

**COLLECTIVE BARGAINING FOR A  
MODERNISED WORKFORCE**

**A PROFESSIONAL APPROACH TO INDUSTRIAL RELATIONS  
IN THE POLICE SERVICE**

**Report to the Home Secretary**

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## Contents

Executive Summary	3
Recommendations	6
Chapter 1: Terms of Reference	9
Chapter 2: The Role and Origins of the Current Negotiating and Consultative Machinery	10
Chapter 3: The Context in which Collective Bargaining Operates	14
Chapter 4: Parameters of the Review	15
Chapter 5: Central and Local Determination of Conditions of Service	18
Chapter 6: Capacity	25
Chapter 7: The Negotiating Machinery	31
Chapter 8: PNB Procedures	40
Chapter 9: Chief Officers	47
Chapter 10: Scotland and Northern Ireland	49
Annex A: Current Role of the PNB in Local Disputes	51
Annex B: Persons and Organisations consulted	53

## **Executive Summary**

### **The Task**

I was invited by the Home Secretary to conduct a review of the negotiating and consultative machinery in the police service, to consult with the parties to these procedures, and to bring forward such proposals for reform as may be necessary to ensure that the machinery is fit for the purpose of supporting the police modernisation agenda.

### **The Context**

A police officer may not decline to discharge the duties of their office, either individually when faced with personal danger, or collectively because of dissatisfaction with conditions of service. In return for their acceptance of this limitation on their freedom of action, it has long been recognised that it is of particular importance that police officers should have confidence in the machinery for determining their pay and conditions of service.

To secure that confidence, negotiating machinery is provided for in statute, so it cannot readily be set aside; it includes a right of access to arbitration; and an independent chair and secretariat ensure fair dealing between the Sides.

Police workforce modernisation requires some new approaches to collective bargaining and industrial relations. The negotiating machinery must be fit for the purpose of taking forward the modernisation agenda, it must also remain fit for the purpose of securing and maintaining the confidence of officers for whom industrial action is not and cannot be an option.

The traditional approach to collective bargaining in the police is similar to that taken in other fields. Some conditions are negotiable (principally pay, hours and leave) and are dealt with by a machinery that provides for formal dispute resolution (the Police Negotiating Board). Other conditions, for example matters relating to training and promotion, are dealt with in a consultative forum (the Police Advisory Board). In common with a number of other fields of employment, the negotiating machineries for the main professional group (police officers) and for supporting staff are separate.

Workforce modernisation requires a more holistic view to be taken of conditions of service. An increased emphasis on personal performance, as one factor determining pay, means that the distinction between negotiable matters (such as pay rates) and consultative matters (such as training) becomes blurred. Flexible deployment of officers and staff, and increased joint working, means that some matters affecting both groups need to be considered jointly, rather than separately. Measures to promote skills acquisition and the retention of experienced officers may need to be targeted differently in different forces, thus requiring some local flexibility in remuneration.

### **The Machinery**

A forum is needed in which issues of workforce modernisation can be considered in the round, which involves all interested parties, and which is able to address all conditions of service. Such a body cannot be one that conducts detailed negotiations, it would be too large, and insufficiently focused. However, a body is needed which can resolve the wider questions of policy and approach, and thus set the context within which smaller bargaining units can operate.

There is a temptation to propose a new, over-arching body for this purpose. This carries the risk that it would be merely a further layer of process, adding cost but not value. Instead, I recommend an expansion of the membership of the Police Advisory Board, enabling it to

represent the entire “police family”, and to provide a forum within which the shared issues of workforce modernisation can be addressed. The detailed negotiations that attach financial rewards to conditions would continue to be conducted through the existing negotiating bodies.

This approach accommodates both the reality that meaningful negotiation is best conducted in focused groups with tightly defined terms of reference, and the requirement to respect the safeguards of the existing negotiating machinery for police officers.

At local level, there is a need for consultative machinery that brings together force management and the representatives of police officers and staff, to consider issues of deployment and other matters arising from the modernisation agenda. Local negotiations, particularly on geographical and skill allowances, will need to be supported by effective dispute resolution procedures, to ensure that unresolved matters do not fester and thus sour good industrial relations.

### **The Challenges**

To be fit for purpose, the machinery must be coherent, flexible and professional.

#### **COHERENCE**

Three aspects of coherence are important. First, the machinery itself must be coherent. This can be achieved by giving a coordinating role to an expanded Police Advisory Board.

Second, whilst local determination of some conditions is appropriate, there must remain a sufficient commonality of conditions of service for police officers to ensure there are no artificial barriers to transfers between forces for operational reasons or career development, and to facilitate mutual aid.

Third, there is a need for a stronger sense of coherence and corporate ownership of policy on the part of the official side of the Police Negotiating Board.

#### **FLEXIBILITY**

It is mistaken simply to equate flexibility with local determination of conditions of service. The starting point should be to identify the nature of the flexibilities that are needed, and then to consider whether these are best provided for in central or local agreements. Police officer conditions of service are relatively centralised, and there is scope for greater local determination of matters such as geographical and skill allowances. However, to move determination of the main conditions of service to local level would create substantial costs of duplication of effort, and run the risk of a fragmentation that would make transfers and mutual aid harder to manage.

Central negotiation should continue in respect of the main conditions of service, where this is the most efficient and effective means of determination. If appropriate, central agreements should provide for some local flexibility in implementation. Local negotiation should be used in respect of geographical and skill allowances, and to provide a general local flexibility to resolve local problems. However, it should be borne in mind that local allowances can themselves create inflexibility, for example in the reluctance of individuals to move from posts that attract allowances.

#### **PROFESSIONALISM**

A more professional approach is needed to collective bargaining and industrial relations at force level. Both sides have a contribution to make to this. Central to this is the development

of local capacity to handle collective bargaining. Delegation from the centre will fail if there is not effective local capacity to handle new responsibilities. That capacity must include an inclusive approach to the management of officers and staff.

To enable workforce modernisation to succeed, and to help bring about the wider reforms of police modernisation, there is an urgent need to improve substantially the ability of police managers to assess individual performance. Without effective assessment of individual performance it is not possible to plan and measure the improvements in that individual performance which are necessary to drive improvements in force level performance. Pay schemes based on competence and performance, business cases to support allowances for skills acquisition, and decisions on the most effective deployment of officers and staff all depend on effective assessment of individual performance. This is such a critical issue for the success of the modernisation agenda that I recommend it should be the subject of a top level performance indicator in the performance assessment framework that is applied to police forces.

### **The Opportunities**

Force reorganisation provides a window of opportunity for the introduction of change. Larger organisations provide the opportunity for greater specialisation within the human resource function, and a more professional approach to performance assessment and industrial relations. A new organisation offers an opportunity for the introduction of new local machinery for consultation and negotiation. The associations representing police officers and staff should be assisted in making their own arrangements to respond to these changes.

The need to take a holistic view of conditions of service, and to consider matters of policy prior to more formal negotiations, has already become apparent in the discussions of the Official Side proposals for police pay, tabled in October 2005. These are being progressed, in the first instance, through a PABEW working party, as the terms of reference of PNB were too narrow to accommodate the range of issues tabled. The need for a wider forum is thus already apparent.

### **Other matters**

The working processes of the Police Negotiating Board are relatively efficient. Unfortunately, the efficient working of processes that operate out of the public view is masked by the impression of a cumbersome and old fashioned forum that is created by the full meetings of the Board. These involve some fifty people, who do little more than rubber stamp decisions reached elsewhere, in smaller, more effective groups. These full meetings are not necessary, and I recommend a means of dispensing with them. This would leave intact the effective parts of the machinery, replacing the full Board with what would be, in effect, an annual conference.

I have considered the impact of my proposals on Scotland and Northern Ireland, and a final chapter makes recommendations concerning the way in which PNB should address matters concerning those countries.

### **Cultural change**

New ways of working, and more local determination of some conditions, involves a cultural change. Such change does not happen solely as a result of recommendations in a report, it requires ownership by those affected. My report contains commentary, and suggestions for consideration by the parties to the negotiating process. Accordingly, I hope that those reading this report will consider the narrative with as much care as the specific recommendations.

## Recommendations

Recommendations are set out in the order in which they are made in the Report. Those dealing with issues of strategic importance to the fitness for purpose of the machinery are highlighted in **bold**.

1. The Home Secretary should use his powers under s.59(6) Police Act 1996 to provide a general authorisation to allow the Police Federation and its branches to be associated with the trade unions representing police staff, to the extent necessary to enable there to be participation by those trade unions and their officials in the PABEW, and by the Federation in force level consultative bodies in which the interests of both police staff and police officers are represented. (Paragraph 29)
2. There should be a service level agreement between PNB/PABEW and the Home Office specifying the maximum time within which regulations and determinations should be drafted, following agreement being reached by the Board. Regulations should be drafted in plain English. (Paragraphs 42 and 43)
3. ACPO, through force heads of human resource, should share information on the exercise of local discretion to determine allowances and other conditions, to minimise any risk of exposure to equal pay claims, and avoid leapfrogging payments. (Paragraphs 85 and 86)
4. The effectiveness of any locally agreed recruitment and retention allowances should be subject to periodic review, in relation to measures such as vacancy rates and turnover. (Paragraph 86)
5. In addressing rationalisation of conditions consequent on force reorganisation, the Police Staff Council should consider whether and, if so, to what extent, any wider harmonisation of conditions between forces is desirable. (Paragraph 97)
6. **Within the top level performance assessment framework operated by HMIC and the Police Standards Unit there should be a performance indicator that “for all officers and staff, personal objectives are set, appraisals are conducted, and PDRs are completed on time”.** (Paragraph 107)
7. Qualitative assessment of PDR completion should be undertaken by HMIC as a part of their regular inspection activity. (Paragraph 108)
8. HMIC, and any successor inspectorate, should maintain the capacity to inspect the human resource management aspects of force performance. (Paragraph 109)
9. The A1 unit for first line assessors should be used to develop the skills of officers who have to carry out appraisals. (Paragraph 110)
10. The professional head of human resources should be a member of the main management Board of each force. (Paragraph 112)
11. **The Police Federation should consider the appointment of a small number of permanent officials to act as Negotiations Advisers to local branch boards, to support them in local negotiations.** (Paragraphs 118 – 123)
12. The Police Federation should consider encouraging its local branch boards to appoint Learning Representatives. (Paragraph 128)

