police Conduct, Complaints and Misconduct and Performance Regulations 2012) as a consequence of IPCC governance reforms, designed to clarify the roles of the investigator and Director-General. In this context, the Secretariat reminded members that those who attended the PIPG meeting the previous week needed to feedback to PABEW on whether a two week consultation period was feasible for these regulations.
53. Victor Marshall advised that he had attended PIPG. He said the Home Office also tabled policy changes and there were a couple of points which they would take issue with. From a legal perspective there were 30 pages on amendments to various regulations, and within that there were a couple of things that fell outside the remit of legislation which needed to come to PABEW. He said he hoped that on the basis of what they had seen they could turn it around in two weeks. The group did however identify some matters that caused concern which he hoped would have been addressed before the formal consultation.
54. The Chair informed members that the Home Secretary had noted the PABEW's annual report, and this had now been published on the webpage. The Secretariat had circulated the link to members.

Date of next meeting

55. 31 January 2018