

PAT Staff Side Oral Submission

Introduction

Firstly, can I say that it is a matter of considerable regret to me that we are before you here again today.

Staff Side has endeavoured, throughout the long process of negotiations regarding the Winsor Review, to be constructive and to facilitate change when it has been shown to be appropriate and necessary.

Indeed, Staff Side has already agreed through the PNB and in parallel at the Police Advisory Board, 19 out of the 29 recommendations it was asked to consider from Winsor.

Staff Side has also, following constructive discussions with the Official Side, accepted changes to the long-term reform of police pensions.

This clearly demonstrates that we have been constructive, and are not seeking to oppose change just for the sake of it.

We have worked with the Official Side and where evidence of a need for change has been found, we have sought to propose changes that are workable and fair, and that do not adversely affect the nature of British Policing or the service offered to the public.

However, Staff Side believes that the proposals before you today are two of the most significant of the Winsor recommendations.

They give rise to the greatest degree of concern and anxiety among police officers and they have the potential to fundamentally alter the nature of service as a police officer.

In one sense, the fact we are here today is curious.

With regard to the recommendations on restricted duty, we agree Winsor's recommendations.

We accept that individuals who cannot fulfil any of the duties of the Office of Constable should not be paid as police officers and of the need for a change to Police Regulations so that there is a systematic and consistent approach.

It is disappointing that the Official Side have gone beyond what we believe was Winsor's intention, and that it is necessary for the PAT to determine this matter.

Compulsory Severance is a matter of serious concern to police officers, and although they are not yet aware of the potential consequences to policing, we believe it will also be of considerable concern to the public.

Staff Side believes that this is of such constitutional importance, requiring changes to primary legislation, that it should be a matter for parliament to decide the principle.

We believe that the proposal of compulsory severance fails to take into account the unique nature of police service, and that the implications of compulsory severance for the way that policing is delivered cannot be overstated.

The independence of police officers stems from the Office of Constable.

The responsibilities the different ranks have at all levels of policing require considerable autonomy.

Each sworn constable is an independent legal official, as are others in the criminal justice system such as judges and magistrates.

We believe that this Office, and this independence, will be damaged by compulsory severance.

The resulting impact on the ability to attract and retain the right calibre of officer; on morale and service delivery; and potentially on behaviours, because officers need to be empowered to do the right thing without fear or favour, will cause harm to the way in which British Policing is delivered to the public.

In all our negotiations we have been concerned to maintain what our Home Secretary has on several occasions now referred to as the “best police officers in the world”.

We do not believe these are empty words – we believe that the government knows that British Policing is a model that is admired around the world.

However this can only be maintained if there is recognition that the fulfilment of the unique and arduous demands on officers is enabled by the assurance that they will remain vested with the authority to act without threat to their independence.

Compulsory severance

It is worth reminding ourselves of the background to compulsory severance, and the context in which it may be introduced.

The PAT has considered compulsory severance once already. In its decision in December 2012 the PAT gave the Sides until July 2013 to conclude negotiations.

Staff Side has grave doubts about the rationale and proposals for compulsory severance set out in Recommendations 46, 47 and 48.

Staff Side has nonetheless attempted, in line with the PAT’s direction, to engage constructively with the Official Side.

We outlined our concerns and sought clarification from the Official Side, in our letter of 14 May and within further correspondence including our letter of 9 July, in respect of:

- Compulsory Severance being used as a measure of last resort
- Selection Criteria
- Voluntary Severance and the pension detriment
- The Right of Appeal

We see that in its evidence to the PAT the Official Side has made much of its proposed guidance to forces on the use of compulsory severance.

I should remind the PAT that guidance to Chief Constables is just that – in fact during the negotiations (fourth meeting minutes Annex C 20), the Official Side stated that once the power of compulsory severance was introduced it would not be possible to predict how it would be used and they did not want to constrain a chief officer's ability to use such a power.

Further, we have sought information as to how officers at risk might be identified, but the Official Side (letter of 23 July Annex C 19) indicated that small pools could be chosen "selected on a team or rank basis".

Whilst this may result in officers deciding to remain in roles with greater numbers of officers to reduce their risk of being selected it should not be forgotten that officers can be moved to specific roles or pools by Chief Officers.

At the PAT hearing last year the Official Side presented an urgent need for compulsory severance in the context of austerity measures. They are doing so again.

The first round of CSR cuts has resulted in the suspension of recruitment by some, but by no means all, forces; it has resulted in the use of Regulation A19 by some, but again by no means, all forces; and it has resulted in the use of Voluntary Severance by just one force, Staffordshire.

The first round of CSR cuts was 20%, the next round has been identified as 5%. Forces have managed the 20% cuts without compulsory severance and without voluntary severance so why is there such an urgent need for compulsory severance as the Official Side claims?