13. Should the Police Federation wish to purchase training for local Learning Representatives from a trade union source, for the avoidance of doubt the Home Secretary should give his authorisation to the resultant association with an outside body. (Paragraph 129)
14. Where warranted by size of post-reorganisation force, the duty time allowed to the Police Superintendents Association should be consolidated so as to create a full time local secondment to Association duties. (Paragraph 133)
15. **A negotiating body, rather than a pay review body, remains the appropriate means of determining police pay.** (Paragraph 140)
16. The existing arrangements for the PNB and PABEW to have an independent chair and secretariat should be maintained. (Paragraph 146)
17. **Two seats on the Police Advisory Board for England and Wales (PABEW) should be allocated to the trade union side of the Police Staff Council, and one seat to the trade union side of the Metropolitan Police Whitley Council; given this there is no need to establish any new national negotiating or consultative body.** (Paragraphs 163 and 178)
18. **The PABEW should be the forum for initial consideration of matters of harmonisation of conditions that cannot be dealt with unilaterally by PSC or PNB, or through local negotiations.** (Paragraph 176)
19. The claim by the trade union side of PSC for an increase in the time allowed to elected officials for the discharge of PSC duties should be considered sympathetically by the Home Office. (Paragraph 180)
20. The Metropolitan Police Service and the MPS trade union side should have observer status on the PSC. (Paragraph 183)
21. **Each police force should establish a joint consultative body that brings together force management and the representatives of both police officers and police staff, to provide a forum in which common issues and concerns arising from workforce modernisation can be considered.** (Paragraph 185)
22. **Any matter that is negotiable, rather than consultative, at national level through PNB, should be treated as negotiable, rather than consultative, if dealt with at force level.** (Paragraph 188)
23. **PNB should prepare a model dispute resolution procedure for use in relation to locally determined, negotiable conditions of service.** (Paragraph 193)
24. **The quorum for PNB meetings should be abolished. It should be replaced by a provision that a formal decision of PNB may be promulgated by a minute signed by the Independent Chair, the Official Side Chair and the Staff Side Chair (or their appointed deputies in the absence of a Chair). The same provision should be made for the Federated Ranks, Superintending Ranks, and Chief Officers Committees.** (Paragraph 212)
25. **There should continue to be quarterly meeting dates set for PNB, at which business should be conducted in “behind the chair” meetings, as at present. Decisions reached in those meetings (including formal failures to agree) should**

- be promulgated by signed minute. A formal record of “behind the chair” meetings should be kept by the Independent Secretariat.** (Paragraph 212)
26. The Sides should continue to hold full meetings on the day before PNB. If a Side wishes to have available on the day of a PNB meeting a number of its members, so as to be able to refer to them in adjournments of “behind the chair” meetings, that should be a matter for each Side. (Paragraph 212)
  27. **Full PNB should hold an annual meeting to consider the annual report of the Independent Chair and any other business tabled by either side; and to provide an opportunity for broader discussion of forthcoming issues.** (Paragraph 212)
  28. Meetings of full PNB, in addition to the annual meeting, should be able to be called at the request of either Side. (Paragraph 212)
  29. PNB and PABEW should develop and implement a communications strategy aimed at promoting a greater understanding within the police service of the role and benefits of the collective bargaining machinery. (Paragraph 216)
  30. The Official Side should take steps to maintain and present a more corporate approach to its policies. (Paragraph 219)
  31. **NPIA should become one of the representatives of the Secretary of State on PNB, and should occupy one of the seats on PABEW now held by the Home Office.** (Paragraphs 222 and 223)
  32. There should be a memorandum of understanding between OME and the two Sides of PNB, so as to define the services that the Independent Secretariat will provide, to define what additional work can be met from within OME budgets, and to provide for the resolution of any disagreements arising from the professional advice of OME statisticians. (Paragraph 232)
  33. Consideration should be given to opening the post of Independent Secretary of PNB to persons who might fill the role on secondment from one of the organisations represented on PNB or PABEW. (Paragraph 234)
  34. The Chief Officers Committee of PNB should give consideration to a pay structure within which posts are allocated to pay ranges by evaluated job weight. (Paragraph 242)
  35. The Chief Officers Committee of PNB should consider whether it would be beneficial for the pay of the chief officer ranks to be determined by, or on the advice of, the Senior Salaries Review Body. (Paragraph 248)
  36. **The Police Negotiating Board should remain a UK wide body.** (Paragraph 251).
  37. **Should it be required, PNB should establish a Scottish Working Group to deal with implementation issues from the current pay negotiations that are particular to Scotland. Should there be a need for such a group to deal with implementation issues on a continuing basis, it should be constituted as a standing committee of PNB.** (Paragraphs 257 and 258)
  38. **The Police Advisory Board for Northern Ireland should no longer be chaired by a Minister, but should have an independent chair.** (Paragraphs 262 and 263)

## **Chapter 1**

### **Terms of Reference**

**1** On 20<sup>th</sup> September 2005 I was invited by the Home Secretary, the Rt Hon Charles Clarke MP, to conduct a review of the negotiating and consultative machinery in the police service (the Police Negotiating Board, the Police Advisory Board for England and Wales and the Police Staff Council). I was asked to consult with the parties to these procedures and to bring forward such proposals for reform as may be necessary to ensure that the machinery is fit for the purpose of supporting the police modernisation agenda.

**2** In consulting with the parties I expressed my willingness to consider any concerns and proposals put to me, whilst making it clear that I would address in particular:

- The appropriate balance between central and force level determination of conditions of service; and
- The relationship between the determination of conditions for police officers and for police staff.

**3** Central to the police modernisation agenda is workforce modernisation, the key elements of which were set out in Chapter 4 of the White Paper “Building Communities, Beating Crime” in November 2004. In addition to the strategy set out in that White Paper, the Home Secretary has now proposed that police services should be delivered through a smaller number of larger, strategic forces. The specific reforms of the White Paper, coupled with the creation of strategic forces, provide the background against which this review has been conducted.

**4** The White Paper refers to England and Wales. The Police Advisory Board for England and Wales and the Police Staff Council are England and Wales bodies. The Police Negotiating Board is a United Kingdom body. My terms of reference relate primarily to England and Wales, but any changes to the procedures of the Police Negotiating Board would affect Scotland and Northern Ireland also. Accordingly, I have consulted fully with PNB constituents in those two countries, and a separate chapter of this report deals with matters pertaining to them.

**5** In this report I illustrate certain points by reference to particular conditions of service. Such illustrations are no more than that, and should not be read as prejudging any matter that may come for determination to either of the Boards (PNB and PABEW) of which I am Independent Chair. The issue for this report is not whether any particular condition should be altered, or should in future be determined locally rather than centrally. The report is concerned with whether the machinery itself has the flexibility and capacity to deal with whatever issues arising from the modernisation agenda are put to it, and to handle whatever mixture of central and local determination may be agreed.

**6** In order to take a realistic view of the sort of issues that might be put to the machinery, I have used as illustrations some matters from current official side proposals for changes to pay and conditions, and some ideas advanced by those charged with carrying forward the modernisation agenda. To the extent that these are the subject of current negotiations, I reiterate that their merits are a matter for the negotiating parties. Nevertheless, I hope that by referring to matters that are currently the subject of debate, my recommendations are grounded in current realities and challenges, rather than hypothetical scenarios.

## Chapter 2

### The Role and Origins of the Current Negotiating and Consultative Machinery

#### **Police Officers**

##### POLICE NEGOTIATING BOARD

**7** The role and status of the negotiating and consultative machinery for police officers is bound up inextricably with the special status of police officers in society. The term “social contract” has been much misused in the context of industrial relations, but it is a reasonable description of the principles that underlie the current arrangements for collective bargaining about the terms and conditions of service of police officers.

**8** On the one hand, Parliament has decided that police officers should not have the right to strike, and that the sole vehicle through which representations about their conditions may be made is a Federation established by Act of Parliament. On the other hand, police officers have negotiating machinery which, as it too is established by Act of Parliament, cannot readily be set aside. The inequality that could arise between an official side with all of the usual powers of the management of an organisation, and a staff side denied recourse to industrial action, is ameliorated by having an Independent Chair to ensure fair dealing between the two sides.

**9** The current arrangements have evolved over a long period of time<sup>1</sup>. They have their origins in the Desborough Report of 1919, which made recommendations on police pay, pensions and conditions, but which was also a response to threats of strike action by the National Union of Police and Prison Officers. The resultant Police Act of 1919 outlawed the union and established the Police Federation as the sole legitimate collective voice of police officers in what became known as the federated ranks.

**10** The Desborough Report had proposed the establishment of a Police Council as a forum for negotiations, and this body, provided for in the 1919 Act, met for the first time in July 1920, under the chairmanship of the Home Secretary. Despite an early flurry of productive activity, the Police Council thereafter met intermittently, with no meetings at all taking place between 1925 and 1930, as the Home Office considered there was no need to call a meeting.

**11** The next major development came with the Oaksey Report in 1949. Hitherto, the Police Council had had an advisory role only. Oaksey recommended the establishment of a new Police Council for Great Britain as a properly constituted negotiating body, with recourse to arbitration on all matters save pensions. The existing Police Councils (for England and Wales, and for Scotland) would become Advisory Boards, dealing with non-negotiable matters such as training, promotion and discipline. The proposals were accepted, but there was a lack of legislative time available to enact them. As such, from its establishment in 1953 the reconstituted body had no statutory basis, but was operated with the tacit consent of the Home Secretary. This lack of statutory authority caused considerable concern to the Police Federation. In 1958 the Government announced the appointment of a Royal Commission on the police, and it was not until the Police Act 1964, which was the vehicle for the implementation of many of the recommendations of the Royal Commission, that the new Police Council and the Police Advisory Boards secured their statutory authority.

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<sup>1</sup> The source for much of the historical information in this chapter is Tony Judge’s history of the Police Federation “The Force of Persuasion”.

**12** In the mid 1970s negotiating arrangements became severely strained, at a time of high inflation and over-riding government pay limits, culminating in the Police Federation withdrawing from the Police Council. An Inquiry into the police negotiating machinery was established in 1978, under the chairmanship of Lord Edmund-Davies. This recommended the establishment of the Police Negotiating Board in its present form, with a Chairman and deputy independent of the sides. The role of the Chair was to “*provide continuity and to supply a neutral voice in negotiation*”. An independent secretariat was also introduced to provide knowledge and expertise. The independent secretariat met one of the criticisms made by the Police Federation of the former arrangements. Under these, although the secretaries of each side had supposedly equal status, forces tended to turn to the official side secretariat for guidance. Now, there was a mechanism to provide guidance on a neutral or agreed basis. The PNB was established formally by the Police Negotiating Board Act 1980, subsequently consolidated in the Police Act 1996.

**13** Edmund-Davies addressed specifically the relationship between the machinery of negotiation and the absence of the right to strike. The report said:

*“Such an important limitation on the freedom of action of members of the police force renders it even more essential that the machinery for determining police pay and other conditions of service commands the confidence of all sections of the service.”*

That conclusion remains as true today as it was 25 years ago. It should guide and inform current deliberations on the future of the negotiating machinery. It is a major reason for retaining the current statutory basis of the negotiating machinery.

#### **POLICE ADVISORY BOARDS**

**14** There are three Police Advisory Boards, for England and Wales, for Scotland and for Northern Ireland. As noted above, they developed from the original Police Council, remaining as a forum for dealing with non-negotiable conditions of service, as the original Police Council gave way to a reformed body, and then to the PNB. Their statutory powers were first contained in the Police Act 1964, and are now consolidated in the Police Act 1996.

**15** All three Police Advisory Boards were chaired originally by Ministers. In the case of Northern Ireland, a Westminster minister still takes the chair. In Scotland, the Justice Minister of the Scottish Executive chairs the Board. In England and Wales, PABEW is chaired by the Independent Chair of PNB.

**16** In England and Wales, chairing by the Minister proved to be unsatisfactory. Ministerial time is at a premium, and is not best used in meetings dealing with the details of conditions of service. In May 2000 Charles Clarke MP, then Minister of State at the Home Office, initiated a review of PABEW. Following consultation, he announced in December 2000 that responsibility for the PABEW would be transferred from the Home Office to the Independent Chair and secretariat of PNB. The Home Secretary retains the power to direct the Board to consider, and to seek to reach agreement by a set deadline, on such matters of serious national importance to the police service as he may specify.

**17** PABEW now operates as an effective body, bringing together the parties as representatives of organisations, not as opposed sides, and advising the Home Secretary on a wide range of issues.

#### **Police Staff**

**18** There are two bodies that deal with the pay and conditions of service of police staff in England and Wales. They reflect the two different inheritances by police authorities of conditions of service for police staff.

