

DECISION
OF THE
POLICE ARBITRATION TRIBUNAL

Winsor Report Part 2

December 2013

POLICE ARBITRATION TRIBUNAL

Present at the hearing held at the London Office of the Advisory, Conciliation and Arbitration Service, 23rd floor, Euston Tower, 286 Euston Road, London NW1 3JJ on Friday 15 November 2013.

Police Arbitration Tribunal

Professor John Goodman CBE (Chairman)

Ms V Branney

Mrs M Salmon

Mr A Sen (Secretary)

Representing the Staff Side of the Federated Ranks Committee

Ian Rennie (PNB Staff Side Secretary, Police Federation of England and Wales)

Graham Halliday (National Secretary, Police Superintendents Association England and Wales)

Dave Jones, (National Negotiating Secretary, Chief Police Officer Staff Association)

Tim Jackson (National Deputy Secretary, Police Superintendents Association England and Wales)

Dr. Joan Donnelly (Head of Research, PFEW)

Mariam Conway (Senior Research Officer, PFEW)

Karen Pinfold (Research Department, PFEW)

Elaine Parker (Research Department, PFEW)

Representing the Official Side of the Police Negotiating Board

Sarah Messenger (LGA)

Graham Baird (LGA)

Andrew Tremayne (LGA)

Avril Cooper (ACPO)

Robin Merrett (ACPO)

Francis Habgood (ACPO)

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Christopher Salmon (PCC)*

Richard Pickering (Home Office)

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Stephen Finer (Home Office)

Harriet Bradley (Home Office)

* Mr Salmon is not related in any way to the Tribunal's Margaret Salmon.

INTRODUCTION

By a minute dated 27 September 2013, the Advisory, Conciliation and Arbitration Service gave notice that a meeting of the Police Arbitration Tribunal (PAT) had been convened to consider a difference between the two Sides of the Federated Ranks Committee of the Police Negotiating Board (PNB); the two Sides of the Superintendents Committee of the Police Negotiating Board; and the two Sides of the Chief Officers Committee of the Police Negotiating Board.

The agreed terms of reference were:

To consider a failure to reach agreement between the two Sides of the Police Negotiating Board on the following matters covered by the attached letter of Direction from the Home Secretary dated 27 March 2012:

Recommendation 38¹

The Police Regulations 2003 should be amended to specify the procedure for determining the circumstances in which an officer may be placed on restricted duty, the arrangements which a Chief Constable may make for officers on restricted duty, and the adjustments to the pay of such officers.

Recommendation 39²

From September 2014, officers on restricted duty should have their deployability and capability to exercise police powers assessed one year after being placed on restricted duty. Officers who are not deployable and are not capable of work which requires the office of constable should sustain a reduction in pay equal to the value of the deployability element of the X-factor, namely the lower of eight per cent and £2,922 per annum.

¹ Recommendation 38 was referred to both the PNB and the Police Advisory Board of England and Wales. The PNB Independent Chair has determined that only the adjustment to the pay of officers is a matter for arbitration.

² Although this recommendation was only referred to the PNB, the PNB Independent Chair has determined that only the first two sentences of Recommendation 39 may be settled through arbitration.

After a further year, appropriate proceedings should be initiated to dismiss or retire these officers from the police service on the grounds of incapability or poor attendance. Officers who are permanently disabled from working as police officers should be ill-health retired. Those who are not permanently disabled should be given the opportunity to resign as police officers and immediately take up a police staff job on police staff terms and conditions, if one is available.

Recommendation 71

The deployment component of the police officer X-factor should be established to be 8% of basic pay for constables. For other ranks, it should be expressed in cash terms, benchmarked at 8% of the maximum of constables' basic pay.

Recommendation 46 – The Police Regulations 2003 should be amended to create a system of compulsory severance for police officers with less than full pensionable service from April 2013.

Recommendation 47 – The Police Regulations 2003 should be amended to provide for the payment of financial compensation to police officers with less than full pensionable service who leave the police service by reason of compulsory severance. Forces should be empowered to offer financial compensation on the same terms as are available under the Civil Service Compensation Scheme.

Recommendation 48 – Officers who have been subject to compulsory severance should have access to employment tribunals if they wish to allege that their severance has been unfair.

1. Prior to the hearing the parties supplied the Tribunal with, and exchanged copies of, their written statements of case which they developed orally at the hearing.

BACKGROUND

2. This is the third reference to the Police Arbitration Tribunal arising out of the Independent Review of Police Officer and Staff Remuneration and Conditions. This difference arose from the Sides' failure to agree the above recommendations contained in Part 2 of the Review (HMSO Cm 8325-II) which come within the remit of the Police Negotiating Board (PNB). The review was commissioned by the Home Secretary on 1 October 2010 and conducted by Mr. T. P. Winsor to be reported in two Parts. The first part of the Review was published on 8 March 2011. Differences arising from that Report but not settled by the parties through the PNB were the subject of the PAT's first award on the Winsor Report which was issued in January 2012.

3. In accordance with the terms of reference set by the Home Secretary, the second Report focused on longer term reform aimed at providing a police service suitable for the challenges likely to be faced during the course of the next thirty years. In particular, the Report covered: the police service employment framework, entry routes and promotion; the health, fitness and management of the police officer workforce; basic pay, contribution-related pay and role-based pay; and the negotiating machinery.

4. The second part of the Review, henceforth referred to as WR2, was published in March 2012. Following its release, the PNB was directed by the Home Secretary, in her letter dated 27 March 2012, to consider and make recommendations to her in respect of a number of WR2 recommendations which were the subject of negotiation.* The Home Secretary's letter set a deadline for the settlement of some of the WR2 Recommendations at the PNB of July 2012, and a further deadline of July 2013 for the remainder. Following negotiations at the PNB, several recommendations were resolved by the parties, but eight recommendations, including three relating to compulsory severance, were

* A copy of the Home Secretary's letter is attached at the end of this document.

referred to the PAT. The Tribunal gave its substantive award on five of these but said in its second award, issued in December 2012, that the Sides should be afforded time until July 2013 to see if a negotiated agreement on the three recommendations relating to compulsory severance (Recommendations 46,47 and 48) could be achieved within the machinery of the PNB.

5. Most of those WR2 Recommendations with a deadline for settlement to be reached at the PNB of July 2013 set by the Home Secretary have been resolved in that way. The exceptions to this are Recommendations 38, 39 and 71 as set out in the terms of reference above. These have not previously been referred to the PAT.

6. In what follows, the issues are presented in the order in which they were dealt with during the course of the hearing.

SUMMARY OF THE CASE MADE BY THE OFFICIAL SIDE

7. The Official Side began by expressing regret that negotiations between the Sides had not produced a resolution of the outstanding issues. It said that it had made every effort to be constructive in negotiations with the Staff Side over the issues now before the Tribunal. In particular, the Official Side said, the Sides had found some common ground. For its part, it had modified its position on restricted duty and compulsory severance and put forward amended proposals which it had hoped would enable an agreement to be reached with the Staff Side. However, this had not proved to be the case.

