

POLICE ADVISORY BOARD FOR ENGLAND AND WALES

118th MEETING, 17 October 2019, 10.30am

Conference Rm 6, Home Office, 2 Marsham Street, London, SW1P 4DF

Minutes

Present:

Independent Chair

Elizabeth France

PABEW Secretariat

Afsana Begum

National Police Chiefs' Council (NPCC)

Rachel Jones

David Paul

Kevin Courtney

Police Federation of England and Wales (PFEW)

Alex Duncan (by telephone)

Police Superintendents' Association (PSA)

Dan Murphy (by telephone)

Chief Police Officers' Staff Association (CPOSA)

Lisa Winward

Shabir Hussain

Home Office

Angela Chadha

Amar Pannu

Mel Sinclair

College of Policing

Nicole Higgins

Independent Office of Police Complaints (IOPC)

Kathie Cashell

Met Trade Union Side

Valerie Harris

Department of Justice Northern Ireland (DOJNI)

Walter Myles

In attendance/observer

Karen Pinfold (by telephone) - PFEW

Rhina Ferrer (by telephone) - PFEW

Welcome and Apologies

1. Apologies were received from HMICFRS, Met Police and APCC.

Minutes of the meeting 17 July 2019

2. Minutes from the last meeting were agreed with no further amendments and will now be published on the webpage. **Action Point 1: Secretariat to publish finalised minutes on webpage.**

Matters arising/action log

3. *The Chair went through the action log of 17 July meeting, which has been updated in the light of discussion.*

Key points were discussed were:

Action Point 2 – Amar Pannu (Home Office) said a factual statement on the pension position for those re-joining would be provided within a few weeks. The Chair explained that this was also discussed at the last UKPPCF and SAB meeting since the current police uplift programme made it particularly important that those thinking of leaving or rejoining the service understood their position. NPCC and Home Office were working together to produce this and were awaiting legal advice on some technical issues. The factual statements would offer scenarios for illustration but would make clear that individuals would also need to take their own advice.

Action Point 5- Kevin Courtney (NPCC) had given consideration to the setting up of a technical working group to look at the action following McCloud/Sargeant and was awaiting the outcome of the police case management hearing on 28 October before taking this further.

Police Pensions

a) UK Police Pensions Consultative Forum & Scheme Advisory Board

4. The second joint meeting of the UKPPCF and SAB was held on 1 October in Edinburgh.
5. The Chair explained that the key reasons the meetings were combined was to avoid duplication of agendas and confusion around the items being taken forward. The Secretariat had circulated a first draft of suggested changes to the SAB terms of reference for comment, intended to incorporate the functions of the UKPCCF as envisaged before the creation of the SAB. There was general agreement from members that this was the right approach. The Chair will produce a

further draft for endorsement at the January SAB meeting once comments are received.

6. The letter on pension tax issues was sent to the Policing Minister on 1 October and a copy has been circulated to SAB.
7. Amar Pannu (HO) summarised the SAB meeting discussion on communication around the further consideration of the McCloud case and likely timing of the police case (Aarons). The Treasury would formally announce proposals for consultation to ensure discrimination was removed from any scheme changes in early November. Before that, and before the case management hearing on 28 October the Home Office would send a note to SAB members setting out a high-level level view of the proposed approach to involving police staff associations and SAB members in those technical discussions.
Action Point 2: Home Office to circulate a high-level summary of the proposed process for technical discussions to SAB members.

8. Staff associations raised questions about the level of involvement, the timeliness and influence they would have in the discussions. The Home Office gave assurance that the full SAB would take part in such discussions, and that there would also be consultation on the final remedy. The Chair suggested that once the timetable was clear, an ad hoc SAB meeting or technical work group meeting might be needed. As the SAB has no budgetary provision it might be necessary to make a case to the Home Office for additional technical expertise.
9. Alex Duncan (PFEW) expressed the Federation's disappointment at the lack of information provided by the government on how they intended to consult on potential remedy. The staff associations had now jointly applied to the Employment Tribunal to be part of the proceedings but considered that if they had been given more information earlier it might not have been necessary for them to take that action.
10. The Chair said she considered it important for PABEW to ensure it was aware of the various significant changes which force administrators might have to apply and advise, where appropriate, on the need for phasing.
11. The PABEW was informed that the October SAB meeting had a presentation from George Russell, the Head of the Pensions and Social Security for the GAD Scottish Office, on the 2020 valuation. It was noted that each force had now received a data improvement note which provides a breakdown of the quality of the data they submitted as part of the 2016 valuation; this should have an input to the 2020 process.
12. The Chair explained that the SAB had been formally consulted on the transfer of the Police Alternative Voluntary Contributions (AVCs) pensions business from Equitable Life to Utmost Life. The SAB discussed whether it was within their remit to give such advice and as

members did not have the financial or investment expertise, the Chair had written to the Home Office advising that the Home Secretary act on the professional advice she had received but making clear that the SAB were ready to advise on any consequential regulatory changes and on communications.

b) Pension scheme valuation

13. Members of the SAB had raised concerns about the statutory basis for the decision taken not to increase accrual rates following the pension scheme valuation in spite of the recommendation made by the SAB and accepted by Ministers. The Home Office had responded on 15 October.