#### POLICE STAFF COUNCIL

**19** The Police Staff Council was established in 1995, when police authorities were incorporated in their present form, as bodies constituted separately from local authorities in England and Wales. The PSC is a voluntary negotiating body. Its national agreements are only binding if police authorities and chief constables agree to incorporate them within the contracts of employment of their employees. A small number of non-metropolitan forces choose to operate their own structures of pay and conditions, rather than adopting those negotiated by the PSC. Increasingly, PSC will be a forum in which wider issues of modernisation affecting police staff will be considered, and these wider considerations are bound to influence negotiations on pay and conditions. It would be sensible and desirable for those non-metropolitan forces that do not now follow PSC agreements to do so. Force reorganisation provides an opportunity for this to happen.

**20** The PSC operates on a traditional Whitley Council basis, with each side having its own chair and secretary. There is no independent element. The trade union side secretariat is provided by the largest union, UNISON. The employer side secretariat is provided by the Employers' Organisation for Local Government (which also provides the official side secretariat to PNB). As with PNB, the employer side comprises the Association of Police Authorities (APA), the Association of Chief Police Officers (ACPO) and the Home Office.

**21** The conditions of service agreed by the PSC have their origins in local government conditions of service, a legacy of the pre-1995 employment arrangements for police staff.

#### METROPOLITAN POLICE STAFF WHITLEY COUNCIL

**22** The Metropolitan Police Service has its own collective bargaining arrangements. The conditions of service, and pension arrangements, of the Metropolitan Police staff have their origins in civil service conditions, a legacy of the time when the Home Secretary was the police authority for the Metropolis. The bargaining group comprises the employees of a single employer, so the question of an employer opting in to or out of agreements does not arise. The major union is PCS, the largest civil service trade union.

#### **Cooperation between police staff associations and trade unions**

**23** As police officers and police staff work more closely together, it is inevitable that their representative organisations will have to develop ever closer working relations. Some brief consideration of this is appropriate, as the restrictions now contained in s.59(5) of the Police Act 1996 have the potential to be interpreted in a manner that could hamper the development of such relationships.

**24** s.59(5) requires that the Police Federation and its branches “*shall be entirely independent of, and ... unassociated with any body or person outside the police service*”. This provision has existed in statute since the Federation was first established. It was modified by the Police Act 1964, which added what is now s.59(6), which allows the Home Secretary to authorise the Federation, or a branch of it, to be associated with external persons or bodies in cases approved by him, and subject to such conditions and restrictions as he may specify. This power has been used to allow the Federation to affiliate to Eurocop.

**25** Consideration of the matter is important, because the prohibition on association with others was motivated originally by a fear that police officers might be subject to the

instructions of a trade union, or a confederal trade union body such as the TUC, to take strike action. The motivation for the prohibition was set out in a message sent in 1918 by the then Prime Minister Lloyd George to the then Commissioner of the Metropolitan Police. He said:

*“... the police force is so essential to the stability of social order that at all hazards we must take steps to ensure that we have a body of men at the disposal of the state who can be relied upon. That we cannot command at the present moment as long as you have thousands of men who are under contract to disobey the authorities at the behest of an outside committee.”*

**26** Since 1918 there have been changes in the law governing trade unions and industrial action. Specifically, secondary or sympathetic actions may no longer be taken, and union members must themselves be balloted on industrial action, rather than being called out by a committee. Increasingly, trade unions are seen as having partnership roles with both government and employers, and are regarded, in the European context, as “social partners”.

**27** Against this background, it would be unfortunate if s.59(5) was to be interpreted in a manner that hampered the establishment of joint negotiating and consultative machinery at national or force level, because of the involvement of trade union officials. Clearly, working with police staff themselves does not offend against s.59(5), as they are within the police service. However, the permanent officials of their unions are not themselves within the service, and the unions are the very organisations from which it was once considered the police staff associations should be insulated. The Police Reform Act 2002 enables police staff to fill a range of front line roles, alongside police officers. It would be absurd if this operational cooperation could not properly be reflected in cooperation between the bodies representing the interests of the two groups.

**28** Later in this report I recommend that police staff should be represented on PABEW, and that there should be formal joint consultative machinery at force level. It is the normal convention that trade unions are free to decide who their representatives should be at any meeting, and it is likely that some of those representatives will be full time officials. The professionalism that full time officials can bring should be welcomed, not shunned.

**29** I recommend that the Home Secretary should use his powers under s.59(6) to provide a general authorisation to allow the Police Federation and its branches to be associated with the trade unions representing police staff, to the extent necessary to enable there to be participation by trade unions in the PABEW, and by the Federation in local consultative bodies in which the interests of both police staff and police officers are represented.

**30** I make this recommendation partly as a means of legitimising some current practice, for example the representation of police staff unions on bodies such as the Police Modernisation Group and the Health and Safety Standing Committee, where full time officials often attend. However, the main motivation for the recommendation is to send a clear signal that cooperation between police staff trade unions and police associations is not merely tolerated, but positively welcomed by the Home Secretary.

## **Chapter 3**

### **The Context in which Collective Bargaining Operates**

**31** In the wider public and professional sectors, the collective bargaining and industrial relations machinery has been shaped by significant changes in the ways in which services are delivered. Some of those changes have not, hitherto, affected the police service. It is worth reviewing briefly the main changes, as a number of them influence the police modernisation agenda.

**32** Increasingly, public services are specified, commissioned and managed by reference to outcomes delivered. This is reflected in the increased use of targets, public service agreements, and the use of contestability to test value for money. This approach often means that managers have greater freedom to define the processes that deliver the outcomes. In turn, this has meant that some conditions of service are determined closer to the point of delivery.

**33** In many parts of the public sector, and notably in the civil service, there has been delegation of responsibility for setting terms and conditions of employment to business units. These units range from very large government departments, to quite small agencies. This approach has both benefits and disadvantages, and it is significant that some organisations (including the civil service) now see merit in taking a more coherent and corporate approach to some aspects of conditions of service. It may be that the police service, in coming later to consideration of delegation, will be able to strike a balance which benefits from the experience of others.

**34** In many professional fields, there has been a growth of para-professional occupations. Some (nurses in relation to doctors, legal executives in relation to solicitors) are of long standing. Others (classroom assistants in relation to teachers) are more recent. The deployment of community support officers in relation to police officers is a close parallel. Para-professional support alters the way in which the professional person is deployed, usually allowing a concentration on core professional duties. Harmonisation of conditions of service between professionals and para-professionals has not always been found necessary, indeed in many cases conditions have remained distinct. However, career pathways that enable the para-professional to aspire to and obtain full professional status, and elements of shared training, are more common.

**35** In many professional fields, there is debate about the balance between generalist and specialist approaches to service delivery. In medicine, the distinction between the general practitioner providing primary care, and the specialist consultant, is well established. In law, debate continues about whether solicitors should be trained to be omni-competent, or whether the reality of specialist practice (especially in corporate commercial work) should be recognised by specialisation in initial training and in first, supervised employment. Additional qualifications, or registers of accredited experts, that recognise specialist skills are becoming common.

**36** To a greater or lesser extent, these changes, or ones similar to them, are affecting the police service. They will be given added impetus by the introduction of a smaller number of larger, strategic forces. Force level strategic thinking and planning will not stop with operational issues, it will include conditions of service matters that impinge on delivery.

## Chapter 4

### Parameters of the Review

**37** In conducting the review, I have worked within some parameters, which I have taken as given. Nevertheless, I considered each of them, and had I felt that any one of them constituted a barrier to ensuring that the machinery is fit for purpose, I would have proposed changes.

#### **The Office of Constable**

**38** The first such parameter is set by paragraph 4.13 of the White Paper. This states:

*The Government does not, however, propose to diminish the legal status of the office of constable within the police service or to make police officers employees of police authorities. To do so would risk undermining the operational discretion and versatility, and the personal accountability of constables for their actions, on which the service depends.*

I agree with that conclusion, and with the reasons given for it. However, there are consequences that flow from the status of the police officer as the holder of an office under the Crown.

**39** Because there is no contract of employment, the conditions of service that would normally be found within such a contract are contained instead within Police Regulations, which are made under the provisions of s.50 Police Act 1996. I considered whether this arrangement would hamper either any agreed delegation of determination of certain conditions of service, or any harmonisation of conditions of service of police officers and police staff.

**40** With regard to the former, s.50 (4) of the Act provides that regulations may:

- (a) authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, police authorities, chief officers of police or other persons, or*
- (b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations.*

This power appears to me to make sufficient provision for such local determination as may be required, within the broad overall framework of conditions of service.

**41** With regard to harmonisation, there is no reason why a condition intended to apply to both police officers and police staff should not be expressed in identical terms in Police Regulations and in contracts of employment. Regulations and contracts are both instruments intended to bind those governed by them, and require equal care and precision in drafting.

**42** Police Regulations are seen by some as cumbersome, legalistic and inflexible. The introduction of Determinations, made under the Regulations by the Home Secretary, was intended to speed the promulgation of at least some agreements, by avoiding the time taken to lay Regulations before Parliament. However, the main delays that have occurred have been in the drafting of both Regulations and Determinations by Home Office lawyers. In early 2005 there was a considerable backlog resulting from priority having been given to other legal work. Whilst this was cleared, there needs to be some safeguard against such delays occurring again. I recommend there should be a service level agreement between PNB/PABEW and the

Home Office specifying the maximum time within which regulations and determinations should be drafted, following agreement being reached by the Board.

**43** Regulations are intended, properly, to have precise effect, and to provide certainty as to conditions of service. In this respect they are no different from the terms of a contract of employment. There are now many examples of contracts, regulations and other legal documents that combine precision of drafting with the use of plain English. I commend this approach to those who draft Police Regulations.

**44** Regulations are inflexible only to the extent that the agreements which they embody may be prescriptive. As s.50(4), quoted above, indicates, there is ample scope for regulations to provide for the exercise of discretion. The degree of flexibility is governed by the terms of the agreement reached in PNB, not by the form of its promulgation.

### **The statutory nature of PNB and PABEW**

**45** The second parameter is the legislation governing PNB and PABEW. Each of the Boards is a creature of statute; s.61 Police Act 1996 in the case of PNB, and s.63 of the same Act in the case of PABEW. The 1996 Act carries forward similar provisions from earlier legislation. s.63 provides that the constitution of PABEW (and hence its membership) shall be determined by the Secretary of State. Any broadening of the membership of PABEW thus requires no new legislation. By contrast, s.61 specifies the interests that shall be represented on the PNB. Any broadening of its membership to include police staff would require primary legislation.

**46** I considered the statutory basis of the negotiating machinery for police officers in Chapter 4 above. I concluded that it was a necessary part of the balance whereby police officers are prohibited from taking industrial action but, in return, have their access to negotiation guaranteed by statute. Here, I am concerned only with the narrow question of whether fitness for purpose of the machinery requires the legislation to be amended, for example to create a single statutory body for negotiating the conditions of both police officers and police staff.

**47** I do not consider that legislation should be the first remedy to which resort is made, for three reasons.

**48** First, primary legislation is relatively inflexible. At a time of change and development in the police service, there can be no certainty that a steady state has yet been reached. Change to the machinery should only be enshrined in statute if there is a reasonable prospect that the machinery thereby established is fit to endure for some time in to the future.

**49** Second, there is merit in attempting to make existing machinery work better, and in new ways, before concluding that fresh statutory provision is needed.