8. The Official Side considered that there were six relevant contextual factors, as outlined in previous appearances before the Tribunal:

- Making the best use of resources
- Recruitment and retention
- The role and status of police officers
- Wider police workforce arrangements and developments

- The wider context of public sector employment and remuneration and
- Government policy and the economic context

9. The Official Side said that it endorsed the package of proposals contained in the WR2 recommendations which were referred to the Police Negotiating Board (PNB). The Official Side said that its long-term objectives of police reform and modernisation of terms and conditions which were in keeping with the needs of the 21st century were shared by the Coalition government. Moreover, at a time when the use of public money was under close scrutiny, it was important that taxpayers' money was seen to be used effectively in the interests of all. The Official Side said that its aim was to ensure that through the implementation of the Winsor reform proposals, there was put in place a cost neutral structure of pay and terms and conditions which rewarded officers for the job they do, their contribution and the skills they possess. At the same time, the structure would also provide flexibility to Chief Officers (COs) and Police and Crime Commissioners (PCCs) to deploy and use resources in a manner which enabled them to achieve their principal goals of providing a modern, effective, efficient police service, while satisfying the demands of local accountability. The Official Side stressed that the newly-elected PCCs wanted to shape police forces according to the needs of the local community and this would in turn affect Chief Officers' decisions on how they deployed forces under their control. The introduction of compulsory severance and the proposed changes to restricted duty were said to be integral to the long-term reform process and not simply the 'icing on the cake.'

10. Turning to the specific issues which had been referred to the Tribunal, the Official Side began with the WR2 Recommendations 46, 47 and 48 relating to compulsory severance. These matters had been considered by the Tribunal last year. In its decision issued in December 2012, the Tribunal had asked the Sides to resume discussions on these recommendations and to consider component elements of a compulsory severance scheme and related matters with a view to reaching an agreed

position and had given the Sides until July 2013 to find a way forward. The Official Side said that it had tried to develop its proposals but that in its view the Staff Side had not engaged fully in negotiations and it had not been possible to obtain the Staff Side's agreement.

11. The Official Side drew the Tribunal's attention to the contents of Her Majesty's Inspectorate of Constabulary (HMIC) recent report which had highlighted that police forces were likely to face continuing budgetary challenges in the years ahead.³ While it was acknowledged that most forces had coped well in adjusting to the substantial reduction in resources, there were concerns that some smaller forces could struggle to meet these challenges from 2016-17 onwards. The Official Side said that while the report recognised that some economic growth was now evident, it was unlikely that the financial position was going to become easier as a consequence.

12. The Official Side explained that about 80% of police forces' budgets were spent on people related costs and of this portion, expenditure on officers' pay and allowances constituted more than half. It was therefore right, the Official Side said, that forces should pay a great deal of attention to managing this major component of expenditure. In this context, workforce planning was the mechanism whereby forces could use their workforces in a manner consistent with the financial resources at their disposal.

13. The Official Side said that Regulation A19 of the Police Regulations 1987 currently allowed COs to require officers below ACPO rank with over 30 years pensionable service to retire on grounds of efficiency. However, the Official Side said that the prevailing economic climate and its predicted course, was such that additional measures were required. Specifically, the Official Side agreed with WR2 that proper workforce planning required that COs and PCCs should have available to them the full range of workforce planning tools necessary.

³ HMIC, Policing in Austerity: Rising to the Challenge, July 2013.

14. In relation to police staff, forces had a greater range of options available to them than was the case with police officers, including that of compulsory redundancy. For police officers a voluntary exit scheme was introduced only in January 2013. For police staff, use had been made by some forces of both the long-established voluntary and compulsory redundancy options. The Official Side said this was unfair and the lack of a compulsory severance option for police officers had led to a disproportionate impact on police staff. As women and BME groups made up a larger proportion of the police staff workforce, the likely impact would be to reverse recent advances in increasing the diversity of the overall police workforce. The Official Side also stressed that the notion of compulsory severance as applied to police officers was not a new one; the British Transport Police already had such arrangements in place. In the Official Side's view, shared with Winsor, the introduction of compulsory severance could be seen as analogous to an extension of Regulation A19 and should be applied to police officers who had not reached full pensionable service. Thus in addition to the possibilities of restricting recruitment, geographical redeployment, redeployment between roles, the existing scope of Regulation A19 and the new voluntary exit scheme introduced in January 2013, compulsory severance should also be available as a measure of last resort once all the other options had been utilised.

15. The Official Side emphasised that while PCCs and COs saw compulsory severance as a necessary part of the suite of management tools available to them, they also recognised the sensitivity surrounding the proposed introduction of compulsory severance for police officers and the possible effects on morale but agreed with the Tribunal's comment from last year that the continued exclusion of police officers from compulsory severance measures was 'very difficult to sustain'.

16. In its decision last year, the Tribunal had asked the parties to seek agreement on the matter of compulsory severance and had asked the Official Side in particular to provide more detail on what a compulsory

severance arrangement might look like and on the nature and scope of the safeguards which would form part of a proposed scheme. The Official Side said that it had developed a compulsory severance proposal in some detail and that progress had been made in some areas in discussions with the Staff Side.

17. During the course of last year's hearing the Tribunal had sought clarification around the precise meaning of the terms 'severance' and 'redundancy' in the context of a proposed scheme. Having obtained legal advice prepared by the Home Office's Legal Adviser's Branch on behalf of the Police Productivity Unit, the Official Side clarified that in its view, '...compulsory severance is akin to redundancy.' Recognising that there would always be a need for police duties to be carried out, it was accepted that the relevant legislation, S.139 (1) (a) (i) of the Employment Relations Act 1996, would need to be modified in order to be applicable specifically to police officers. Other parts of the relevant legislation would however need to be retained. In this context, the Official Side confirmed that the introduction of compulsory severance for police officers would require primary legislation (that is, an Act of Parliament).

18. The Official Side said that it had prepared draft guidance in the form of a document for those forces which might wish to implement a compulsory severance scheme. This guidance, the Official Side said, covered a number of important areas including a strong emphasis on the need to avoid using compulsory severance until other measures such as redeployment and voluntary severance had been used, and detailed consultation, selection and appeal processes had been followed. The Official Side said that it had made a number of amendments to its guidance in response to the Staff Side's comments and concerns.

19. The Official Side reiterated its position that compulsory severance was a measure of last resort. All other means of controlling workforce costs would need to be fully explored first. Therefore, the Official Side guidance stressed the need for forces to run a voluntary exit scheme before the use of a compulsory scheme and also to ensure that the possibilities for using

Regulation A19 should be looked at fully without however compelling all officers who might meet the A19 criteria, to leave under that provision. However, the Official Side said that in its view the introduction of compulsory severance for police officers would be fairer to the police workforce as a whole. The Official Side said that it attached a great deal of importance to the whole issue of fairness and that was why it had sought to ensure that the use of any compulsory severance scheme would be accompanied by appropriate safeguards.

20. The Official Side said that it appreciated the need for any compulsory severance scheme to be applied fairly and transparently. This implied the need for appeal mechanisms to address challenges from officers to decisions made by management. Such mechanisms were not nationally prescribed but there were expectations, the Official Side said, that measures would be taken to ensure fairness; for example the independence from the original decision makers of those involved in the appeal process. The Official Side said that in its view, police officers should have access to employment tribunals if they wished to claim that their dismissal had been unfair, given tribunals' experience of dealing with analogous cases. The Official Side did not share the Staff Side's anxieties that a compulsory severance scheme for police officers would be used by senior officers to target officers unfairly for selection for severance. There was no evidence to support the Staff Side's view on this issue and the Official Side said that it was clear that PCCs and COs would wish to uphold the high standards associated with policing in this country.