The Official Side's responses have only further reinforced Staff Side's view that it will be used to target individual officers rather than being used to reduce police numbers at times of financial restraint. The Official Side consider that this is essentially an issue of fairness when police staff numbers are also being reduced through redundancy.

Significantly for our members, our concerns regarding the impact of compulsory severance on pensions have not been addressed.

The terms for voluntary severance in the public sector are generally more favourable than for compulsory, which has the outcome that compulsory is not often used.

There is no pension mitigation within voluntary severance for police officers, which means that voluntary terms are less favourable than compulsory terms for many police officers.

This amounts to a structural undermining of compulsory severance being a 'last resort' and makes its use more likely.

Police Officers are likely to see the third part of the 3.2% contribution increase recommended by Lord Hutton next April, which could see most officers paying at least 14.2% of their salary. In accepting this significantly high contribution rate they have an expectation that they will receive a pension at their retirement age, not receive it years after they are entitled to retire because the force has made them subject of compulsory severance.

The Official Side accepts there is a pension disadvantage.

This disadvantage is caused by the fact that, in the police pension schemes, there is a difference between normal pension age and deferred pension age. This is not the case for civil servants, whose pension age is the same as their deferred pension age. If a police officer was made subject to compulsory severance before the age at which they could leave with an immediate pension, they would have to wait until deferred pension age to collect their pension.

It is important to understand that this would affect all officers who have not reached the age at which they could draw an immediate pension at the point of termination for compulsory severance because their pensions would be in deferment.

The core of the Official Side proposal is that officers who face compulsory severance can give up their severance compensation not to improve their pension position, but to (at best) stand still – in terms of the age at which their pension becomes payable.

All officers would be doing here if the disadvantage is bought out completely is preserving his or her pension age and in most cases even giving up all the compensation payment is nowhere near enough to do even that.

I am content to explain the pension disadvantage in more detail later in these proceedings should members of the PAT wish.

We remind you that the Official Side position is that the police service remains the largest single group of the workforce to be excluded from some form of compulsory severance, and has made comparisons to the treatment of police staff, civil servants, the Armed Forces, and British Transport Police.

But the size of the police service here is not relevant. The nature of Policing is.

We believe that the Official Side has overlooked a critical distinction between the ethos and responsibilities of these groups, and police officers who operate within an independent criminal justice system that serves and protects the public, and the proposed right of appeal to an Employment Tribunal in itself will not provide adequate safeguards.

I have spoken to police officers all over England and Wales and can assure you they feel that recent events and the introduction of directly-elected Police and Crime Commissioners is seeing the politicisation of policing.

This is not just idle speculation.

They have expressed real concerns that they will not be able to make decisions without being singled-out in the future because they have taken decisions that do not fit a particular agenda.

As I've already stated, the introduction of compulsory severance could undermine the Office of Constable.

That is not simply my view. I have already made you aware of a letter from Shami Chakrabarti, Director of Liberty, to the Policing Minister, Damian Green. In that letter she stated (Annex E):

“The doctrine of ‘policing by consent’ is the constitutional foundation of our police service and is underpinned by the dual concepts of non-partisanship and accountability to the Rule of Law. Crucially, each constable is an independent legal officer rather than an agent of the State, Executive or police. In our view the bedrock notions of consent and neutrality have also ensured the preservation of a policing framework which simultaneously maintains legitimacy and preserves human rights.

In our view, a power to make police officers redundant directly conflicts with the Office of Constable.”

I believe Ms Chakrabarti's words on this matter should be taken very seriously indeed.

The unique nature of British Policing is a point I will return to, but first I want to set in context the change that you are being asked to consider, and the evidence, if any, that Compulsory Severance is needed.

You are aware that significant upheaval has already occurred in policing.

The reduction in the policing budget during this CSR period has resulted in a cumulative reduction in the numbers of officers.

By March 2013 according to HMIC figures the police service had reduced its officers by 14,200, so that the number of police officers per head of population is now lower than at any time over the last 20 years.

This reduction was greater than expected, suggesting that there is some danger that in fact the measures taken have already created a situation where HMIC are not able to provide accurate predictions.

The Official Side have made much of the contention that they are trying to achieve value for money with both compulsory severance and their proposal on restricted duties.

They refer to value for money or efficiency, no fewer than 21 times in their submission.

However they only actually talk about cost savings.

This is not the same as value for money.

Value for money is a calculation that accounts for both expenditure and results.

The Official Side do not indicate what results, in terms of force effectiveness, would be achieved by these measures.

So how does Official Side measure value?

We contend that the likelihood is that force effectiveness would be diminished by these measures.

Furthermore, we do not believe that the Official Side has adequately considered the longer term costs and risks of the measures.