**50** Third, Parliamentary time is at a premium. It would be reasonable for Ministers to conclude that other elements of the police reform agenda, for which legislative change is an absolute necessity, should receive a higher priority than a matter in respect of which substantial progress is possible within the framework of existing legislation.

**51** I do not consider that the total amalgamation of the various elements of the negotiating machinery of the police service is the right course of action at the present time, for reasons that I discuss in Chapter 7 below. Accordingly, the need to couch my recommendations within the existing statutory framework creates no difficulty.

### **Union representation**

**52** The third parameter is trade union representation of police staff. There is a debate, in some quarters, about whether Police Community Support Officers should be members of a trade union, or should be subject to the same constraints as police officers, and be represented by the Police Federation. The fact of the matter is that representation of PCSOs by trade unions is now well established.

**53** In a free society, government should be cautious about prescribing the organisations that employees may choose to represent them. If the status of PCSOs were to change, such that they became a form of police officer, then it would follow that they should be subject to the conditions of service and limitations that apply to police officers. In the absence of such a change, it would not be right for government to seek to prohibit PCSOs from being represented by the organisations that now speak for them.

**54** An attempt to interfere with current arrangements for representation would be controversial, and would be opposed by the unions concerned. It might well be seen as a move comparable to the banning of trade unions at GCHQ twenty years ago. It would sour industrial relations at a time at which a sense of common purpose is needed to carry through the modernisation agenda.

**55** In the light of these considerations I have taken as a given the current pattern of representation of police staff in general, and PCSOs in particular.

## Chapter 5

### Central and Local Determination of Conditions of Service

**56** Central and local determination of conditions of service are not alternatives. It is difficult to envisage a system of determination of police conditions of service that did not involve both. At one end of the spectrum, it would be foolish to propose that the pension scheme should be determined other than centrally. At the other end, it would be equally foolish to suggest that shift rosters should be determined other than locally. Between these extremes, it is for consideration whether particular conditions should be determined locally or centrally.

**57** The Civil Service provides an interesting case study. For ten years the determination of pay and conditions of service (other than pensions) for those below the level of the Senior Civil Service has been delegated to departments and agencies. This has provided flexibility, but also fragmentation. It has brought with it some costs. For example, when machinery of government changes have resulted in the amalgamation of parts of different departments, pay rates have had to be rationalised. Inevitably, rationalisation is always upwards. Similarly, when surplus staff from one department are deployed to another, those on higher rates for comparable work have to be accompanied by a “dowry” to meet the higher employment cost.

**58** Within the Civil Service there are now moves to bring a greater coherence and corporate approach to the operation of the delegated system.

**59** The police service is not immune to the changes, described in Chapter 3 above, that have resulted in a shift from central to local determination of some conditions of service, in other parts of the public sector. Added to those changes is the more strategic approach to policing at force level, which will result in a smaller number of larger forces. Strategic decision making on operational matters will need to be supported by conditions of service that enable the workforce to be deployed in support of the strategy determined. This points to greater local determination of some conditions. However, the key issue is not so much whether decisions about conditions are taken centrally or locally, but whether the totality of conditions of service, wherever determined, provides appropriate resources, skills and flexibility to enable force level strategies to succeed.

#### POLICE OFFICERS

**60** From my consultations, there is a clear consensus that the main structure of police officer pay and conditions should be determined centrally, but with greater local flexibility to address operational needs. Even the strongest advocates of a greater measure of local determination (for example, within the Metropolitan Police) favoured the main principles of the pay structure being determined centrally. Both the Scottish Executive and the Northern Ireland Office (the latter with responsibility for a Force that has many of the characteristics of a regional, strategic force) favoured this approach.

**61** Arguments put to me for the maintenance of central determination of the main conditions of service of police officers were as follows:

- Determination of the main conditions of service is a complex and potentially time consuming business. Many respondents saw merit in doing centrally those things that are unlikely to differ significantly between forces; most saw the main pay structure as being one such thing. There was a general concern to avoid duplication of effort, particularly with respect to the determination of

the main pay structure for police officers<sup>2</sup>. In discussion with the Cabinet Office I learned that the most common enquiry received by those advising on the exercise of delegated responsibilities for pay and conditions in the Civil Service is “What is everyone else doing?”. There are real concerns about the inefficiencies and costs that could arise if basic pay determination mechanisms had to be replicated across all forces. Amongst managers there is an appetite for local flexibility, but not for the total burden of determination of pay and conditions to pass to force level.

- Concerns were expressed about the potential for wage drift in a system in which pay was determined locally, a matter that was of particular concern to police authorities. This could arise through a “ripple out” effect from London, or from leapfrogging claims.
- There are operational arguments for the main structure of pay and conditions being common to all forces. Officers move between forces during the course of their careers, and significant differences in pay and allowances between forces could act as disincentives to movements that benefit forces (through acquiring skilled and experienced officers) and individuals (in terms of career development). The recent concern about the impact of a possible requirement to change pension schemes on moving between the Police Service of Northern Ireland and the rest of the United Kingdom is an illustration of this point. It was felt by some that mutual aid arrangements would be harder to manage if there were significant differences of basic pay or conditions between officers in different forces.

**62** Arguments put to me for the introduction of a greater element of local flexibility were couched primarily in operational terms. ACPO representatives identified to me the following operational flexibilities that they wished conditions of service to facilitate:

- the mix of staff, particularly as between officers, community support officers and other police staff;
- the most appropriate local blend of generalist and specialist officers and staff;
- the ability to vary the intensity of deployment, to cope with seasonal or other peaks and troughs of demand, and to handle major incidents;
- the ability to provide incentives to address problems of retention in particular locations, or of staff and officers with marketable skills; and to promote skills acquisition.

**63** These operational flexibilities may be considered in three categories.

**64** First, there are matters that, in the first instance, are purely operational, and require no necessary alteration to conditions of service. Nevertheless, there may be changes in conditions, or the introduction of flexibilities, that may make such operations easier.

**65** In this category is the various mixes of staff, whether between police officers and others, or between generalists and specialists. Flexibility of deployment between different types of officers and staff depends not on the conditions of service of individuals, but on managing by budget, rather than categorised headcount. There may be issues of harmonisation of conditions of service that would facilitate mixed deployment, for example

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<sup>2</sup> One official side consultee told me that he was “neither brave enough to pay less, nor rich enough to pay more” to police officers, and so saw merit in avoiding duplication of effort in determining pay scales.

by reducing the risk that some mixed deployments might give rise to claims for equal pay for work that is claimed to be of equal value. However, it is the case that existing flexibilities are not always fully understood, nor fully utilised by forces.

**66** Second, there are matters where it is sensible to address changes in conditions centrally. A shift from incremental progression through time served, to incremental progression by reference to competence demonstrated and skills acquired is an example of a central change that can drive local flexibility by providing incentives for the acquisition of specialist skills. In other cases, a combination of central and local determination may provide a way forward. For example, if it were thought that annualised hours would provide greater flexibility in deployment, the principle of specifying working time on the basis of annualised hours (and the safeguards that should go with this) might best be determined centrally, whilst particular patterns of working within such a framework would be for local determination.

**67** Third, there are matters that should be determined entirely at local level. In this category one might place:

- local flexibility to pay allowances to promote the acquisition of skills, and to retain those with particular skills.
- local flexibility to pay allowances to retain officers in areas with high living costs, or to meet particular recruitment difficulties.
- local flexibility to make payments generally outside the specific provisions of regulations, to deal with individual difficulties arising in connection with transfers, or otherwise.

**68** Some observations can be made in the light of the views expressed to me about both central and local determination of conditions.

**69** A first and important observation is that the central machinery of PNB and PABEW does some things well. In general, these are matters of the type that most consultees consider should continue to be handled centrally. PNB and PABEW are at their best in dealing with large, complex and sensitive issues. Recent examples include securing agreement on the New Police Pension Scheme (PNB), agreeing a scheme that placed substance misuse testing on a proper legal footing (PABEW), and reaching agreement on fitness standards for recruits (PABEW). Work is currently in hand on new disciplinary arrangements, and on the terms and conditions of officers seconded between forces, and to other organisations at home and overseas. It would be wrong to conclude that the central machinery is unable to deal with those matters for which central determination remains appropriate.

**70** A second and equally important observation is that delegation to local level is not an invitation to Chief Constables to decide unilaterally on all matters so delegated. Local determination requires local consultation and negotiation, with a clear understanding of which matters are subject to local consultation only, and which matters should be for local agreement. Matters of staffing and deployment are sensitive. They affect the working lives and career prospects of individuals, and they have a bearing on the sense that individuals have of the value that is placed upon their personal contribution. An inclusive style of management, that places a premium on securing consent for change, wherever possible, is more likely to achieve lasting success than one that relies solely on a command and control approach.

**71** Related to this is the issue of capacity. In a system in which collective bargaining has been almost wholly centralised, in some forces neither the Official Side nor the Staff Side has much experience of local negotiation. With some honourable exceptions, there are serious questions about the extent to which local machinery has the capacity to handle effectively matters that might be devolved to it. I return to this central issue of capacity in Chapter 6 below. A shift of emphasis from central to local determination has to be accompanied by the development of capacity, on both Sides, to handle local determination.

**72** A system based on central determination of core conditions, and local flexibility, begs the question of what is a core condition? I do not attempt to answer that question directly, as the answer is likely to change over time. The greater the confidence there is in the capacity of local machinery to handle matters in a fair and equitable manner, the greater is likely to be the willingness of both sides to trust matters to that machinery. Nevertheless, I attempted to test current views on matters that might fall on one side or the other of any initial line that might be drawn, by posing a hypothetical question about where an issue of pay structure might best be determined.

**73** I took for this exercise a matter that is perceived by some to be a barrier to flexible deployment, namely the pay difference between police officers employed on desk duties, and working office hours, and police staff engaged on similar or identical work. Police officer pay is a composite rate that has consolidated within it an element that reflects the unique liabilities of police officers to be called upon at any time and to face any risk, and an element that reflects the liability to work a shift pattern covering 24 hours a day and 7 days a week. Arguably, the former liability is not diminished by any particular pattern of working. The latter liability may arise intermittently over a police career, and the composite rate of pay may reflect the intermittent nature of the liability.

**74** The composite nature of police officer pay accounts for a significant part of the pay difference between police staff and police officers. In some fields of employment, the element of pay that compensates for a 24/7 pattern of shift working is calculated and paid separately. I asked a number of consultees, most of whom were in management positions, whether, in the event that there was a proposal to disaggregate the shift element of police officer pay, they saw this as a matter that should be handled centrally or locally. All those I asked saw this as appropriate to central determination.

**75** This reflects three of the considerations that led most consultees to favour the retention of central bargaining machinery for core conditions. First, it is a complex matter, that would require the investment of significant management time, and to duplicate this across all forces would not be efficient. Second, it impinges on the pension scheme (which no-one suggests is suitable for local determination), in that it would have to be determined whether, and if so in what way, separately paid shift allowances were reckonable for pension purposes. Third, if the matter were determined differently in different forces, the disparity in conditions could be inconvenient in dealing with mutual aid, and could amount to a disincentive to movement between forces.

**76** This example illustrates the point that not all matters in respect of which some managers seek greater flexibility lend themselves to local determination. Central negotiations thus have a crucial role to play in providing local flexibility.

**77** The third category of flexibility I describe in paragraph 67 above concerns matters that should be determined entirely at local level. If such local determination is to be meaningful, it should not be fettered by requirements to secure the endorsement of PNB or the consent of the Home Office. Local determination should be the subject of meaningful local consultation with the representatives of those affected. Beyond this, the constraints should be budgetary in nature.

