

**POLICE ADVISORY BOARD FOR ENGLAND AND WALES**

**119<sup>th</sup> MEETING, 29 January 2020, 10.30am**

**Conference Rm 4, 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

Karen Pinfold (in attendance)

**Police Superintendents' Association (PSA)**

Dan Murphy

Eamonn Carroll

Kate Halpin

**Chief Police Officers' Staff Association (CPOSA)**

Shabir Hussain

**Association of Police and Crime Commissioners (APCC)**

Andy Tremayne

**Home Office**

Angela Chadha

Amar Pannu

Mel Sinclair

Frank Murphy

**College of Policing**

Nicole Higgins

**Independent Office of Police Complaints (IOPC)**

Stephen Oakley

**UNISON**

Ben Priestley

**Met Trade Union Side**

Valerie Harris

**Met Police**

Mark Pomroy

**Department of Justice Northern Ireland (DoJNI)**

Amanda McBride

**Association of Scottish Police Superintendents**

Craig Suttie

**Welcome and apologies**

1. The Chair welcomed Frank Murphy, Home Office's Pay Lead, to his first PABEW meeting.

**Minutes of the meeting 17 October 2019**

2. Minutes from the last meeting was agreed with no further amendments and would now be published on the webpage. **Action Point 1: Secretariat to publish finalised minutes of 17 October 2019 on webpage.**

**Matters arising and action log**

3. *The Chair went through the action log of 17 October meeting, which has been updated in the light of discussion. Key points discussed were:*

Action Point 2 – Home Office have provided a high-level overview of how Government intends to involve Police Staff Associations and SAB members in the development of proposed changes to remove discrimination between transitionally protected and non-protected members of the police pension scheme. This action point has been completed as the remit has now been issued.

Action Point 4 – At the last meeting, the Chair said she would look at section 12 of the Public Service Pensions Act to understand better how HM Treasury were relying on it to amend directions. This action point has been superseded by the legal action of the firefighters who have instigated a judicial review, with which the Police Staff Associations have joined.

4. *The Chair then went through the action log of items outstanding from previous meetings:*

Action Point 1 – It had been agreed at the July 2019 PABEW meeting that a factual statement on the pension position for those re-joining the

police service would be provided to the College of Policing by the Home Office. Nicole Higgins (CoP) said they were still awaiting suitable text. Amar Pannu (HO) agreed to pick up this action and ensure the response was copied to the staff associations. **Action Point 2: Amar Pannu (HO) to ensure a factual statement on the pension position for those re-joining would be provided to the CoP and copied to staff associations.**

5. Although not logged as a matter arising, the Chair asked for an update on Capability Dismissal. It had previously been agreed that the process would not be introduced without a compensation package and a working group had been set up to consider how this might be achieved. At the last working group in July 2019, it was recognised that designing a compensation package which would be fair and affordable would be a challenge. Mel Sinclair (HO) confirmed, that after further consideration, and in the light of other changes which had reduced the need for a scheme of this kind, the proposals would not be pursued. Rachel Jones (NPCC) noted that a scheme allowing departure from the service by mutual agreement was being developed and would be brought forward for consideration in due course.

**“A Proposal to Improve Independent Accountability and Change the ‘Blame Culture’ Associated with Police Misconduct Investigations” Report.**

6. Dan Murphy (PSA) explained that the PSA, PFEW and CPOSA, had jointly prepared a report with proposals to improve organisational justice. Dan Murphy (PSA) summarised the key points in the report and proposed that the Board remit the recommendations to the Discipline Sub-Committee for detailed consideration and report back to PABEW.
7. He recognised that there had been many changes and additional powers provided to the IOPC and employer by the Government over recent years, which were broadly supported by the Staff Associations. The report did not set out to challenge the changes but to recognise that more action might be necessary to create balance for those within the police workforce who find themselves under investigation. He drew attention to the recommendations of the report:
  - *We recommend that the Legally Qualified Chairs (LQC) Association should be supported by the College of Policing.*
  - *We recommend that the proposed Legally Qualified Chair’s Association has representation on the Discipline Sub-Committee, in order for a*