21. The Official Side said that it recognised the fundamental nature of the change being proposed. That was why it had taken care to address many of the Staff Side's concerns around the introduction of compulsory severance by examining carefully the possible implications of such a change and with a view to introducing the best scheme possible for police officers. In addition to the guidance and the clarification of the distinction between 'severance' and 'redundancy' referred to above, the Official Side said that it had also considered the impact of compulsory severance on

officers' pensions as well as possible arrangements for national monitoring of the way in which forces were operating compulsory severance.

22. The Official Side said that the Staff Side had expressed particular concerns during discussions about the impact of compulsory severance on the pensions of those officers selected for redundancy. It recognised that pension matters were outside the scope of the Tribunal's remit but made some points about its position on this issue.

23. The Official Side said that the main impact on the three police officer pension schemes, that is, the 1987 scheme, the 2006 scheme and the new 2015 scheme, would be to increase the age at which officers subject to compulsory severance could draw their pensions. However, this would not mean that officers could not have access to their pensions; but that they would incur an actuarial reduction were they to access their pension at the previously expected date instead of at 65. The Official Side said that it had put forward a number of proposals to mitigate the effects on pensions of those officers who had been selected for compulsory severance, such as the option to use some or all of their lump sums to buy out some or all of the actuarial reduction. Further, it was proposed that forces would have the discretion to make a top up payment in circumstances where the lump sum was insufficient to fund an unreduced pension. While the Official Side appreciated that the Staff Side had genuine concerns about the effects of compulsory severance on officers' pensions, it said firefighters, who have similar pension arrangements, can and have been made redundant. Moreover, there were currently no provisions in place to mitigate firefighters' pensions in the event of redundancy; nor were there plans to introduce any provisions to do so. The Official Side also stressed that, as evidenced by Lord Hutton's independent analysis of pensions, compared with workers in the public and private sectors, police officers receive valuable pension packages, even taking into account the relatively high contributions that officers have to pay in to their schemes. The Official Side did not underestimate the fundamental nature of the possible impact of compulsory severance

on police officers' lives and its proposal to introduce a compulsory severance monitoring process at national level reflected that awareness.

24. Given the concerns expressed by the Staff Side about the operation of a compulsory severance scheme, the Official Side said that it had proposed a national monitoring body. In the Official Side's view, this role could possibly be discharged by a body such as the Police Advisory Board for England and Wales (PABEW) or the HMIC. The role would involve collecting information from the forces which had used compulsory severance to identify discernible trends and patterns in the scheme's operation. This initiative, the Official Side said, was a further illustration of its desire to ensure that there were adequate safeguards in place for police officers who might be subject to compulsory severance and noted that as far as it was aware there was no similar mechanism available for any other group of public sector workers.

25. At last year's PAT hearing, the proposal to introduce a voluntary exit scheme had been discussed. Since its introduction in January 2013, only one force, Staffordshire, had made use of it. Of the 39 officers' applications which had been approved, 37 officers, evenly distributed according to age and length of service, had left the 1800-strong force. The Official Side said that this indicated the scheme's general attractiveness. It also illustrated, the Official Side said, that the terms of the scheme were not so generous that forces could be sure that reliance could be placed solely on voluntary exit as a tool for workforce planning and that a compulsory severance option was also required. The Official Side amplified this point by referring to the experience of the Cambridgeshire and the Devon and Cornwall forces which had both used voluntary exit and compulsory severance measures to reduce police staff numbers during 2010. The experience of Staffordshire had been watched closely by other forces considering the possible use of voluntary exit, the Official Side said. There were a number of other issues relating to compulsory severance which the Official Side asked the Tribunal to consider and these are outlined below.

26. The Official Side drew the Tribunal's attention to the High Court challenge mounted by the Police Superintendents' Association of England and Wales (PSAEW). Briefly, the Official Side said that this unsuccessful challenge which called into question the lawfulness of Regulation A19, showed that elements of the Staff Side were not convinced as to the adequacy of A19 as a workforce planning tool and that further tools were required. This, combined with the likelihood that the 2015 pension scheme would render the use of A19 obsolete within 10-15 years since the maximum service rule which allowed it to operate is not a feature of the 2015 scheme, suggested the need for more flexible workforce management tools.

27. The Official Side said that the Staff Side had expressed other concerns associated with the introduction of compulsory severance: the threat to the office of constable; deterioration in morale; risk to deployability; difficulties of attracting officers to specialist roles and equalities considerations. The Official Side said that it did not find persuasive the Staff Side's position that the introduction of compulsory severance would put the integrity of police officers at risk. The Official Side said that it had confidence in the integrity of the large majority of officers and that the introduction of compulsory severance was not going to alter that position and there was no evidence to support the Staff Side's view.

28. The Official Side acknowledged that the introduction of compulsory severance would represent a major change and therefore did not underestimate the potential for some impact on morale. However, the Official Side said that compulsory severance would be a measure of last resort and was of the view that the possibility of compulsory redundancy was a fact of life in the wider economy and that it was anomalous that police officers continued to be excluded from that economic reality.

29. The Official Side said that the Staff Side's position was that compulsory severance conflicted with the special role that police officers occupied in society, the restrictions on their professional and personal lives and an inherent contradiction between the definition of redundancy

and the wide-ranging tasks involved in policing and the flexibility of officers. The Official Side agreed with Professor Disney that police officers were rewarded to a level which was commensurate with those restrictions. The Official Side also said that some areas of police work had become increasingly specialised and technical and that it was unrealistic to assume that all officers could readily undertake the many roles performed by modern police forces. It did not accept that redundancy could never apply in a police officer context.

30. The Official Side accepted the Staff Side's observation that there could be certain areas of work which could be more vulnerable to the risk of redundancy, for example narrower specialist rather than more general roles, and could therefore potentially reduce the number of applicants for such roles. However, the Official Side said that in its view there were a number of factors which influenced officers' career choices, not simply the risk of possible redundancy. Moreover, since there would always be a need for police officers, their employment was still likely to be more secure than for many workers.

31. The Official Side said that in developing its policy on the introduction of compulsory severance it had paid careful attention to the equality implications which might flow from it. Currently, only police staff could be made redundant and this was discriminatory in its effect since that workforce was composed of a higher proportion of women and ethnic minority staff. The Official Side also suggested that the operation of Regulation A19 was discriminatory against older white men but that the introduction of compulsory severance would reduce this impact across the workforce. In addition, its proposal to introduce a monitoring process would ensure that those with protected characteristics under the Equality Act 2010 would not be adversely affected.

32. In concluding its case for the introduction of a compulsory severance scheme for police officers, the Official Side stressed that it was intended as a measure of last resort and that the safeguards accompanying its

introduction would be sufficiently rigorous to ensure that officers could have confidence in its fairness and transparency.

33. The second issue before the Tribunal on this occasion was covered by Recommendations 38, 39 and 71 about Restricted Duty and the deployability element of the X-factor.⁴ The Official Side said that it agreed with these recommendations but said that its position on Recommendation 39 was slightly modified from that which was put forward in WR2.

34. The Official Side began by making it clear that its policy in this area was not intended to penalise officers who had sustained serious injuries in the line of performing their duties as police officers and this had been agreed in discussions with Staff Side.

35. The Official Side said there was currently no consistent definition of the term 'restricted duty' across all police forces. There were some police officers who were performing, on a long-term basis, roles which required only limited use of police officer powers and which could be undertaken by police staff and yet they were receiving full pay. In the Official Side's view, this state of affairs was unjustified at a time of budgetary pressures, was not a good use of public money, was unfair to those police officers who were fully deployable, and detrimental to police service resilience by reducing the number of officers available for front-line duty. The decision making processes which forces used to determine which officers should be on restricted duty with full pay were unclear and inconsistent. There was therefore a need to address these areas to ensure that police officers are paid for what they do.