Looking at compulsory severance, the Official Side has calculated only the immediate costs of severance payments.

But it is well recognised within management that redundancies have indirect costs too, and indeed there are formulae that organisations should use to take these into account before deciding on redundancies.

These include the risk that people of high calibre will leave to find other jobs that are more secure.

We believe this is happening already.

The force then has to pick up extra costs of recruiting and training to replace the experience lost.

As a workforce planning tool, redundancy is known to be high risk and high cost.

The Official Side are in danger of creating unintended consequences that are actually the opposite to those they want to effect.

Immediate cost savings are being prioritised over value for money in the longer term.

The current situation is that only very few officers are delaying retirement and remaining in service beyond their 30 years' service and if this trend continues the service will lose up to a further 5,000 officers on retirement alone within the next 3 years.

The service is also experiencing a reduction in police officer numbers because individuals are leaving of their own accord.

This is being attributed to the changes in officers' terms and conditions, and forces reducing their establishment numbers due to the austerity measures, which has left those remaining experiencing difficulties in coping with the increased policing demand.

This is seeing sickness levels increase and has resulted in the PCC for WMP providing funding from reserves for the recruitment of 450 extra officers.

Even Sir Hugh Orde, the President of ACPO has spoken publicly of the service rapidly reaching the 'tipping point'.

The current existing measures including Voluntary Severance and the amended A19 process, both of which were agreed by Staff Side, together with Winsor's proposed changes to restricted duties that have been accepted by Staff Side provide sufficient management tools to deal with a workforce that forces can also control by restricting or suspending recruitment.

There is no evidence that compulsory severance is needed to reduce numbers.

It is important to point out that not all Chief Officers support the introduction of compulsory severance and have indicated that they will never use it.

Many who want it support it on 'a just in case basis' that they may need it in the future. We believe that this is not justification for introducing such a fundamental change.

The introduction of compulsory severance is likely to have a number of damaging impacts.

In any organisation those enacting roles do so on the basis of an understanding, written or otherwise, that what they are asked to do is in balance with what the organisation will do for them in return.

There are a set of mutual expectations. These govern the relationship between the organisation and the individual, from recruitment, through service, to leaving.

For police officers, this is a delicate balance.

Officers need to be reassured that they can be confident that so long as they carry out their duties properly and efficiently their position is secure.

So long as the balance is maintained, and officers believe themselves to have a deal that is broadly fair and allows them to conduct their role with confidence, the organisation reaps benefits.

These include a motivated workforce, the ability to attract good candidates, and the ability to retain experienced officers and maintain an effective workforce.

We contend that this balance is already under serious threat because of the erosion of existing terms and conditions such as pay and numbers of personnel. To add to this the power of compulsory severance against officers is likely to be a step too far.

It is well known that organisations who breach what is commonly called the psychological contract, or the balance of expectations between the organisation and the people in it, suffer negative consequences.

Many organisations have suffered resultant loss of staff, or an increased tendency for individuals to demand to have their say on what is happening.

You will be aware that earlier this year 33% of police officers voted for the PFEW to seek industrial rights on their behalf – most specifically the right to strike, a view that is likely to gather further momentum should compulsory severance be introduced.

Let me be clear, industrial rights have no place in policing. However when one of the fundamental distinctions that exist between office holders and employees is removed, this becomes difficult to sustain.

Restricted duties

Moving now to restricted duties, Staff Side has accepted the need to change.

We are not simply refusing to modernise, and have, in fact, agreed the fundamental intentions of Winsor's recommendations.

The core of Winsor's proposals is that Police Regulations should be amended to specify the procedure for determining the circumstances when an officer may be placed on restricted duty, and the arrangements thereafter, including adjustments to pay.

Winsor made it clear that he wanted to ensure that "officers who are not deployable and who are not capable of work which requires the Office of Constable" should sustain a reduction in pay, should be assessed after one year, and should be ill-health retired if permanently disabled from working as police officers. Those who are not permanently disabled should be offered a police staff role, if one is available or

alternatively appropriate proceedings should be initiated to dismiss the officer on capability grounds.

In assessing the need for change, we have looked at two types of evidence:

- evidence of the current differences in the ways in which restricted duties are categorised and counted; and,

because the Official Side have introduced the argument that there is a need to make changes in dealing with restricted duties for resilience purposes,

- evidence of the need for change to how people on restricted duties are dealt with.

We have found evidence that there are inconsistencies between forces in the way in which officers are classed as being on restricted duties. (Annex I)

For example, forces who include officers with temporary restrictions - pregnant officers and those on recuperative duties - within their classification have a much higher percentages of officers on restricted duties than those who do not.