*collective view from LQCs to be sought and shared in relation to the management of police misconduct issues.*

- *It is the recommendation of this proposal that the PABEW, as the appropriate body, develops guidance in respect of the interpretation of Regulation 27, Police (Conduct) Regulations 2019, in accordance with the case management powers for Legally Qualified Chairs set out in detail within this report.*

8. While accepting that the new regulations would help to improve the situation and needed to be given time for impact to be judged, the Staff Associations considered that the necessary cultural change could only be achieved if there was some independent scrutiny.

9. One of the key changes proposed related to the role of Legally Qualified Chairs (LQCs). Dan Murphy said that he had preliminary discussions with the Chair of the Association for LQC. He recognised the importance of distinguishing between involvement in discussions on process and independence in individual cases but reported that the Association would be interested in involvement in the Discipline Sub-committee.

10. Rachel Jones (NPCC) welcomed the report's focus on organisational justice but would want, in discussion, to learn more about the proposed role for LQCs and the support from the College of Policing which was suggested.

11. Andy Tremayne (APPC), asked for clarity on the role of the PABEW in this. After discussion it was agreed that part of the role of PABEW was to offer advice to Ministers on the functioning of regulations and general questions affecting the police in England and Wales. It would be appropriate for the report to be remitted to the Discipline Sub-Committee with a request that it look at the way Regulation 27 might be used to achieve the objectives identified.

12. Ben Priestly (UNISON) welcomed the report from the police staff's perspective. It was also agreed that a member of the Met Trade Union Side would be invited to the Discipline Sub-Committee meetings.

**Action Point 3: Secretariat to include the report on the agenda of the next Discipline Subcommittee and invite a member of the Met Trade Union Side.**

## Update from College of Policing (CoP)

### a) Guidance on pension information for rejoiners

13. Discussed as a matter arising (paragraph 4 above).

### b) Status of sexual harassment guidance

14. Members noted that at the Discipline Sub-Committee the NPCC had undertaken to work with the College of Policing and the Staff Associations on the development of guidance on the prevention, identification and dealing with sexual harassment, which the College had originally been tasked to do as part of the Sexual Harassment Implementation Plan. The first draft produced by the college had focussed on misconduct rather than prevention, which the Sub-Committee had agreed was unhelpful and unnecessary given that the Service already had procedures for dealing with misconduct. Secondly, linked to this, members noted that on the advice of the Sub-Committee the investigative checklist had been removed from the Sexual Harassment Implementation Plan launch package because it conflicted with regulations in places and was considered premature pending the production of the College of Policing guidance. Nicole Higgins (CoP) said there had been little progress with the development of the Sexual Harassment Guidance. The immediate concern was that the implementation plan had been issued to force PSDs ahead of the guidance; this may give rise to confusion on appropriate action if misconduct was identified. CoP would work with the NPCC portfolio lead (CC Guilford) to progress this and report back to the Discipline Sub-Committee. **Action Point 4: CoP and NPCC to report back to the Discipline Sub-Committee on progress in finalising guidance on sexual harassment.**

15. In discussion Ben Priestley (UNISON) said he did not agree with linking the Sexual Harassment Guidance with the Appropriate Relationship Guidance as one was based on non-consensual relationship while the other was not.