**78** The view was put to me, by some managers, that each force should have the freedom to spend up to a fixed proportion of its total pay bill on locally determined allowances and other payments. The nature of these payments would be a matter for each force, and each force would be judged on the improvements in performance that those additional payments delivered. Any or all of the matters specified in paragraph 67 above might be candidates for such payments, the balance between them should be for local determination. What is crucial to the success of such a scheme is that the business case for such payments should not be second-guessed by the centre.

**79** The percentage of the pay bill that might be used in this way is for consideration. In the first instance, surpluses on the pay budget (for example, those arising from any gap between resignations and replacements) could be utilised. This would amount to no more than a freedom to spend an element of the existing budget outside the constraints of regulations. The amount of new money that might be allocated could well be a matter for consideration in the setting of overall police budgets, and in central police pay negotiations.

**80** In dealing with locally determined additions to pay, two factors need to be taken into account in managing the process.

**81** First, local pay additions can detract from flexibility, as well as enhance it. An officer holding an additional allowance, which is attached to a post, rather than to an individual, will be reluctant, understandably, to move from that post. If an allowance is too great, in relation to the salary available in the next rank above, it could act as a disincentive to seeking promotion. These are not reasons not to use such allowances, but they are factors to be taken into account in managing their use.

**82** Second, care must be taken not to give rise to claims of discrimination. Individually, decisions to pay additional allowances may be soundly based on business cases. Taken together, if all of the beneficiaries are, for example, of one gender, there is a risk that the overall practice may be discriminatory. Careful monitoring is advisable.

**83** Forces should be aware that equal pay claims by officers are likely to be able to be made across force boundaries, that is, by a person in one force seeking to take as a comparator a post in another. The case of *Robertson and others* decided by the Employment Appeal Tribunal, under the Equal Pay Act 1970, involved the applicants, who were employed in one government department, seeking to make comparison with a post in another government department. The case failed, as the Tribunal found that the nature of delegation (set out in Civil Service Orders in Council made pursuant to the Civil Service (Management Functions) Act 1992) was such that there was no longer a “single source” which had responsibility for setting the terms and conditions of all civil servants below the Senior Civil Service.

**84** The case went to the Court of Appeal as *Robertson v DEFRA (2005)*<sup>3</sup>. It was held that civil servants working in one government department could not compare themselves with those working in another. As a result of the delegation of power to set terms and conditions to individual departments, their employment was not governed by common terms and conditions for the purposes of the Equal Pay Act 1970. Nor could they rely upon Article 141 of the European Community treaty, despite retaining a residual power to determine the pay of civil servants, neither the Treasury nor the Minister for the Civil Service exercised sufficient *de facto* control to qualify as a “single source”.

**85** In the case of police officers, it is probable that it would be held that the Police Negotiating Board and the Home Secretary, and the Police Regulations that promulgate

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<sup>3</sup> Industrial Relations Law Reports 363

agreements, did constitute a “single source” of responsibility. As such, I recommend that ACPO, through force heads of human resource, should share information on the exercise of local discretion with a view to minimising any risk of exposure to equal pay claims. It should be remembered that disparities in pay are not unlawful if they are objectively justified in relation to the pursuit of a legitimate aim, and that the means chosen to achieve that aim are necessary and proportionate. The reason for any differential, and the extent of it, must be justifiable.

**86** There should be consultation between force heads of human resource on the general use of premia paid for recruitment and retention. In the National Health Service there is a formal requirement for there to be consultation with neighbouring employers in the service before any such premia are paid. I do not consider such a formal requirement to be necessary in the case of the police service. Health trusts are smaller, and have overlapping boundaries, thus the extent to which they are in competition with each other is greater. Nevertheless, consultation between adjacent forces, to avoid leapfrogging payments, would be sensible. The effectiveness of any recruitment and retention allowances should be subject to periodic review, in relation to measures such as vacancy rates and turnover.

## POLICE STAFF

**87** As noted in Chapter 2 above, the pay and conditions of service of police staff are determined largely at force level, within an overall structure provided by the Police Staff Council. In considering whether this remains appropriate, it is sensible to note the differences between recruitment and retention of police officers, on the one hand, and police staff on the other.

**88** There is limited competition between employers, in a single location, for the recruitment of police officers. With the exception of the British Transport Police, the City of London Police, and the small specialist forces, there is a single police force in each area. In many parts of the country there is thus no significant local competition between different employers of police officers, at the point of first recruitment. The market works at a higher level, in terms of the broad attractiveness of police officer pay and conditions in relation to a range of other occupations requiring comparable levels of education and skill. There is more competition for serving officers, on both level transfer and promotion. This can occur between neighbouring forces (especially in London and the South East), or between police forces and SOCA. The scale and nature of the competition on promotion is well illustrated by the advertisements in police journals for all ranks from Inspector to Chief Constable.

**89** By contrast, there is active local competition for initial recruitment of clerical, executive, administrative and call-handling staff. An individual may readily find comparable work with another employer in the same travel to work area. Relatively small pay differentials can affect recruitment and retention. This suggests that it is sensible for individual forces to be able to position their rates of pay for such staff in relation to the local labour markets in which they have to compete. As each Police Authority operates independently, there is no central “single source” of responsibility for those conditions of employment that would make differentials between forces vulnerable to equal pay claims.

**90** However, police staff roles extend well beyond generalist administrative and other support staff. Specialist police staff roles include Police Community Support Officers, Scenes of Crime Officers, scientific support, fingerprint, and photographic officers. For these specialist roles the recruitment market may bear a closer resemblance to that for police officers.

**91** Current arrangements provide significant flexibility. There is a pay spine determined centrally by the Police Staff Council, but considerable freedom as to how posts are allocated

to pay points. In the report “Modernising the Police Service”, the thematic report on police staff (2004), HM Inspectorate of Constabulary found that:

*Benchmarking across forces is extremely difficult due to the lack of consistency in matters such as grading arrangements, organisational structures and allocation of job titles.*

This illustrates that, inevitably, a more flexible system is also more fragmented.

**92** There are divided views on whether there should be any greater centralisation of determination of pay and conditions than now exists. In general police managers, as represented by those consultees in ACPO posts, do not wish to see any greater centralisation. However, this view is not entirely consistent with a view expressed by some within that group that there should be a totally unified structure of pay and conditions for both police staff and police officers. Those who wish to retain local control over police staff pay generally qualify their views to an extent in relation to specialist staff. Specialist staff may be involved in mutual aid, or may be seconded between forces. In these circumstances a more consistent approach to the pay and conditions of those undertaking similar roles in different forces is seen as desirable.

**93** A different view is taken by UNISON, the trade union representing police staff in forces outside the Metropolis. They wish to see a convergence between the pay and conditions of service of police officers and police staff, leading not necessarily to common conditions, but to a closer alignment. Given the central determination of most police officer conditions, that would involve a greater degree of centralisation.

**94** The position of Police Community Support Officers was discussed in the White Paper “Building Communities, Beating Crime”. In paragraph 4.29 the Government sets out its commitment to “*a coordinated approach to their recruitment, development and rewards*”. Whilst terms and conditions should “*provide the right rewards to recruit, retain and motivate CSOs*” they need also to “*give forces the flexibility they need to maximise the benefits from deploying them*”.

**95** The picture is complex. For support staff, the ability of forces to respond flexibly to the local markets in which they recruit is probably a paramount consideration. For some specialists, harmonisation that would facilitate deployment between forces would be sensible. For CSOs, the thrust of the White Paper proposals is towards a greater commonality of approach to powers, recruitment and training. A balance needs to be struck between reflecting that greater commonality in the approach to pay and conditions of service, and retaining flexibility in local recruitment and deployment.

**96** What is needed is a consideration of whether there are roles, and conditions, in respect of which a measure of harmonisation would be appropriate. Where any such harmonisation is entirely between police staff roles in different forces, that is a matter for the Police Staff Council. Where harmonisation between police officers and police staff is involved, the mechanism that I discuss in Chapter 7 (paragraph 176) should be used.

**97** Reorganisation of police forces provides an opportunity to address some of these matters, as within enlarged forces there may need to be some rationalisation of conditions of service for police staff. That may be an appropriate time for any proposals to be put to the Police Staff Council concerning whether and, if so, to what extent, any wider harmonisation is desirable.

## **Chapter 6**

### **Capacity**

**98** With respect to police officers, a legacy of the current, centralised system of determination of conditions of service is that neither side has needed to develop the experience, skills and capacity necessary to make local determination succeed. To recognise this does not lead to the conclusion that there should be no decentralisation, rather it should lead to an identification of the measures necessary to build the required capacity.

**99** To decentralise in the absence of a strategy for the development of local capacity would be a recipe for failure. Accordingly, capacity building must be a high priority. The cultural change involved in this should not be underestimated.

#### **The official side**

**100** On the official side largely central determination of conditions has meant that there has been little need to develop expertise and, given the other pressures on senior management time, there has been little incentive to do so. This lack of experience and skill was acknowledged by the senior police managers I consulted.

**101** The difficulties that can arise from this lack of expertise are not restricted to matters concerning police officers. In one force, the handling of a job evaluation exercise for police staff gave rise to protest action by the staff affected. Avoidance of disputes at any cost is not a proper management objective. Nevertheless, engendering protest action at an early stage of what should be a fairly normal human resource management exercise suggests shortcomings in consultation, and a lack of professional skill in managing a sensitive issue.

**102** The skill and capacity of senior force management in relation to pay systems was tested, and found wanting, in the implementation of the 2003 pay settlement for the superintending ranks. The settlement, which involved additional increments being available for exceptional performance, was not fully or consistently implemented by a considerable number of forces. Given the extent to which proposals for local determination of some conditions involve assessing performance and identifying skill shortages, this is a cause for concern.

**103** This illustrates what is, perhaps, the single greatest worry about the capacity of forces to carry through the workforce modernisation agenda. Much of what is now envisaged depends upon assessment of performance. This was needed for the implementation of the 2003 pay settlement for the superintending ranks. It will be needed even more if pay progression generally is to depend on performance and the demonstration of competence. It will be needed to identify circumstances in which performance is held back because of a shortage of persons with necessary skills. Without an adequate assessment of overall performance it will be difficult to make a business case for the payment of allowances to promote skills acquisition, or to encourage the retention of those with skills. A more qualified workforce will depend, to an extent, on the acquisition of qualifications through work based learning and assessment. The assessment of performance by first line supervisors is central to this. Mixed deployment of police officers and police staff should depend on an assessment of who, regardless of status, is likely to perform best in roles in which either could be deployed.

**104** For all of these reasons, development of the skills of assessing individual performance must be an urgent priority.

**105** The skills of supervisors and managers in assessing individual performance are needed now for the completion of Personal Development Reviews (PDRs). Completion of annual PDRs rarely achieves the 100% rate that should be expected. Too often, completion of PDRs may be seen as “paperwork” or “bureaucracy”. Yet, performance assessment is central to the overall modernisation agenda. Performance against targets, such as crime figures, can be measured readily. For performance to be improved, there has to be an understanding of how individual contribution to performance can be measured. Force level performance depends on the performance of individuals, and to improve at force level, individual performance needs to be enhanced. It is not over-stating the case to say that without effective assessment of individual performance, it is not possible to plan and measure the improvements in that individual performance which are necessary to drive force level improvement.