Using these definitions of restricted duties leads to false conclusions as to whether reducing the number of officers on restricted duties would benefit so-called operational resilience.

The Official Side appear to be confusing operational resilience with front line duties.

For every public order situation needing officers on the streets, there is a need for officers to undertake other aspects of policing within the full range of police duties to ensure that operational resilience is maintained.

We have not found any evidence that there is a resilience issue related to the numbers of officers on restricted duties that would impact on operational resilience.

Neither has the Official Side provided such evidence.

In fact, there is no study that we know of demonstrating this relationship.

We note also that the Official Side at 3.2.31 of their evidence indicate that 'as at the end of March 2013, police officers on restricted duties accounted for 3.45% of all officers in England and Wales'.

The Official Side have attempted to argue that resilience is a problem by providing data for three circumstances: to maintain front line numbers across the whole service; for national strategic requirements; and at local levels. None stack up.

In every case the Service easily has enough officers available to meet the numbers required and those on restricted duties would not have any impact on this.

Staff Side has, therefore, sought to build on Recommendations 38, 39 and 71 of the Winsor Final Report, as well as 40 and 41 which were referred to PAB.

This we believe delivers a proportionate approach to the issue of restricted duties ensuring that officers are paid for the work they do.

During the discussions within both the PNB and Police Advisory Board the issue of disagreement between the Sides related to the definition of adjusted duties, specifically the individual officers who would be subject to the removal of pay.

It is this matter that has been determined by the Independent Chair as being arbitrable, which has been accepted by both Sides.

Our key considerations in drafting our proposal were the need to provide a systematic approach; the need to comply with the Equality Act; and the provision of a fair and workable scheme.

The main elements of our proposal are that officers for whom reasonable adjustments have been made to enable them to perform the full duties of the Office of Constable should not be included in the definition of Adjusted Duty.

Officers who can only perform some, or none of the duties of the Office of Constable are within our definition. In accordance with Winsor, only those who are not deployable and not capable of any work that requires the Office of Constable or police expertise should have their pay reduced. The sides are agreed that those officers who become injured or ill as a result of police duties will not be included.

By contrast, the Official Side have proposed a system that we believe will mean that most, if not all, of the officers disadvantaged will be disabled under the terms of the Equality Act.

We note the Official Side evidence that goes into great length to seek to justify their proposed blanket treatment of disabled officers.

The Official Side also note that every case needs to be decided individually and they propose that Chief Constables should be able to exercise discretion to allow officers to keep their pay.

That is our concern - the Official Side's proposals will result in litigation each and every time someone suffers a disadvantage if they are disabled.

SS would prefer to have a workable system that recognises the requirements of the disability discrimination legislation and caselaw.

The Official Side has stated that:

“the definition of restricted (adjusted) officers includes any officer who cannot fulfil the complete range of duties required for deployment operationally in every sense...”

We agree with the Independent Chair of PNB and the Police Advisory Board that to expect every officer to be fully deployable, all of the time, to every role is a counsel of perfection and believe the Official Side's position goes much further than Winsor intended, and is likely to lead to breaches of the disability provisions of the Equality Act.

Given that over half the cases currently supported by PFEW to Employment Tribunal concern matters of disability discrimination (58%), we believe that Forces have significant difficulty already managing disability and the Official Side have embarked on a risky course of action that will result in further costly litigation.

Conclusion

In concluding my opening remarks

I would ask you to accept Staff Side's position with regard to compulsory severance.

The case for change is unconvincing, the proposal is fundamentally damaging to the nature of British Policing, and it would cause significant unfairness, including a major pension detriment.

The introduction of Compulsory Severance for police officers is a constitutional matter that will require changes to primary legislation.

In view of the profound implications for British Policing, Staff Side would ask the tribunal to recommend that that the decision to proceed should only be made by Parliament.

With regard to restricted duties, Staff Side has accepted the need for change and has provided a system that is in keeping with Winsor's intentions, and that will avoid costly litigation.

Staff Side was reluctant to agree recommendations 38 and 71 until agreement was reached on the process for determining which officers would be affected. Therefore, Staff Side's acceptance of recommendations 38, 39 and 71 was on the basis that they are a package and included Staff Side's definition of adjusted duty.

That said, in adopting this negotiating position that ensured the three recommendations together with the full facts would be considered by the tribunal, Staff Side had already accepted the principle of recommendations 38 and 71, which I can confirm is still the case.

The disagreement between the Sides relates to the definition of adjusted duties, specifically the individual officers who would be subject to the removal of pay.

Although it is this matter that both Sides have accepted as being arbitrable, on which the tribunal are being asked to rule, we would ask the tribunal to accept the Staff

Side proposals in respect of recommendation 39, together with recommendations 38 and 71.

I thank you for your attention and we are happy to answer any questions that you may have.