### c) Allowances for those on secondment to CoP

16. The PABEW had agreed Guidance on Police Officer and Staff Secondments in December 2013 which was accepted and adopted by the CoP. Subsequently, the CoP appeared to have departed from the guidance, applying it inconsistently. Nicole Higgins (CoP) said the

College were looking into this issue and would report back to members. Dan Murphy (PSA) said this was an issue with HMICFRS too. The Chair said it would be valuable for the CoP to liaise with HMICFRS and report back to members. **Action Point 5: CoP to progress consideration of allowances for those on secondment and report back to PABEW.**

### **Police Pensions: UK Police Pensions Consultative Forum & Scheme Advisory Board**

17. The third joint UKPPCF and SAB was held on 13 January 2020. The Chair updated PABEW members on key matters discussed at the meeting:

#### Response from the Policing Minister on AA flexibilities and pensions challenge

18. The Chair received a response, dated 27 January, from the Policing Minister addressing both the letters on the Annual Allowance flexibilities and pensions challenge. An invitation to the PABEW or to one of the SAB Technical Discussions had been extended to the Policing Minister but had been declined due prior commitments.
19. Members expressed disappointment at the response which was dismissive of the concerns raised about the pensions challenge and took members no further forward in understanding what was needed to persuade Ministers of the problems being caused by the current rules on Annual Allowance. The evidence sought would only be available if there was service failure, whereas there was significant evidence of the risk of such failure. It seemed that the response indicated a preference to wait for the risk to become an issue rather than work with the service and Staff Associations to mitigate it. Angela Chadha (HO) assured members that the Home Office would continue to put forward any evidence provided and make the argument to HM Treasury.
20. It was agreed that the Chair would write again to the Minister expressing PABEW's disappointment and using the opportunity to draw attention to the lack of any change to the £40,000 annual limit in spite of inflation. **Action Point 6: Chair to respond to Minister's letter (27 January) encouraging a meeting and drawing attention to the £40k AA limit.**
21. In discussion, reference was made to the case made on behalf of Hospital Consultants, whose contracted hours were less than those required to meet the needs of the sector, and so, their refusal to work

optional additional hours had an impact the police could not properly replicate. Dan Murphy (PSA) also pointed out that any remedy would have a direct impact on Home Office funding which made the argument a difficult one for officials to present. He also attended the roundtable where HM Treasury lead informed PSA that if the Home Office allow pension flexibilities to be introduced to resolve members annual allowance concerns, which results in any shortfall in the revenue being received into the Treasury, then the Home Office budget would be adjusted to make up the shortfall.

22. In response to members' comments about the impact on workforce planning, David Paul (NPCC) confirmed that the portfolio lead for workforce planning, Matt Jukes, had raised in correspondence concerns about the impact on the uplift programme of early retirement or lack of interest in advancement caused by the Annual Allowance concerns of officers.
23. Dan Murphy (PSA) had raised, at the SAB meeting on 13 January, frustration at the lack of progress on flexible application of the commutation cap. The PSA, with PFEW, PSA and CPOSA had now instructed lawyers to take formal action.
24. On 'scheme pays' there was evidence that officers in three forces who had opted for scheme pays were being chased by HMRC to pay the penalty themselves, with accrued interest, with some going back to 2014. Kevin Courtney (NPCC) had been made aware of the problem, which seemed to have been caused by recording errors with one pension administrator. He agreed to liaise with those who have this issue and seek to resolve it. **Action Point 7: Kevin Courtney to liaise with the PSA and address concerns about forces' failure to act on 'scheme pays' instructions.**

#### Updates on legacy scheme amendments

25. Legacy amendments were being progressed, a draft Statutory Instrument was with the HO drafting lawyer.

#### The Pensions Regulator (TPR)

26. Sarah Humphrys and Andre Champion of TPR attended the SAB meeting on 13 January and gave an oral presentation on their engagement strategy with those they regulate. They set out the two models created to build stronger relationships; supervisions and relationship supervision. TPR had said they would be working with four

of the larger police schemes under the relationship supervision model. The Chair said that she would encourage those forces to share information about their involvement with TPR in her quarterly letter to pension board chairs and scheme managers.

27. Kevin Courtney (NPCC) reported that initial feedback from the TPR Survey was encouraging with only one missing response. He said many more forces are now willing to be identified which would make the findings more useful to the SAB.