36. The Official Side said that there was a case for changing current practices. It said that the nature of crime and policing responses were

⁴ It was clarified at the hearing that the terms Restricted Duty and Adjusted Duty were interchangeable. The former term was used in WR2 and is used here for that reason. It is distinct from Recuperative Duty and Management Restriction of Duty which are different categories and are not covered by the Tribunal's terms of reference.

undergoing rapid and ongoing change while at the same time budgetary pressures seemed likely to be a feature of the financial climate for the foreseeable future. This made it all the more urgent for forces to be able to protect their frontline capability and use the reduced resources at their disposal as flexibly and efficiently as possible. The Official Side quoted HMIC's finding that in the period March 2010 to March 2015, police forces planned to have 6,600 fewer frontline officers but an increase from 89% to 93% in the proportion of those on frontline duties.⁵ The HMIC also noted that the practice of placing officers who were on restricted duty in non frontline roles, such as back office, limited the flexibility and efficiency of forces and, the Official Side said, reduced force resilience. Moreover, new statutory requirements on forces to provide a prescribed level of resilience to deal with, for example civil disorder or counter terrorism threats, made it all the more essential for forces to be able to deploy officers to the front line as efficiently as possible. As at March 2013 the Official Side said that 3.45% of all officers in England and Wales were on restricted duties. In the context of declining police numbers and the increased responsibilities placed on the police service, this was a significant proportion, the Official Side said.

37. The Official Side recognised the need to treat officers fairly but said that since police pay and conditions were governed by Police Regulations rather than employment law, there were currently no mechanisms analogous to the procedures which were normally seen in employment contracts, which could be applied to police officers who were unable to carry out the full range of duties expected of an officer. In the absence of a clear and consistent process across forces for dealing with the issue of restricted duty, the Official Side said that it agreed with Recommendation 38 and called for Police Regulations 2003 to be amended.

38. One of the anomalies arising from the lack of a clear and consistent process around restricted duty was the full payment of salary to officers who were either not performing or unable to perform the full range of

⁵ HMIC, July 2013, op.cit. pp16-17

duties. This, the Official Side said, was unfair to other officers who were carrying out the full range of duties and also to police staff who were paid less than those police officers on restricted duties who were undertaking police staff roles for long periods of time yet continued to receive the deployment element of the X-factor payment.

39. The Staff Side had agreed with the Official Side that there were circumstances in which the removal of the deployment element of the X-factor paid to officers could be justified. However, there was, the Official Side said, a difference between the Sides as to the breadth of those circumstances. In the Official Side's view, the deployment element of the X-factor premium should be withdrawn where an officer was not fully deployable. Such a decision would be dealt with on a case by case basis, subject to a right of appeal to a CO and would not necessarily be permanent.

40. The Official Side said that acceptance of the Staff Side's position that officers who could perform some but not all of the functions of a police officer should be excluded from the restricted duties category and therefore not subject to the possible removal of the deployment element of the X-factor would render the impact on force resilience ineffective.

41. The Official Side said that it took very seriously the equality impacts of any policy it proposed. It noted Staff Side concerns that the Official Side's proposals in this connection were likely to affect officers who were disabled under the provisions of the Equality Act 2010. However, the Official Side was of the view that its proposals would enable forces to retain officers who had sustained injuries in the line of their duties but did not qualify for ill-health retirement. They would nevertheless be paid fairly for the work they performed.

42. The Official Side said that it had considered whether reducing the pay of some officers would be in breach of equalities legislation. Its submission set out a legal analysis to illustrate different circumstances which could arise in relation to its proposals on restricted duties. It acknowledged that

a reduction in pay would have a disproportionate impact on disabled officers and older officers and, for affected officers, would constitute less favourable treatment within the meaning of the Equality Act 2010 (section 15(1)(a)). However, the Official Side took the view that, if challenged, the measure would be objectively justified. In this context, the Official Side referred to the need to increase the resilience of forces and to the nature of police officers' work. Policing was a physically and mentally demanding occupation and this needed to be taken into account when assessing a police force's ability to provide an effective, efficient service. It was entirely appropriate for forces to take wider organisational resources into account in keeping officers in work who did not fully recover and who were not fully deployable. Paying an officer less to carry out a restricted range of duties was not in itself unfair or unreasonable, the Official Side said, and it rejected the Staff Side's claim that its proposal would be in breach of disability legislation.

43. In concluding its case on both the issues presented before the Tribunal, the Official Side said that it acknowledged the importance of the issues under consideration and the unique nature of the police service. It also recognised that any changes implemented as a consequence should be fair, justified and transparent. It emphasised that the measures being proposed were not out of step with the experience of many public sector workers. It said that if police forces were to deliver an efficient, flexible, modern police service attuned to the needs of this century and meet the expectations of the people they served, the proposals put forward by the Official Side were essential and called upon the Tribunal to find in its favour.

SUMMARY OF THE CASE MADE BY THE STAFF SIDE

44. The Staff Side also began the presentation of its case by expressing regret that the parties had not been able to resolve the issues before the Tribunal through negotiation. The Staff Side said that it had worked constructively with the Official Side on the latter's programme of long-term reform arising from both Winsor and the Hutton review of pensions. It had not sought simply to oppose change, nor to ignore the impact of

austerity on the police service, nor wider public sector reform. The Staff Side said that its positive approach and input was evidenced by the fact 19 of the 29 Winsor Recommendations it had been asked to consider had already been agreed, as well as concluding an important agreement on police pension reform. However, the Staff Side said, the need for reform must be clearly evidenced and any measures introduced should be fair, workable and in keeping with the nature of British policing. In the Staff Side's view, the issues before the Tribunal were of particular significance for police officers.

45. The proposed introduction of compulsory severance for police officers, although a sensitive issue, had not prevented the Staff Side from taking part in detailed, lengthy discussions with the Official Side during the extra period of time afforded to both Sides by the PAT in its previous award. However, these detailed discussions had reinforced its opposition to this proposal: it found the case for change unconvincing and indicated a number of very serious concerns about the proposed introduction of compulsory severance. It considered this would upset the delicately balanced framework on which policing rested.

46. The first of these objections was based on the nature of British policing and the centrality of the long-established independence of the office of police constable. Police officers were office holders and not employees. The Office of Constable was legally independent with a significant degree of authority and discretionary power and as such, holders of the post were answerable to the law alone. It was the Staff Side's view that the introduction of compulsory severance could lead officers to be open to pressures which may undermine their independence. The Staff Side cited in support of this position, a letter from the civil liberties group 'Liberty'. The introduction of compulsory severance would, the Staff Side said, affect forces' ability to attract and retain officers of a sufficiently high calibre. It might also impact adversely on officers' morale and possibly police officer behaviour if the independence of the Office of Constable was undermined.