'The then Chief Secretary to the Treasury announced a pause to the cost control mechanism on 30 January 2019 because of the uncertainty around the impact of the Court of Appeal judgment in the McCloud and Sargeant litigation on the assessment of the value of current public service pension arrangements.

Treasury officials signed amending Directions under section 12 of the Public Service Pensions Act on 14 February 2019, following consultation with the Government Actuary. Those amending Directions implemented a pause by removing the requirement for schemes to calculate a cost cap cost in the valuations. Accordingly, the valuation report signed on 28 February 2019 does not calculate a cost cap cost and so the Home Secretary's obligations under regulation 198(4) of the Police Pension Scheme Regulations (SI 2015 No.455) are not engaged.'

14. Shabir Hussain (CPOSA) remained concerned that HM Treasury might have assumed powers they do not have and was keen to understand which subsection of section 12 HMT's power to amend directions mid-valuation are derived from. The response from Home Office refers to amending Directions. It was agreed that on the assumption that the amending Directions had been published they would be circulated for consideration. The Chair also said she would also look at section 12 in detail. He also wished to remind PAB of the confirmation at SAB that members have a legal entitlement to accrued rights and that the McCloud remedy is separate to the suspended uplift.

Action Point 3: Home Office to circulate the amended directions signed by HM Treasury on 14 February 2019 to SAB members.

Action Point 4: Chair to look at section 12 of the Public Service Pensions Act.

Discipline Sub-Committee

15. The Sub-Committee met on 10 October.

16. The Home Office provided a response to a NPCC proposal on adding hair sampling to the procedures which could be used for 'with cause' testing of police officers suspected of drug abuse. While there might be some benefit in the change proposed, they shared the initial concern of the subcommittee that more evidence was needed about the nature, accuracy and availability of testing as well as about the extent of the problem to be addressed.
17. The College of Policing (CoP) presented a paper setting out the process for seeking removal from the Police Barred Review List. The staff associations raised their continued concern that the process was unfair and there was no legislative provision for lifelong inclusion on the Barred List and that proceeding on that basis might risk legal challenge. The CoP would monitor the operation of the process and keep the Sub-Committee informed.
18. The Sub-Committee also discussed the CoP's Sexual Harassment Guidance. While members supported action, which would change the culture and make reporting of harassment easier, PFEW expressed their concerns that the guidance was unhelpful. Where disciplinary action was called for, they considered the existing processes should be used. A meeting between the CoP, Staff Associations and NPCC would look at this further.
19. Dan Murphy (PSA) has collated three examples of where officers temporarily promoted found that issues relating to their substantive role had led to 'management action' as a result of which their temporary promotion had been removed. The PFEW has said it was also aware of examples. The Staff Associations would share these, and the matter would be considered at the next Sub-Committee meeting.

Upcoming Home Office Legislation Update

20. A paper was tabled for information and discussion showing forthcoming legislative changes that fall within the terms of reference of the PABEW and the Police Consultative Forum (PCF).
21. Mel Sinclair (HO) told members that she had a meeting with lawyers who would be tidying up the pay determinations in addition to the changes to implement the pay award 2019.
22. Following conversation with lawyers the deadline for PCF comments regarding a defined 40 hour week for the superintending and inspecting ranks would be extended to include the consideration of increasing the 12 month cap on taking rest days to 24 months with a clause to extend in exceptional circumstances.
23. The business case for Medical Capability Dismissal had been under discussion by the PABEW for a considerable period and was proving difficult to finalise in a way which was fair and acceptable to all. While

David Paul (NPCC) said Capability Dismissal had been sought by chief officers, circumstances and priorities had changed and they were now reviewing whether further work on the proposal was justified.

24. PFEW noted that the paper did not include an update on changes to Annex O to implement PNB circular 2014/08 – rest day/free day in a period of leave. In addition, the paper said that work to amend determinations to implement PNB circular 2014/09 – part time audit and treating free days as rest days when less than 15 days' notice is provided was complete, this was not correct, and no progress had been made on this since 2017. PFEW undertook to provide comments to the HO so that both PABEW and the PCF had an up to date and accurate list.

25. The table containing information and update on Home Office legislation would be a standing quarterly document

Any other business

Date of next meeting

26. The next meeting would be held on 29 January 2020.

	Actions	Date of the Meeting	To be completed by:	Status – to be updated and re-circulated before the next meeting
1	Secretariat to publish finalised minutes of 17 July on webpage	17 October 2019	Secretariat	Completed
2	Home Office to circulate a high-level summary of the technical discussions	17 October 2019	Home Office (Amar Pannu)	Completed
3	Home Office to circulate the amended directions signed by HM Treasury on 14 February 2019 to SAB members	17 October 2019	Home Office	Completed
4	Chair to look at section 12 of the Public Service Pensions Act.	17 October 2019	Chair	Completed

OUTSTANDING FROM PREVIOUS MEETING				
1	A factual statement on the pension position for those re-joining would be provided to the College by the Home Office.	17 July 2019	Home Office (Amar Pannu)	Ongoing This is currently in progress.
2	Secretariat/Kevin Courtney to consider setting up a technical working group on post Sergeant/McCloud and AA issues	17 July 2019	Secretariat/Kevin Courtney	Completed