#### Update on 2020 Valuation

28. James Hurley (NPCC) was concerned that the questions raised by GAD could not be effectively answered in advance of decisions on McCloud/Sargeant. Given the pressure on resources he asked for reassurance that forces were completing work which was useful and contributing towards the valuation. He asked that the work plan the HO had agreed to provide considered the sequencing of work and asked for NPCC to be engaged with HO and GAD on the details of how this work would tie in with McCloud/Sargeant.

#### Pensions Challenge

29. A technical working group for the SAB technical discussions had been arranged. The Chair invited questions which might be considered over the course of the three scheduled meetings. **Action Point 8: Members to provide preliminary questions to the Chair for the SAB twg, so an agenda can be agreed by 5 February.**
30. Members confirmed that they were content for representatives of the Home Office and the GAD central McCloud team to attend any of the discussions as an observer. In response to staff association questions about the role of the SAB in reaching a solution, the Chair suggested starting the first meeting with a brief presentation on what the Government hoped to gain from the discussions. Amar Pannu (HO) said the paper provided by HM Treasury was an open one and set out two different options. The Government had not taken a position on which option to follow and were still developing their thinking. After the technical discussion, the HO would provide a position paper. The staff associations pointed out that they had asked for details of the meeting held in December 2019 with scheme administrators. **Action point 9: HO to provide a summary of the meeting with scheme administrators ahead of the first SAB twg 11 February 2020.**



31. In response to comments from Alex Duncan, the dual position of Staff Association members was recognised. As SAB members they would look at the practicalities of the options and advise of the likely concerns of their members, seeking a consensus. They might also want to respond separately to the formal consultation if there were points particularly affecting their members.

#### Opt-out data

32. The Home Office had provided information about the level of opt-outs at the last meeting. At the aggregated level this seemed encouraging, but further work would now be done to with the Home Office Analysis and Stats Team to see whether further de-identified information could be extracted to give more information about those opting out.

### **Discipline Sub-Committee**

33. The Discipline Sub-Committee meeting was held on 21 January 2020. The Chair updated PABEW members on key matters of the meeting:

#### IOPC Statutory Guidance

34. Following the last Sub-Committee, Stephen Oakley (IOPC) had circulated the latest draft of the IOPC Statutory Guidance. This was in response to comments made at the Sub-Committee about the lack of opportunity to compare the IOPC and Home Office Guidance to ensure consistency. IOPC had been told that Ministerial sign off was likely to be on 3 February and, given the short period between that and commencement on 1 February they had decided to wait and publish the final version rather than an interim draft.

#### Police Integrity Regulations

35. Home Office confirmed the Police Integrity Regulations had been laid on 10 January 2020 and would come into effect on 1 February 2020.

#### Former Officer modifications and Home Office Guidance

36. The PABEW had been consulted on modifications to regulations and changes to the Home Office Guidance in relation to former officers. The Home Office Guidance was going through HO legal checks before Ministerial sign off. There was likely to be a short delay in publishing the HOG after the police integrity regulations had come into effect on 1 February 2020.

#### Management Action & Reduction in Temporary Promotion Cases

37. Dan Murphy (PSA) had provided three examples of members on temporary promotion to the rank of Superintendent arbitrarily reverted to their substantive rank when 'management action' was being considered. He was pleased to be able to tell PABEW members that since the meeting NPCC guidance had been provided which should prevent this happening.

#### Police (Conduct) (Amendment) Regulations 2020

38. On 27 January, Tom Cherry (HO) contacted the Chair explaining that in the final drafting of the Police (Conduct) Regulations 2020 a small intended change had been omitted which would require a separate short statutory instrument to correct the error. This was circulated to the PABEW on 27 January. As members had already been consulted on the proposed change and no further comments were received, the Chair approved the amendment on behalf of PABEW.

#### **Home Office Legislation Update**

39. 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).