47. Allied to the independence of the Office of Constable were a number of other significant features which underpinned the nature of policing in this country, such as: policing by consent, the fact that officers can be required to perform any policing role at any place or time – which Staff Side argued went far beyond a mobility clause in an employment contract - and the risk of death or serious injury whether on or off duty. There was, the Staff Side said, a framework of terms and conditions and regulations which had been developed over time and which mirrored the unique nature of British policing. For example, officers' terms and conditions reflected the constitutional significance of the role of police officers; their much lengthier than normal probationary period of two years indicated the weight of the responsibilities they had to bear; the restrictions on their personal lives; the requirement for flexible deployment; the prohibition on taking industrial action; the regulations by which service could be terminated but which did not include compulsory redundancy; pension provisions which took account of the demanding nature of the occupation, and their duty to obey lawful orders. These factors and others ensured that police officers were prepared to accept the various restrictions and dangers associated with their occupation and gave them confidence that their well-being, independence and security were protected. Together, they constituted the 'psychological contract' of reciprocal responsibility between police officers both collectively and as individuals and the authorities which commanded them. This reciprocal exchange of the way in which officers were treated was balanced against their obligations to the service. The introduction of compulsory severance would fundamentally change that balance and lead officers to question other areas of it.

48. The Staff Side said that during negotiations with the Official Side it had expressed specific concerns about a number of elements in the proposed introduction of compulsory severance. These included compulsory severance as a measure of last resort; the size of the pools from which the selections were to be made; selection criteria; voluntary severance and pension detriment; and the right of appeal.

49. The Staff Side, in referring to the Official Side's draft guidance on compulsory severance, stressed that it was only guidance. As such it would leave COs free to operate the compulsory severance scheme, if introduced, as they deemed appropriate. Staff Side said that the Official Side had not been able to offer assurance that compulsory severance would only be applied where there was a need to reduce officer numbers in order to meet cuts in force budgets. The Staff Side said it had continued to harbour reservations about the lack of such constraints and about the possible unfair selection of officers for compulsory severance based, for example, on the power of COs to move officers to posts in which they might be more vulnerable for selection for compulsory severance.

50. The Staff Side highlighted that one of the main reasons given by the Official Side for the introduction of compulsory severance was the severity of the economic climate. The Staff Side said that there had already been a reduction of 20% in resources and that a further cut of 5% was earmarked for the next Comprehensive Spending Round (CSR). It noted that forces had thus far coped with the major 20% cut without resort to compulsory or voluntary severance. It was true that some forces had suspended recruitment, but not all. It was also true, the Staff Side said, that some forces, but not all, had used Regulation A19 for some of those officers who fell within its provisions. The Staff Side noted that the voluntary exit scheme introduced in January 2013 had so far been used only by the Staffordshire force. Therefore, the Staff Side said, it could not understand the Official Side's stated urgent need for the introduction of a compulsory severance scheme.

51. The Staff Side said that the impact of compulsory severance on police officer pensions was another source of great concern. The Staff Side noted that generally both in the public sector and elsewhere, the terms for voluntary severance schemes were more favourable than those for compulsory severance schemes, resulting in the avoidance or reduced frequency of a need for using the latter. The Civil Service Compensation

Scheme 2010 was said by the Staff Side to be one such example.⁶ However, this was not the case in relation to police officers. The financial compensation terms for voluntary severance were more favourable than those proposed for compulsory severance. For example, police officers receive a maximum of 21 months' pay as compensation for voluntary severance and would receive a maximum of 12 months' pay as compensation for compulsory severance. However, provision for early (voluntary) leavers below pension age appeared to compare unfavourably with the Official Side's compulsory severance proposals on mitigation of pension disadvantage for officers below pension age on their final day of service. The Staff Side said this would make voluntary severance relatively unattractive for many officers and made it more likely that compulsory severance would be used. This, the Staff Side said, cast doubt on the Official Side's position that compulsory severance was a measure of last resort.

52. The Staff Side said that in the light of changes to officers' pensions, most officers would have to pay a contribution rate of at least 14.2%. Given the significant proportion of their salaries that pension contributions would absorb, officers had an expectation the Staff Side said, that they would receive their pension at their expected retirement age and not years after that time as a consequence of being made compulsorily redundant by their force before retirement age. The Staff Side compared the position of civil servants made compulsorily redundant with that proposed for police officers. A civil servant could take a compensation payment and access their pension at their normal pension age or use the compensation payment to take the pension at an earlier age by buying out the actuarial reduction, thus improving their pension position, the Staff Side said. The Official Side's proposals for mitigation of pension disadvantage involved an option for a police officer to take a compensation payment and access their pension at the deferred pension

⁶ In WR2 it was suggested that the terms of a compulsory severance scheme for police officers should be analogous to the Civil Service Compensation Scheme. One of the current issues before the Tribunal (Recommendation 47) indicated that '...Forces should be empowered to offer financial compensation on the same terms as are available under the Civil Service Compensation Scheme.'

age (at 60, 65, or 67-68, depending on which scheme the officer is a member of) or, to use the compensation payment to buy out the actuarial reduction and take the pension. However, the Staff Side submitted that the pension age may still be later than expected for a PPS member (many of whom retire and take a pension before 55) and the compensation payment may be insufficient to buy out the actuarial reduction. Furthermore, forces had only a discretion – not an obligation – to cover any shortfall. In short, the compensation being offered to police officers was not comparable with that offered to civil servants under the 2010 Civil Service Compensation Scheme. In the Staff's Side's view, this was unfair.

53. The Staff Side said that comparisons had been made by the Official Side between police officers and other groups such as police staff, civil servants, the armed services and British Transport Police but these were not appropriate. Police officers serve and protect the public independently within the framework of the criminal justice system. In the Staff Side's view, the proposed appeal to an employment tribunal would not provide adequate safeguards for officers who had been dismissed under the compulsory severance proposals. In particular, the Staff Side expressed concern about the Official Side's apparent suggestion that, even in the event of an employment tribunal order for reinstatement being made, forces would not necessarily be bound by it. The Staff Side's view was that the Official Side was more concerned with ensuring that the design of the selection process for compulsory severance was such that unfair decisions did not go to the employment tribunal. The Staff Side were not reassured by this approach and stressed that current internal appeal processes for the police service required forces to comply with the reinstatement remedy, where it was ordered. Many police officers, the Staff Side said, viewed recent trends and the introduction of elected PCCs as the gradual politicisation of policing and an undermining of the Office of Constable.

54. The Staff Side said that the police service had already undergone considerable change in recent times arising from the recommendations of the Winsor Reports many of which impacted negatively on police officers'

pay and conditions. As with other areas of the public sector, real wages were continuing to fall as a result of the government's pay policies. It was against this background that the introduction of compulsory severance was being proposed. According to the HMIC, police officer numbers had fallen by over 14,200 in the three years up to March 2013. This now meant there were fewer police officers per head of population than at any time in the last two decades.

55. According to the Staff Side, the Official Side's focus was first and foremost on cost savings, with insufficient attention being paid to police force effectiveness. In the Staff Side's view there was already a discernible adverse impact on force effectiveness. Cost savings were not the same as value for money, the Staff Side said. In its calculations on compulsory severance, the Official Side had concentrated on the potential for immediate cost savings without taking into account the wider, longer-term costs such as the loss of high calibre officers and the costs of recruitment and training to replace those losses. The Staff Side said that compulsory redundancy as a workforce planning tool was risky and costly. A number of unintended consequences flowing from the Official Side's concentration on short-term savings were already evident, the Staff Side said. For example, fewer officers were delaying their retirement beyond their 30 years' service, implying a possible further loss of 5,000 officers in the next three years; individuals leaving the service of their own accord resulted in those remaining struggling to cope with the increased demands made upon them; rising sickness absence levels and concerns that some forces may be reaching a 'tipping point'.