**106** It follows that effective assessment of performance is central not only to the implementation of the workforce modernisation agenda, but also to driving up performance more generally. So important is this, I consider it should be the subject of a performance indicator in the top level performance assessment framework operated by HMIC and the Police Standards Unit.

**107** The top level performance indicator should be that for all officers and staff, personal objectives are set, appraisals are conducted, and PDRs are completed on time. Performance against that indicator should be tracked by forces through their management information systems. In most organisations with developed systems of annual performance appraisal, and in particular those where an element of pay may depend upon performance, the normal expectation is that appraisal reports should be completed on all staff who have been in post for 12 months. The police service should be judged against the same expectation of 100% completion.

**108** Such a performance measure is quantitative, it does not assess the quality of reporting, or the effectiveness of follow-up action. Nevertheless, such a quantitative measure can provide the necessary stimulus to ensure that completion of PDRs is seen as an operational necessity, not a bureaucratic burden. Qualitative assessment of PDR completion should also be undertaken, this might best be done by a sample of reports being considered by HMIC as a part of their regular inspection activity.

**109** HMIC will need to maintain the specialist capacity to inspect the human resource management aspects of force performance. It will be particularly important to ensure that this capacity is not lost in any amalgamation of inspectorates within the wider justice sector.

**110** A significant problem with performance appraisal, in many organisations, is that line managers lack the confidence and skill to conduct one-to-one appraisals properly. There are qualifications and units of competence available that cover this task. In particular, the A1 unit (developed by the Employment National Training Organisation for first line assessors of vocational qualifications, but of much wider application) covers the basic skills of performance assessment. The A1 unit is used by some forces to develop the skills of officers who have to carry out appraisals, I recommend that it should be used generally for this purpose.

**111** Looking more positively at human resource management within forces, the proposed reorganisation into a smaller number of larger forces provides an opportunity to embed a more professional approach to the function. The head of HR function in a large force is likely to be more attractive to high calibre HR professionals, than would be the equivalent posts in smaller forces. In a small force, HR resource is, inevitably, generalist. Within larger forces, with correspondingly larger HR departments, a greater degree of specialisation is possible.

This could enable a more professional approach to be taken to matters such as collective bargaining, appraisal, and development.

**112** A more professional approach to HR management should be reflected in the overall management and decision making structures of forces, with the professional head of HR having a place at the main management board within each force.

### **The staff side**

**113** Local negotiation will present the staff side with the same challenges that have been faced by many trade unions as centralised bargaining has been replaced with a greater local determination of some conditions of service. Elsewhere in the economy this has resulted from the policy decisions about the specification and delivery of public services, discussed in Chapter 3 above; and from the privatisation and de-regulation of services and utilities that were previously provided through national organisations.

### **POLICE FEDERATION OF ENGLAND AND WALES**

**114** As would be expected, the Federation is equipped to handle central, rather than local collective bargaining. The professional support and advice available to it is impressive, but is concentrated primarily in the fields of research support and legal advice. There is less professional support for the negotiating function itself.

**115** To a greater extent than is the case with most trade unions, the Federation relies upon elected officials to discharge a majority of its functions. Elected officials are the right people to carry out many functions, especially leadership, governance, policy determination, and most representational roles. However, election is an uncertain process for producing skilled negotiators. As many trade unions have found, good negotiators will often start their careers in elected posts. But it does not follow that election is an infallible process for producing negotiators.

**116** At national level, the electoral process is able usually to produce effective negotiators. To secure one of the key negotiating roles, an individual will first have had to prove himself or herself at the levels of the local branch board and a central committee. It is unlikely that a person who lacked negotiating skills would be regarded as a credible candidate for senior, national office.

**117** However, at branch board level the basis on which a candidate for elected office is judged may be different. Greater weight may be given to the views that a person holds on the issues facing the membership, not least because it is known that most negotiations are conducted centrally. The ability to represent a viewpoint within the Federation may be more important than the ability to lead local collective bargaining. At this first level within the organisation, there will also be an understanding that individuals cannot prove themselves as negotiators unless given the chance to do so. This is the level at which experience is first gained. As with trade unions generally, some locally elected officials will prove themselves to be excellent negotiators, others may not.

**118** The Federation is a democratic organisation, and the way in which it responds to the likely challenge of greater local determination of conditions of service is an internal matter for it to decide. One option it may wish to consider is to employ permanent officials, with negotiating expertise, to assist branch boards in their dealings with force managements. The analogy with trade unions is instructive. Permanent, appointed officials of trade unions support many local negotiations, often taking the lead in negotiating meetings. Nevertheless, their role is advisory to the elected officials, even when leading in negotiations they are

working under the direction of those elected by the members, and within the constraints of the overall policy of the organisation.

**119** Delegation of the determination of some conditions of service to the force level will require a more professional approach to local negotiations. Branch boards may benefit from the assistance of professional negotiators, in the same way that locally elected trade union representatives are supported by the full time officials of the union.

**120** The lessons of history may be instructive. In 1955 the Federation first acquired voluntary funds, contributed by the members. In his history of the Federation "*The Force of Persuasion*" Tony Judge reports that one of the first actions taken once such funds were available "*was to acquire the professional expertise that would allow the Federation to begin to match the formidable machine at Belgrave Square, where the local authority negotiators had a professional team of vast experience.*"

**121** Fifty years ago, the Federation needed to professionalise its central negotiating capacity. Today, the challenge is to bring about a similar professionalisation of its local negotiating capacity. Then, the Federation turned to a former trade union official, James Callaghan MP. He was appointed as a part time consultant, to act (in the words of Tony Judge):

*"as a negotiator, to assist in the preparation of claims and to present them at the Police Council".*

Little adaptation of that brief would be necessary to specify the sort of professional assistance that might be of benefit to branch boards.

**122** A window of opportunity will open shortly, which may make it easier to bring about the appointment of a small number of what I will term "Negotiations Advisers". The requirement is not large, as an Adviser could be expected to cover several branch boards, even after the reorganisation of police forces. The main resource now available to the Federation is elected members who are able to carry out their work for the Federation in duty time. Several of these are, in effect, seconded to the Federation at national or force level. Reorganisation into a smaller number of forces might reduce the number of such full time secondments. The cost of these secondments comes from public funds. Reorganisation provides an opportunity for the Federation to seek to agree with the Home Office that, in return for any reduction in the overall number of secondees, there should be an increase in the grant-in-aid to the Federation to enable a small number of Negotiations Advisers to be appointed.

**123** If such appointments are made, it will be important that those appointed have the necessary skills. The Federation should draw up a specification for the posts that places an emphasis on proven competence in negotiation. Whilst, as is the case with trade unions, some Advisers may be drawn from the ranks of elected officials, recruitment should not be limited to this source. In particular, the creation of these posts should not be seen as providing sinecures for elected officials who are displaced as a result of force reorganisation.

**124** New skills will be needed on the part of elected officials also. I was pleased to learn from the Federation that an internal review of training for new representatives is being undertaken, and that a recent (September 2005) appointment has been made of a Head of Learning and Development.

**125** Those elected to branch boards will be the first source of advice and assistance to members. Individual members of branch boards may well take on specific responsibilities for advising on particular matters, such as the interpretation and application of conditions of

service, disciplinary matters, and health and safety. To that list needs to be added learning and development.

**126** The modernisation agenda involves proposals for pay progression to be based less upon time served in a rank, and more on performance, skills acquired, and competence demonstrated. The local casework handled by branch board members is likely to come to include matters concerning the assessment of performance and competence, opportunities to acquire skills, and training and development generally. Local discussions with force management should include developing shared agendas on these matters.

**127** There are helpful parallels in recent developments in collective bargaining by trade unions. The development of a fully skilled workforce is seen as a prime trade union concern, and shared approaches to workforce development are becoming the norm in many industries and areas of the public service. Such a shared approach will facilitate the development and embedding of the workforce modernisation agenda.

**128** For branch boards to be effective in representing the interests of their members, and to enable them to play a full part in joint discussions of training and development matters, new skills and understanding will have to be acquired. The trade unions have done this through the widespread appointment of Union Learning Representatives at local level. These are locally elected, workplace representatives, who specialise in learning matters, in the same way as other representatives may specialise in discipline or health and safety. Training is available to them, either within their union, or through the TUC. I recommend that the Federation considers encouraging its local branch boards to appoint similar Learning Representatives.

**129** Those individuals will require training, and the Federation will need to consider the best way of providing this. One option would be to explore with the Trades Union Congress (TUC) the possibility of purchasing from the TUC, or an individual union, training equivalent to that provided for Union Learning Representatives. Should the Federation conclude that is the most effective way in which to proceed, and should the TUC or a union be willing to provide such services, I recommend that the Home Secretary gives his authorisation (under s.59(6) Police Act 1996) to the resultant association<sup>4</sup>.

#### POLICE SUPERINTENDENTS ASSOCIATION OF ENGLAND AND WALES

**130** The Superintendents Association is a much smaller body than the Federation, thus it benefits from shorter lines of communication with its force level representatives. With a smaller number of members, likely to be concentrated in future in a smaller number of forces, there is not the same requirement for full time negotiators to support branches. Most support will come directly from Association head office. The need to acquire expertise in staff development matters is less than is the case with Federation representatives, as most members of the Association should have, or should acquire such expertise, in the course of the exercise of their management functions.

**131** The major issue affecting the local effectiveness of the Association is the difficulty that can arise from combining an operational role with acting as an Association representative. If a clash of commitments arises, the operational role has to come first. There

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<sup>4</sup> As noted in Chapter 2 above, section 59(6) of the Act allows the Home Secretary to authorise the Federation, or a branch of it, to enter into an association with a body outside the police service, that would otherwise be prohibited under s.59(5). It is debatable whether a commercial arrangement to purchase services amounts to an “association”, within the meaning of the Act. However, given the past sensitivity of association of the Federation with the trade union movement, a specific authorisation might be desirable, for the avoidance of any doubt as to the legitimacy of any such arrangement.

can also be a tension in dealing, as an Association representative, with a person on the official side who may well be the line manager of the representative.

**132** Only in the Metropolitan Police is there a sufficient number of members in the superintending ranks to warrant a full time local secondment to Association duties. This arrangement has worked well, with the individual concerned contributing also to national level policy work.

**133** Where warranted by size of force, following reorganisation, consideration should be given to consolidating the duty time allowed for Association duties so as to create similar full time local secondments.

#### THE TRADE UNIONS

**134** In general, the issues of local capacity discussed above do not affect the trade unions representing police staff. They already benefit from a well established structure of support from full time union officials, and access to training for Union Learning Representatives.

## Chapter 7

### The Negotiating Machinery

#### National Level Machinery

##### NEGOTIATION OR REVIEW?

**135** Any consideration of the fitness for purpose of the current machinery must consider whether negotiation is the most effective means of determining pay within the police service, and in particular for police officers. The alternative process is that of a pay review body, such as those established for a range of professional and senior public occupations. A number of consultees, whilst not supporting a move to a review body system, felt that a report such as this should at least consider the case for and against such a change.

**136** Periodically, the negotiating process for the pay of police officers has been supplemented by an independent, external review. Usually, this has been as a part of a wider review by a Royal Commission or committee of inquiry. Sometimes, a review has been the mechanism for restoring the relative pay position of the police (for example, the Edmund-Davies review). In other cases, review recommendations have been associated with other proposed changes that the service found less welcome (for example, the Sheehy review). I pass no judgement on the relative merits of these two reports, I merely observe that the two main external reviews that are within the memory of at least some serving officers had very different receptions. The experience of Sheehy may well colour views on the part of the staff associations to the desirability of entrusting pay determination to a review body.