40. Frank Murphy (HO) told members how items would be combined and taken forward. He said they were currently at different stages in terms of the position with HO lawyers.

41. Dan Murphy (PSA) raised concerns about delays in regulations and determinations following agreements reached at the PABEW or the PCF. This caused practical problems in forces where, for example, payments would need to be calculated and made in arrears even when all were aware that the changes would be made in due course. Recognising the pressure on HO lawyers he asked the HO to re-introduce the use of Home Office circulars that provided forces with the authority to implement an agreement pending publication of a revised regulation or determination. Mel Sinclair (HO) said the issue that the concern with reliance circulars is that the final regulations might change. She would look at the possibility again but Angela Chadha (HO) said they were aware of the problems caused by shortage of lawyers were in active conversation on increasing legal resources across the Government.

**Action Point 10: Mel Sinclair (HO) to look into the possibility of using HO circulars to give forces authority to implement PABEW and/or PCF agreements pending publication of revised regulations or determinations.**

## Any other business

## Date of next meeting

42. The next meeting will be held on 29 April 2020.

	<b>Actions</b>	<b>Date of the Meeting</b>	<b>To be completed by:</b>	<b>Status – to be updated and re-circulated before the next meeting</b>
1	Secretariat to publish finalised minutes of 17 October 2019 on webpage.	29 January 2020	Secretariat	<b>Completed</b>
2	Amar Pannu (HO) to ensure a factual statement on the pension position for those re-joining would be provided to the CoP and copied to staff associations	29 January 2020	Amar Pannu, Home Office	<b>Ongoing</b>  This was currently with lawyers and was being dealt as a priority.
3	Secretariat to include the PSA report on the agenda of the next Discipline Subcommittee and invite a member of the Met Trade Union Side.	29 January 2020	Secretariat	<b>Completed</b>  This was on the agenda at Discipline Sub-Committee on 20 April. It was agreed to invite a NALQC rep to the committee and the report would then be discussed at the July meeting.
4	CoP and NPCC to report back to the Discipline Sub-Committee on progress in drafting guidance on sexual harassment.	29 January 2020	CoP, NPCC	<b>Completed</b>  Mike Allen (NPCC) reported at the Discipline Sub-Committee on 20 April that the draft guidance was now on the second iteration and would be shared with the Sub-Committee.

5	CoP to progress consideration of allowances for those on secondment and report back to PABEW.	29 January 2020	CoP	<b>On Agenda</b>
6	Chair to respond to Minister's letter (27 January) encouraging a meeting and drawing attention to the £40k AA limit.	29 January 2020	Chair	<b>Completed</b>  The Chair sent a response on 14 February. The Minister then responded to this on 24 February. The Board noted the response.
7	Kevin Courtney to liaise with the PSA and address concerns about forces' failure to act on 'scheme pays' instructions.	29 January 2020	Kevin Courtney, NPCC	<b>Completed</b>  Administrators have details of cases across a number of forces and two separate administrators provided Dan Murphy. Due to COVID-19 setbacks, they are working on the response. Once completed, Kevin will share with members.
8	Members to provide preliminary questions to the Chair so an agenda for the SAB twg can be agreed by 5 February.	29 January 2020	SAB Members	<b>Completed</b>
9	HO to provide a summary of the meeting with scheme administrators	29 January 2020	Home Office	<b>Completed</b>  Circulated to SAB twg members on 24 February from Kevin Courtney.

	ahead of the first SAB twg 11 February 2020.			
10	Mel Sinclair to look into the possibility of using HO circulars to give forces authority to implement PABEW and/or PCF agreements pending publication of revised regulations or determinations.	29 January 2020	Mel Sinclair, Home Office	<b>Completed</b> HO had completed publication of revised regulations or determinations therefore HO circular was not required. In future, HO would consider the use of circular case by case.

**PABEW Secretariat**

**06 February 2020**