56. In the Staff Side's view, the existing combination of voluntary severance, the amended A19 Regulation process, the WR2 proposals on restricted duties and the flexibility for forces to vary their recruitment strategies all provided sufficient management tools for workforce planning. There was, the Staff Side said, no evidence that compulsory severance was needed to reduce police officer numbers. Moreover, the Staff Side said, it was aware that not all COs were persuaded of the need for compulsory severance or intended to use it. Those who supported its

introduction did so on a 'just in case' basis and this, in the Staff Side's view, was an insufficient basis for introducing such a fundamental change which could have profound effects on the commitment and positive behaviour of police officers.

57. Having set out its case on the proposed introduction of compulsory severance for police officers, the Staff Side then put forward its case on the second issue before the Tribunal, Restricted Duties. The Staff Side said that it agreed with WR2 and accepted that there was a need for some change in this area. It said that the key issue was around the need for clarity, consistency and transparency in the Police Regulations setting out the circumstances and procedures when an officer may be placed on restricted duty and the subsequent arrangements to be made, including adjustments to pay.

58. The Staff Side said that apart from consistency, clarity and transparency, any revised system in relation to restricted duties should also meet the requirements of the Equality Act 2010; be fair, workable and appropriate to the nature of the police service.

59. The Staff Side said that in its experience, police forces have difficulty in managing officers who have disabilities and in particular in arranging reasonable adjustments. The Staff Side said that its position was that where an officer was capable of fulfilling any duties of the Office of Constable, that officer should be paid his normal remuneration, whether or not reasonable adjustments have been made. This position, the Staff Side said, was in keeping with that adopted in WR2. This position differed, the Staff Side said, from that of the Official Side which had argued that any officer unable to perform the full range of duties required for deployability should lose the X-factor and be vulnerable to termination of their service. The Staff Side said this approach would go beyond what had been proposed in WR2 and was likely to result in breaches of the Equality Act 2010 and increased litigation flowing from those breaches.

60. The Staff Side said that any scheme which was introduced would need to be workable and fair to officers and to police forces. In particular, officers must feel that their force would treat them reasonably and fairly in the event that they became sick or injured. Also, it was important that there was in place a proper process for considering any situation in which an officer might be subject to a reduction in pay. The Staff Side accepted that COs needed considerable flexibility in their deployment of officers under their command. However, the Staff Side agreed with the Chairman of the PABEW who said that to expect every officer to be fully deployable all of the time was ‘...a counsel of perfection...’

61. In the Staff Side’s view, officers for whom reasonable adjustments have been made to perform the full duties of the Office of Constable should not be treated as being on restricted duty. The Staff Side’s proposal on restricted duty would ensure that officers who perform duties that require the Office of Constable (or who are capable of doing so) would not have their pay reduced regardless of whether they were classified as being on restricted duty or not. This was consistent with the approach in WR2, the Staff Side said. It was agreed between the two Sides that officers who had been injured or become ill as a consequence of doing their duty would be excluded from these provisions. This was in marked contrast to the Official Side’s position which would disadvantage many officers who would be deemed disabled under the Equality Act 2010. In the Staff Side’s view such a system would in practice be unworkable and contravene the requirements of the Act.

62. The Staff Side said its approach while it reflected WR2 would require some flexibility on the time limits for managing officers on Recuperative Duties – normally six months and, exceptionally, 12 months if appropriate. In any event there should be a process for considering and deciding whether to reduce pay, similar to that which already exists under Regulation 28 and applied by some forces. This would address the inconsistency prevalent across forces in such circumstances, the Staff Side said.

63. One of the reasons given by the Official Side for going beyond WR2 was the impact of officers on restricted duties on force resilience. In the Staff Side's view there was some confusion within the Official Side as to the distinction between operational resilience and front-line duties. The Staff Side said that where, for example, a public order disturbance required officers to be deployed on the streets, there was at the same time also a need for other officers to undertake other police roles within the whole range of police duties. The Staff Side said that it had not found any evidence and nor had the Official Side provided any, to support the contention that officers on restricted duties were adversely affecting police force resilience. A recent major mobilisation exercise was cited by the Staff Side to support its view.

64. In closing the presentation of its case on the two issues before the Tribunal, the Staff Side said that the Official Side had presented its desire to introduce compulsory severance as a workforce planning tool, ostensibly equating cost savings with providing better value for money. The Official Side had failed to take into account the full consequence of this proposal: that it would breach the psychological contract which officers currently had with their forces. All officers recognised this relationship as one embedded in tradition and heritage and fundamental to the Office of Constable. The Staff Side said that a proposed change as fundamental as the introduction of compulsory severance for police officers should be a matter for Parliament to determine. On the issue of restricted duties, the Staff Side expressed some surprise that the Official Side had gone beyond WR2 in the absence of clear evidence that the estimated 3.45% of officers on restricted duties put police force resilience at risk and also, in the Staff Side's view, gone beyond the bounds of what was fair and lawful. The Staff Side reiterated that in its view officers should be paid for the work they do and not what they might be required to do; if officers were in roles which demanded police powers or skills, then they should be paid the rate for those roles. In conclusion, the Staff Side called upon the Tribunal to support its position on both of the issues before it.

CONSIDERATIONS

65. We thank the respective Sides for their clear, detailed and well presented submissions. We have given full and careful consideration to all of the oral and written information presented to us. In reaching our Award we have considered only the evidence put before us by the Sides. In keeping with normal practice, this award does not make reference to each and every point raised by the Sides in their written submissions, orally at the hearing and in answers to questions at the hearing. This should not be construed as an indication that they have been overlooked by the Tribunal. Both Sides are to be commended for the progress made by them in identifying common ground and narrowing some of the differences in their respective positions on some far-reaching and fundamental matters in a concentrated period of time. The Tribunal would also like to acknowledge the work done by the Official Side in developing its draft guidance on the many detailed issues in their proposals on compulsory severance.

66. The Tribunal appreciated the importance to both Sides of the proposal to introduce compulsory severance. Last year the Sides were given additional time to try to reach a negotiated agreement but unfortunately they were unable to do this.

67. Last year, the Tribunal queried the distinction being drawn between the terms 'severance' and 'redundancy' in relation to police officers. On this occasion the Official Side, having obtained legal advice on the matter, clarified that severance was akin to redundancy as generally understood. The legal advice noted that 'severance' was not a term in general use in employment legislation, however it was further clarified that some sections of the relevant legislation would need to be adapted if they were to be applied to police officers. While the Tribunal found these clarifications to be helpful when considering this particular issue, the reason for making a distinction between the two terms remained opaque, in the Tribunal's view, and the explanation for the retention of the word 'severance' in the guidelines proposed by the Official Side appeared

insubstantial. However, the Tribunal noted that the terminology did not appear to be a significant issue between the Sides.

68. The Official Side stressed the need for management to have at its disposal the full range of workforce planning tools, including the power to use compulsory severance, in the context of declining resources for the foreseeable future. The term 'suite' of workforce planning tools was used frequently. The Tribunal noted that COs already had at their disposal a range of tools such as Regulation A19, recruitment strategies, the selective filling or not filling of vacancies arising from predictable retirements and labour turnover more generally and the new voluntary exit scheme. It was also the case that overall forces had shown that they were capable of managing the size of their workforces using the mechanisms available to them, in order to live within their current financial constraints. No evidence was given indicating the proportionate importance of the various measures, some of which are outlined above, which have enabled forces to implement the very substantial reductions necessary in the current March 2010 - March 2015 spending review period. According to HMIC these totalled £2.42bn, that is 17% of forces' 2010/11 baseline costs. HMIC has indicated that forces plan to save 73% of this reduction by cutting the total police workforce by 31,600, including a reduction of 15,400 police officers, and which HMIC says should be substantially (95%) achieved by March 2014.⁷ The Tribunal noted that the voluntary exit scheme, introduced in January 2013, had so far been used by only one force, where it was taken up by 37 officers. It is clear therefore that this major reduction in the number of police officers has been achieved without compulsory severance and with a single force using the now available voluntary severance option.