**137** The strength of the review body approach is that it is more strongly evidence based and analytical. The detachment of a review body from the day to day running of a service enables it (in the words of one consultee) to “clear out accumulated clutter”. Experience from outside the service can be brought to bear on deliberations. Negotiation can be a reactive process, with each side responding to the proposals of the other; the review process, involving as it does a single body that receives and evaluates evidence, can be more proactive.

**138** Against this is the high premium that must be placed on securing the confidence of the parties in the machinery. Altering the role of a staff association from negotiating party, to that of one of a number of bodies making representations, would alter radically the compact that provides a trade off between the prohibition on industrial action and guaranteed negotiating rights. From the official side standpoint, whilst a proactive review body may be a driver of change, the change so driven may not be that contained in government policy, as the official side too would become merely a body making representations. The direct engagement in the negotiating process of the parties that make up the official side enables the negotiating process to take full account of the wider policy objectives of both government and force management. Negotiation is a more pragmatic process, which provides opportunities to strike a balance between different interests.

**139** The terms of reference of review bodies vary, with some dealing with the totality of pay and conditions of service, whilst others deal with pay alone. In a system that is moving towards a measure of local determination, those conditions that might be subject to local flexibility would need to be excluded from a national review body remit.

**140** On balance, I conclude that negotiation remains the more appropriate approach to the determination of police officer pay. A deciding factor is the inevitable controversy, and

potential lack of confidence in a review body, that could result from a unilateral decision to withdraw from the police staff associations the negotiating rights they enjoy at present, and which they regard as a part of the overall “social contract” governing their conditions of service. None of those I consulted proposed a change to a review body, and most expressed a strong preference for negotiation.

**141** I qualify this conclusion in one respect. There are aspects of chief officer pay that might be dealt with more effectively through a review body approach, and I discuss this in Chapter 9 below.

#### THE INDEPENDENT ELEMENT

**142** The maintenance of an independent element in the national police officer negotiating process is supported strongly by most of the parties, but particularly by the staff associations. The need for an independent element was questioned, but not challenged, by the APA. The other involvement of APA members in collective bargaining is in unionised environments where there is no independent element.

**143** In most collective bargaining the management side has all of the advantages of control of resource and direction of policy that are inherent in the management function. Against this, the trade union side has the ultimate sanction of withdrawal of labour. If that sanction is not available, there is the potential risk that the management may take unfair advantage of its position. An independent chair offers some safeguard against this.

**144** In the context of PABEW, the change to independent chairing has greatly improved effectiveness. The Board operates in a more collegial manner, and is able to offer robust advice to the Home Office, in a way that was not possible when the Home Office combined the roles of recipient of advice and chair of the body providing the advice.

**145** As noted in Chapter 2 above, the independent secretariat is valued by the staff side as an impartial conduit through which advice on the interpretation of agreements may be provided. A note about this role appears at Annex A.

**146** Overall, the maintenance of an independent element has the support of the parties, and I make no recommendation for change.

#### IS NEW NATIONAL NEGOTIATING MACHINERY REQUIRED?

**147** To answer the question of whether substantially new negotiating machinery is required, the test of fitness for purpose needs to be applied at both the level of strategic determination of the overall approach to conditions of service, and at the level of the determination of the pay and conditions applicable to specified groups of officers or staff.

**148** Changes to the negotiating machinery should not be proposed for the sake of organisational tidiness. Collective bargaining is an inherently untidy business. Very often, the real work is done outside any formal frameworks. Structures need to facilitate this, by providing forums in which the outcomes of informal negotiations can be ratified, finalised or formalised, as well as dealing with some matters entirely within a formal meeting.

**149** At the level of strategic overview, and of the initial working through of strategy, the modernisation agenda brings together conditions of service that are negotiable, and those that are consultative. It brings together some aspects of the conditions of officers and staff, in circumstances in which joint or flexible deployment may arise.

**150** Negotiation of detailed conditions is usually carried out in bodies dealing with a defined range of posts. For example, most PNB negotiations are conducted through committees representing the federated ranks, the superintending ranks, and the chief officer ranks respectively. Wider issues of policy affect all members of the police service. Whilst conditions of service may be a matter for a body dealing with a particular rank or grade, the wider policies that shape those conditions will of interest also to those who have to work alongside the individuals concerned, whether as supervisors or fellow team members. At the consultative stage, there is merit in ensuring that the representatives of all who are likely to be affected by a policy have the opportunity in participating in the consultation process.

**151** The machinery necessary to deal with workforce modernisation issues at the highest level needs to have the following characteristics:

- terms of reference that are sufficiently broad to encompass the full range of conditions of service;
- an ability to deal with the interface between policy and negotiation;
- geographical coverage that matches that of the administration and legislature with policy responsibility;
- a membership that represents all parts of the wider “police family”;
- working methods that enable detailed issues to be pursued through short-life working parties.

**152** I consider in turn each of these characteristics.

**153** Negotiating bodies usually have tightly defined terms of reference, often limited to matters that the sides have agreed, or statute has provided, may be subject to arbitration. As discussed below, this is the case with PNB. A wider remit is needed to address the totality of the modernisation agenda, as this agenda encompasses also such matters as training, qualifications, promotion and deployment. These issues are consultative, and are not, by themselves, arbitrable. A wider remit would allow workforce modernisation proposals to be considered in the round, as matters of policy. Similarly, wider issues of structure, and of progression between ranks and roles, may involve more interests than those represented in a negotiating committee dealing with a defined range of ranks.

**154** These wider issues need to be determined before the formal negotiating process can attach a “price” (in terms of pay, allowances or other benefits) to proposed changes in conditions. At times, there will be strong inter-dependencies between issues of structure and role, and rates of pay, and this may require more than one iteration of the policy issues. Nevertheless, in general it makes for clarity of pay negotiation to resolve the policy and structural issues first.

**155** There is a sensitive interface between public policy and negotiations. In a democratic society, the elected government is entitled to the implementation of its policies, especially where these are set out in White Papers, or have been the subject of debate in Parliament. Negotiation of terms and conditions should not frustrate properly established public policy. Nevertheless, those whose working lives are affected by that policy are entitled to be consulted about the manner of its implementation, and to have their reasonable representations taken into account. There is merit in dealing with that consultation and representation before commencing any detailed negotiations on changes to conditions of service that may flow from a new policy. In this case also, that sequence enables the necessary clarity of purpose of negotiations to be maintained.

**156** Justice issues are now devolved to Scotland, and there is provision for them to be devolved to Northern Ireland. This means that it is possible for different policies on policing

to be pursued in the different countries of the United Kingdom. A measure of harmonisation of pay and conditions of service between countries, so as to facilitate rather than frustrate transfers and mutual aid across boundaries, is a proper negotiating objective. Consideration of, and consultation on a policy that may apply to one jurisdiction only is best conducted in a body representative of that jurisdiction.

**157** A consultative body, constituted on a basis of inclusivity, may be relatively large (but need not be as large as the current membership of PNB). It is important that the working procedures of such a body provide for detailed consideration of the consequences of matters of policy to be conducted through smaller working parties, representative of those with direct interests, and able to co-opt expert advice. In some respects, the workforce modernisation agenda may call for breaking out of straitjackets imposed by the different historical development of conditions of service. This is most likely to be achieved by small working parties that bring together the different groups concerned, in problem solving mode.

**158** The characteristics required of the high level body described in paragraph 151 above are to be found in, or could be developed by the Police Advisory Board for England and Wales.

**159** The terms of reference are sufficiently broad, being to advise the Home Secretary “*on general questions affecting the police*”<sup>5</sup>. The terms of reference also place PABEW at the interface of policy and negotiation, and matters arising from White Papers already come to it. Its scope is England and Wales, there being separate Advisory Boards for Scotland and Northern Ireland. It conducts its detailed business through working groups. Significantly, in December 2005 the sides of PNB agreed that matters concerning workforce modernisation, tabled originally by the official side to PNB, would be best dealt with, in the first instance, through a PABEW working party, to enable matters of policy to be resolved prior to formal negotiations under the auspices of PNB.

**160** The only respect in which PABEW does not now meet all of the characteristics I have described is that it does not have within its membership representatives of police staff. There is a strong case for such representation to be provided. PABEW deals with all matters relating to conditions of service, which are promulgated by way of Police Regulations, and which are not covered by the specific remit of PNB. A significant proportion of these are matters that affect police staff also.

**161** PABEW has dealt with recently, or is dealing with currently, a range of matters that affect police staff. At present, once an agreement is reached within PABEW, proposals reflecting the terms of that agreement are then tabled to the PSC. This is an unsatisfactory duplication, and carries the risk of appearing to downgrade the status of PSC, by leaving it feeling it has little option but to adopt proposals agreed elsewhere. Examples include substance misuse testing, recruitment fitness standards (where fitness for patrol should be common to PCSOs and police officers) and discipline (in respect of which the PSC has been invited to send a representative to meetings of the PABEW working group).

**162** Matters relating to training, qualifications, recruitment and promotion are all issues in respect of which there are likely to be common interests, particularly as a number of individuals see employment as a PCSO as a means of trying out aspects of a police career.

**163** PABEW is a consultative body, it does not operate on the basis of sides. Its current membership includes representatives of all police staff associations, APA, ACPO, HMIC, the Commissioner of the Metropolitan Police, and the Home Office. It would be appropriate for it to become representative of the wider police family. The official side constituents of PSC

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<sup>5</sup> S63(1) Police Act 1996

are represented already on PABEW. I recommend that provision be made for the representation of the trade union sides of PSC and the Metropolitan Police Whitley Council. I recommend that two seats be allocated to the PSC trade union side, and one to the MPWC trade union side. Such a move would be consistent with the intention expressed in paragraph 4.86 of the White Paper to “*formalise the relationship between the police staff unions and the PABEW*”.

**164** Agreements reached in PABEW, on consultative matters, would require ratification through the PSC for them to apply to police staff, but given that all parties represented on PSC would also have representation on PABEW, in the absence of disagreement on PABEW, this should be a formality.

**165** At the level of detailed negotiations of conditions of service, the fitness for purpose test is relatively easy to apply to the existing machinery. The reality is that most negotiations relate to discrete functional groups of officers or staff, or to single conditions that affect all or a defined group. The former negotiations are conducted with the representatives of those affected, not around a “big table” at which all parties are represented, regardless of whether they have an interest in the matter under consideration. The latter are usually taken forward in relatively small working groups. There are dangers that new, all-embracing negotiating forums may prove to be no more than an additional superstructure that adds cost without adding value.

**166** Some of those I consulted started from the position that life would be easier if all conditions of service for police officers and police staff were common. I do not think this is the right approach. If one was establishing a new organisation, with no legacy of inherited conditions of service, such an approach might be possible. However, that is not the position. Not only are there established, separate conditions of service, there are the different approaches necessitated by the different status of employees and office holders. Harmonisation in some areas may be relatively straightforward, in others (for example in pension provision) it would be extremely complex.

**167** In all cases the benefits of harmonisation must be weighed against the costs. Where there is an operational case for harmonisation, then the necessary consultation or negotiation should proceed. Harmonisation should be for an operational purpose, it is not an end in itself.

**168** The machinery needed to deal with any necessary harmonisation should be fit for the task required of it. It should not be over-specified. It is appropriate to identify matters likely to be the subject of harmonisation, and then to consider how they would best be handled.