69. The Official Side presented compulsory severance as a measure of last resort with draft guidance for forces on the measures to be taken before the compulsory severance option could be exercised. However, it was the case that COs would retain the discretion to act as they thought best so

⁷ HMIC, July 2013, op.cit. pp15-16 and 39-40

the measure of last resort could, conceivably, be used earlier than envisaged by the draft guidance.

70. Related to the proposal to introduce compulsory severance were the possible consequences for police officers' pensions. The issue of pensions was raised by both Sides. In the Tribunal's view, the pension implications for many officers in the event that they were subject to compulsory severance, were rather serious for officers below normal pension age. It was the case that officers who had an expectation that they would receive their pensions at a particular age could be faced with a situation where they would have to wait for some years before they could receive their pension. (This would vary according to individual circumstances including which pension scheme an officer was a member of, and possibly, given the proposed discretion to mitigate pension disadvantage, the force they served with). The Tribunal acknowledged forces' right to structure and shape their workforces according to their and the public's needs. However, taken in the round, the Tribunal was not persuaded that the terms of the proposed compulsory severance package were sufficient to reflect the negative change in pension age expectations that compulsorily redundant officers would face through no fault of their own. In the Tribunal's view it would have been expected that in the event of compulsory severance, officers would be able to receive their pensions at the time originally anticipated.

71. The Tribunal recognised that for the Staff Side the introduction of compulsory severance would represent a momentous change. The nature of the key arguments put forward reflected the depth of concern felt by the Staff Side. The 'constitutional' change that Staff Side referred to in the context of compulsory severance was clearly deeply felt but in the Tribunal's view was not entirely persuasive. In particular, the Tribunal was not convinced that the introduction of compulsory severance would set in train negative practices, such as targeting particular officers or groups of officers for compulsory severance, in the manner suggested by the Staff Side.

72. The Staff Side's presentation of the possible damaging effects on the 'psychological contract' between officers and forces was, in the Tribunal's view, more persuasive. Officers were required to accept a number of sacrifices and restrictions in their personal lives and, on occasion, put themselves in harm's way. The knowledge that despite making these sacrifices, an officer could still then be subject to compulsory severance as part of workforce planning was, in the Tribunal's view, detrimental to the mutuality of commitment between officers and forces.

73. There have been many changes introduced into the police service in recent years. On balance, these changes have resulted in a deterioration in police officers' terms and conditions. The introduction of compulsory severance would be yet another change, probably more far-reaching than all of the others. The Official Side had said that compulsory severance was a measure of last resort which was unlikely to be used. In principle, the case for the introduction of such a fundamental measure, whether used or not, needed to be compelling. In the Tribunal's view, this was not the case.

74. The proposals in Recommendations 38, 39 and 71 formed the second part of the Tribunal's terms of reference and were presented by the Sides as a package. The referral was unusual in that there was no real dispute over Recommendations 38 and 71. Both Sides were agreed of the need for change. The key difference lay in the Sides' differing interpretation of Recommendation 39.

75. The Staff Side's position was similar to that adopted in WR2, while the Official Side's approach went beyond that. The Staff Side said that downward adjustments to pay should not be made where an officer was in a role which required the use of police powers or expertise, while the Official Side took the view that an officer who was unable to undertake the full range of duties of a police officer should (after 12 months on Restricted Duty and subject to some possible exceptions) be subject to a pay adjustment. Plainly the number of officers who would face a potential

downward pay adjustment would be less under the Staff Side's position than that of the Official Side.

76. The Tribunal supported the principle that officers should be paid for what they do. This was the norm in the wider world of work. The Tribunal could therefore appreciate the Official Side's arguments in relation to the fairness of paying officers who were undertaking for example police staff roles, a lower amount than their police colleagues who were performing (or were capable of performing) the full range of police officer duties. The application of this principle would be fairer to police staff and to those officers who were fully deployable. The issue of force resilience was highlighted by both WR2 and the HMIC. Against a trend over time of more officers on restricted duty and particularly with fewer officers available in forces nationally, it was especially important in the Tribunal's view too, that as large a proportion of officers as possible should be available for frontline police roles.

77. The Staff Side's concern that adoption of the Official Side's position would be likely to lead to an increase in litigation was regarded by the Tribunal as understandable, given the intrinsic relationship between disability and Restricted Duty and what the Staff Side said about forces' mixed track record in dealing with disability issues. The Tribunal also noted that the Official Side firmly rejected the Staff Side's claim that its proposals would be unlawful. Of course, these are not matters for this Tribunal to determine although we are mindful of the industrial relations implications. In this regard, the Tribunal was reassured that forces would not have carte blanche to proceed as they wished. In particular, the Tribunal noted that any decisions made in respect of pay adjustments would be dealt with on a case by case basis, subject to a right of appeal to a CO and would not necessarily be permanent. The Sides were agreed that Police Regulations needed to be clarified and this would in the Tribunal's view help to ensure that the necessary safeguards were incorporated to avoid the kind of situation envisaged by the Staff Side.

78. As noted above the Sides are broadly agreed on Recommendations 38 and 71. The Tribunal has considered both recommendations separately and its decision as set out in the award is to accept the arbitrable elements of both.

79. In the Tribunal's view the cases presented by the two Sides in relation to Recommendation 39 both have merit. The key difference between the Sides turned on the definition of 'Restricted Duty'. Moreover, the Sides had different views about their respective interpretations of the wording of Recommendation 39, and in particular the phrase '...not capable of work which requires the office of constable...' The Official Side accepted that their proposals modified (what we might term) the 'Winsor formulation' of Recommendation 39 so that the definition (and potential pay reduction) would cover officers who were unable to undertake the full range of duties of a police officer. The Staff Side took the view that their position was consistent with the 'Winsor formulation' – only officers who were not deployable and not capable of performing any work that requires the Office of Constable would be subject to a pay reduction. The Staff Side also proposed that there should be other exceptions to the groups of officers who would be included within the definition of Restricted Duty. On this basis, the Staff Side asked the Tribunal to accept Recommendation 39. The Official Side did not agree with the Staff Side's interpretation of Recommendation 39, or its proposed exclusion of officers who are disabled and others who are not fully deployable (albeit in negotiations the Official Side had been prepared to make some amendments to its original position). The Staff Side emphasised to the Tribunal that the Official Side's proposed definition went beyond the scope of the Winsor formulation. We agree that the Official Side proposals would be a modification of Recommendation 39, however it is this difference which has been jointly referred to us for arbitration. Having considered all the points made by the Sides the Tribunal's decision is to reject Recommendation 39 (as worded) and to accept the Official Side's proposed definition of Restricted Duty.

PAT AWARD

The Tribunal's Award is set out below. The full text of each of the Recommendations from the Winsor Report Part 2 referred to us, is given in our terms of reference in the Introduction and is only repeated here when deemed appropriate. Unless otherwise stated in what follows, the Award relates to the exact wording used in each Recommendation.

Recommendation 46 – The introduction of a system of compulsory severance for police officers with less than full pensionable service from April 2013.
REJECTED.

Recommendation 47 - The payment of financial compensation to police officers with less than full pensionable service who leave the police service by reason of compulsory severance. Forces should be empowered to offer financial compensation on the same terms as are available under the Civil Service Compensation Scheme.
REJECTED. The Tribunal's decision on this follows from that made on Recommendation 46 because this Recommendation is linked to it.

Recommendation 48 - Officers who have been subject to compulsory severance should have access to employment tribunals if they wish to allege that their severance has been unfair.
REJECTED. The Tribunal's decision on this follows from that made on Recommendation 46 because this Recommendation is linked to it.

Recommendation 38 – The Police Regulations 2003 should be amended to specify the procedure for determining the circumstances in which an officer may be placed on restricted duty, the arrangements which a Chief Constable may make for officers on restricted duty, and the adjustments to the pay of such officers.
ACCEPTED. There was no apparent difference between the Sides on the arbitrable part of this Recommendation.

Recommendation 39 – From September 2014, officers on restricted duty should have their deployability and capability to exercise police powers assessed one year after being placed on restricted duty. Officers who are not deployable and are not capable of work which requires the office of constable should sustain a reduction in pay equal to the value of the deployability element of the X-factor, namely the lower of eight per cent and £2,922 per annum.
OFFICIAL SIDE VARIATION ACCEPTED. The Sides' respective positions on the arbitrable elements of this particular Recommendation were the difference between them in the three related Recommendations (38, 39 and 71) on this issue. The Tribunal accepts the Official Side's variation of and position on this Recommendation.

Recommendation 71 - The deployment component of the police officer X-factor should be established to be 8% of basic pay for constables. For other ranks, it should be expressed in cash terms, benchmarked at 8% of the maximum of constables' basic pay.

ACCEPTED. There was no apparent difference between the Sides on this Recommendation.

Prof. John Goodman CBE
Ms V Branney
Mrs M Salmon

(December 2013)



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27 March 2012

DIRECTION TO THE POLICE NEGOTIATING BOARD – TOM WINSOR’S INDEPENDENT REVIEW OF POLICE OFFICER & STAFF REMUNERATION & CONDITIONS FINAL REPORT

Paragraph 41 of the constitution of the Police Negotiating Board (PNB) provides that the Home Secretary may direct the Board to consider and reach agreement on such matters as she may specify, and to set deadlines for the Board to complete its consideration of such matters. This power is reserved for use in those cases in which the Home Secretary considers its use to be justified as a matter of serious national importance to the police service. The power may be used only following consultation with the Independent Chair of the Board.

The Review of Police Officer and Staff Remuneration and Conditions

The commitment to undertake this review was set out in the Coalition Programme for Government as part of a radical programme to improve public services, including the criminal justice system.

The Coalition Programme made clear that action is needed to tackle the deficit fairly and responsibly, and the police, like the rest of the public sector, has its part to play in this. The Government has also made clear its commitment to supporting and maximising frontline services to the public. We are committed to supporting the police service in making the most of its potential and progressing into a flexible, modern twenty-first century service.

It was with these aims in mind that the three key objectives of the review, as set out in its terms of reference, were set:

- use remuneration and conditions of service to maximise officer and staff deployment to frontline roles where their powers and skills are required;
- provide remuneration and conditions of service that are fair to and reasonable for both the public taxpayer and police officers and staff; and
- enable modern management practices in line with practices elsewhere in the public sector and the wider economy.

Part 1 Report

The review's first report, on short-term improvements, was published on 8 March 2011 and, as you know, I directed the negotiating machinery to consider recommendations relating to police officers' remuneration and conditions. As I set out in my Written Ministerial Statement of 30 January and in my letter to you of the same date, after carefully considering the recommendations made by the Police Arbitration Tribunal and PNB I decided to accept them.

The Government believes that these reforms are an important first step in modernising officers' pay and conditions to make them fairer to officers and to taxpayers. However, we remain committed to further reform and to the principles set out in the Part 1 Report – in particular, the link between pay and skills is a key principle – and I have considered the review's final report in this light.

The Final Report

The review's final report was published on 15 March. It is available on the following website: <http://review.police.uk>.

The Government's position

As I set out in the Written Ministerial Statement of 27 March, the Government welcomes this report and I am now referring its recommendations in respect of England and Wales to the appropriate bodies to consider them.

I await full consideration by the PNB of the specific recommendations within its remit before I come to any final decision on these.

Consultation and direction

In my view, the recommendations contained in the report are matters of serious national importance to the police service, which could play a vital role in reforming the police service against a background of deficit reduction, as described above. Taken together, they represent significant changes to the service's structures for pay, conditions, careers and leadership. They also have the potential significantly to affect individual serving and future police officers.

On my behalf, my officials have consulted you on my proposed use of the power of direction, as required by paragraph 42 of the PNB constitution.

The review recommends phased implementation of its recommendations. I am therefore directing the PNB to consider those recommendations within its remit in stages. I have set out below two groups of recommendations and the timescales for considering them. There are a number of recommendations within the PNB's remit that are linked to work to be done elsewhere, in particular by the Policing Professional Body. I intend to direct the PNB to consider these when that work has reached an appropriate point.

Therefore, in accordance with paragraph 41 of the Constitution of the Police Negotiating Board, I direct that the Police Negotiating Board and its standing committees consider all of the recommendations that fall within the PNB's remit and call for changes in the short term to the terms and conditions of officers in England and Wales:

1. Specifically, I direct them to consider and reach agreement and make recommendations to me in respect of the matters set out in Recommendations 46, 47, 48, 50, 51, 54, 64, 74, 83, 86, 87, 88, 89, 94, 103, 112 and 114 of the *Independent Review of Police Officer and Staff Remuneration and Conditions, Final Report*; and
2. complete such consideration and reach the necessary agreement by 24 July 2012 at the latest.
3. I also direct the PNB to consider and reach agreement and make recommendations to me in respect of the matters set out in Recommendations 38, 39, 55, 56, 59, 60, 62, 71, 84, 95, 96, 97, 98, 99 and 101; and
4. complete such consideration and reach the necessary agreement by 24 July 2013 at the latest.

This direction only applies to England and Wales.

The Board should take into account the following factors when considering the Winsor recommendations:

- the review's three key objectives as set out above
- the review's reports, taken as a whole
- the tough economic conditions and the Government's wider economic objectives, which include reduction of the deficit and the challenging but manageable reduction in Government funding to the police over the Spending Review period
- the need to maintain and improve the service provided to the public, taking account of a strong desire from the public to see more police officers and operational staff out on the frontline of local policing and also recognising that there are less visible frontline roles that require policing powers and skills in order to protect the public
- the particular frontline role and nature of the Office of Constable, including the lack of a right to strike
- the Government's wider objectives for police reform, including developing professionalism in the service and the creation of the police professional body, the introduction of police and crime commissioners, the reduction of police bureaucracy and collaboration between police forces and with other public services
- the Government's wider policy of pay and pensions in the public sector, and its proposals on long-term pension reform for the police
- the review's analysis of the value of officers' remuneration and conditions, as compared to other workforces
- parallel work by the police service to improve value for money, including collaboration with the private sector
- the impact of the recommendations on equality and diversity.

Where matters considered by the PNB are linked to those directed to the Police Advisory Board for England and Wales I request that, as the Independent Chair of both bodies, you facilitate coherent consideration and, where possible, a single recommendation from both.

Tom Winsor's other recommendations in respect of England and Wales will be put to the appropriate bodies to progress or will be taken forward by the Government in consultation with partners.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Theresa May', written in a cursive style.

THE RT HON THERESA MAY MP