**169** A starting point is to look at the remit of PNB, as the negotiating body dealing with the larger of the two groups. PNB deals with:

*“questions relating to hours of duty, leave, pay and allowances, pensions or the issue, use and return of police clothing, personal equipment and accoutrements”<sup>6</sup>*

**170** These terms of reference are, necessarily, highly specific. All of the matters mentioned, with the exception of pensions, are matters in respect of which the Secretary of State must take into account recommendations made by PNB before making Police Regulations. The same matters (again with the exception of pensions) are capable of arbitration<sup>7</sup> at the Police Arbitration Tribunal. It is necessary for there to be clarity as to those matters in respect of which the views of PNB must be taken into account, or which are arbitrable. Those matters covered by the specific remit of PNB are negotiable, other matters

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<sup>6</sup> s.61(1) Police Act 1996

<sup>7</sup> s.62(2) Police Act 1996

relating to conditions of service (such as promotion, training, etc) are the subject of consultation only.

**171** In terms of the practicalities of negotiation, to deal with any of these negotiable matters jointly for police officers and police staff would be logistically difficult. There is a very different dynamic in negotiations where a breakdown could lead to industrial action, compared with negotiations on behalf of officers for whom recourse to industrial action is prohibited. Similarly, there is a different dynamic in negotiations in which there is a right to have recourse to arbitration (as is the case with police officers), compared with negotiations in respect of which arbitration must be agreed between the parties. Even if there are voluntary agreements to abstain from industrial action, or to permit unilateral access to arbitration, these can be abrogated, whereas statutory prohibitions and rights of access to arbitration cannot be set aside.

**172** The different dynamics make it inevitable that, even if there were an over-arching negotiating machinery covering police officers and police staff, the actual negotiations would be conducted separately. As such, the value that would be added by combining the machineries is limited, and is likely to be outweighed by the additional cost of another layer of decision making.

**173** Of the conditions of service that are negotiable within PNB, two were mentioned to me as possible candidates for harmonisation. One is pay, in respect of which two issues were put to me by some individuals on the official side. The first is the composite nature of police pay, mentioned in Chapter 5 above, which can give rise to significant differences between police officers and police staff working side by side. Any change to this would involve negotiations in PNB only, as no change is likely to be proposed to police staff conditions such that all police staff would also be paid on composite rates. As such, if the sides were minded to pursue the matter, it would not require any change to the negotiating machinery.

**174** The other pay issue is that of whether there should be a common pay spine covering both police officers and police staff. A pre-condition for this would be a change in the composite nature of police pay, itself a matter of some complexity. I am of the view that a common pay spine falls in to the category of being tidy, rather than necessary. Reaching agreement would be fraught with the difficulties of the different negotiating dynamics I have referred to above, and disagreements would, at least in theory, be subject to resolution through two different arbitration mechanisms. (Although in practice, both are operated by ACAS, so difficulties might not be insuperable.) It is likely that whatever benefits are perceived as flowing from a closer alignment might be achievable in other ways. In this context, I note that common pay arrangements for professionals and para-professionals in other fields have not been regarded as a priority. The official side of PNB and PSC is the same, and it would be open to the official side to make pay proposals that, if agreed, would achieve a closer alignment. Alternatively, if local flexibility, expressed as a proportion of the total pay bill, was agreed, it would be for forces to use that flexibility to agree local allowances to achieve whatever local alignment was felt to be necessary.

**175** The second matter mentioned as a possible candidate for harmonisation is the payment of certain allowances, particularly those relating to working away from the home base. This arises because certain specialist police staff may now be deployed on mutual aid, or on secondment, and there would be an obvious inequity in treating them differently from police officer colleagues deployed on the same incident, or seconded to the same body. However, resolving any such inequity does not require the addition of another layer to the negotiating machinery. All that is needed is agreement in the Police Staff Council that such specialist staff should receive the same allowances as officers or, alternatively, local agreements at force level to that effect.

**176** Whilst I consider that most matters of harmonisation are capable of resolution within the existing national machinery, or through the use of local flexibility, there remains the possibility that matters might arise that required a more formal, joint approach. In some such cases the matter might have been dealt with originally at PABEW, in the manner described in paragraphs 158 - 164 above. In such cases, initial disposal of the matter by PABEW could include the establishment of a working party under PABEW auspices, or remittance of the matter to a joint PNB/PSC working group, depending on whether the matter was subject to consultation or negotiation. Matters that were of the nature of a straightforward claim for change, unrelated to wider strategic issues, could be dealt with by the establishment of a working party representing the interests of both PNB and PSC to progress the matter, and to put recommendations to both bodies. The machinery for dealing with this should be an informal meeting between the joint secretaries of PNB (independent, official side and staff side) and the trade union side secretary of PSC. In the event of difficulty in progressing a matter, the good offices of the chairs of PNB and PSC should be available. If no agreement to establish a joint working party could be reached, the matter could be tabled to either or both bodies unilaterally, and dealt with through the conciliation or other dispute resolution procedures of that body.

**177** With the official side being common to PNB and PSC, it is relatively easy for a joint official side view to be established on any matter of harmonisation. It would be reasonable to expect that there would be liaison between the staff side of PNB and the trade union side of PSC on any matters of common interest.

**178** I conclude that, subject to the extension of the membership of PABEW that I recommend above, and to sensible informal joint working between PNB and PSC on matters of common interest, there is no need to establish any new national negotiating machinery.

#### POLICE STAFF COUNCIL

**179** In the context of the fitness of the Police Staff Council to play its part in the processes I have discussed above, two matters require consideration. The first is the resource available to the PSC. On the official side it is served by the Employers Organisation for Local Government, as is PNB. On the trade union side, it is served by a UNISON full time official (amongst his other duties), and by elected representatives. In terms of numbers represented, it appears to me that the trade union side is less well resourced, at national level, than is the staff side of PNB. The staff side of PNB has the benefit of the services of a number of police officers, holding elected positions within their associations, who are seconded to association duties.

**180** I am aware that the trade union side of the PSC has submitted a claim to the Home Office for an increase in the time allowed to its elected officials for the discharge of their PSC duties. The details of this claim are a matter for the Home Office and the trade union side. However, my recommendations will involve a further increase in the time commitment of the officers of the trade union side of the PSC, in particular to PABEW and to any joint working parties established. In the light of this, I recommend that sympathetic consideration be given to the claim submitted by the trade union side.

**181** The second matter is the relationship between the PSC and the Metropolitan Police Service. I do not propose that the Metropolitan Police should adopt the pay and conditions of service negotiated through the PSC. The case for these continuing to be determined within the MPS is strong. There would be significant harmonisation issues, given the different origins of conditions of service, in the civil service and local government respectively. There are separate pension schemes. The MPS is able to deal with London weighting within its substantive salaries, given that all of its staff are London based. These seem to me to be

sufficient reasons for maintaining the existing arrangements concerning the determination of pay and conditions.

**182** Nevertheless, the modernisation agenda introduces a number of matters that are consultative, rather than negotiable. Some of these, and particularly those relating to deployment, ought to influence the Metropolitan Police, just as current practice in the MPS ought to influence the wider national agenda. To the extent that some of these matters will be dealt with through the PSC, there should be an involvement of the MPS.

**183** I consider that an appropriate way forward would be for the MPS and the MPS trade union side to have observer status on the PSC. Given the current constitution of the PABEW, and my proposals for the police staff trade unions to be represented on PABEW, these MPS interests would be involved in any PABEW level discussions anyway.

### **Local Level Machinery**

**184** Greater local determination of some conditions of service will require effective local negotiating machinery. In general, there are well established arrangements for local consultation and negotiation between chief officers and police associations, and between chief officers and staff trade unions. However, it is less clear that there are effective consultation arrangements in place for dealing with some aspects of the modernisation agenda, and in particular for discussing issues of deployment that affect both officers and staff in a forum that brings together the representatives of both groups. The HMIC thematic report *“Modernising the Police Service”* found that:

*“Some forces’ trade union representatives were consulted through one ACPO officer whilst police officer representatives reported to another, with no obvious means of identifying common issues and concerns.”*

**185** Each force should have a joint consultative body that brings together force management and the representatives of both police officers and police staff, to provide a forum in which the increasing number of *“common issues and concerns”* arising from workforce modernisation can be considered.

**186** Increased local determination of some conditions of service for police officers will bring with it a requirement for greater professionalism in local collective bargaining. In addition, there will need to be clearly agreed and understood procedures for handling negotiations at force level.

**187** A key matter will be clarity as to which issues are consultative, and which are negotiable. With respect to negotiable issues, there is a premium on reaching agreement, and there is normally access to some process of dispute resolution in the event of a failure to agree.

**188** Broadly, those conditions that are negotiable at national level should be regarded as negotiable at force level also, in the event that any of them are subject to local determination. Nationally negotiable conditions are those specified in the terms of reference of PNB (quoted in paragraph 169 above). Pay supplements and allowances are the negotiable matters most likely to be determined locally.

**189** Dispute avoidance and dispute resolution will take on great importance at force level, and will require sensitive and professional handling. It will be important to avoid situations in which unresolved matters are left to fester, thus souring local industrial relations. It must be remembered that the organisations representing police officers cannot use a tactic commonly employed by trade unions to draw a line under an unresolved issue. If negotiations have not

produced a desired outcome, and members remain dissatisfied, it is possible for a union negotiator to ask members if they wish to be balloted on the question of industrial action. In most cases, members do not wish to press their dissatisfaction to that point. By inviting the members to “put up or shut up”, it is possible for the union to move on from the issue.

**190** In circumstances in which industrial action is not an option, it is important to find other ways of reaching closure of an issue. Usually, a professional approach to the negotiations will avoid one side being left feeling that it has been sold short, even if its desired objective was not achieved. On the official side, this will require high quality industrial relations skills, and an inclusive approach to management. On the staff side, it may be that the involvement of professional negotiations advisers, as discussed in Chapter 6, will assist.

**191** Nevertheless, it must be recognised that there will be circumstances in which a failure to agree at force level should be able to be referred to an agreed dispute resolution process. There is an established procedure for handling a failure to agree that involves the interpretation of a national agreement. This involves an interpretation being provided by the Joint Secretaries to PNB; if such an interpretation cannot be agreed, the matter can be tabled to full PNB, from whence formal conciliation, and ultimately arbitration, is available. The procedure is set out at Annex A to this report.

**192** Dispute resolution procedures for negotiable matters determined locally will have to be developed. In Chapter 5 (paragraph 67) I identified the types of issue that might fall to be determined at force level. Local determination of these issues would be undermined significantly if the dispute resolution process was no more than a provision for disputes to be referred for central resolution. There is a need for a local dispute resolution procedure.

**193** This might involve conciliation, which could be conducted by an independent person appointed by ACAS, or by the Independent Chair or Deputy Chair of PNB. It could involve arbitration, probably conducted by an arbitrator appointed by ACAS. The precise details of such arrangements will require agreement between the parties, rather than imposition from outside. I recommend that PNB should prepare a model dispute resolution procedure for use in relation to locally determined, negotiable conditions of service.

**194** Forces should be invited to adopt, through their local negotiating and consultative machinery, local procedures based upon the model procedure. It is for consideration, at force level, whether the model should be adopted in respect of locally determined conditions for police officers only, or for both police officers and police staff. I am conscious that local bargaining for police staff is already established and, in some forces, this may well include dispute resolution procedures. It is not my intention that these should necessarily be set aside, if they are working well. Nevertheless, there is an opportunity to agree a single force model, covering both staff and officers. One reason for recommending that the procedure to be considered by PNB should be a model, not a prescription, is to provide for the possibility that there might be local agreement on a single procedure at force level.

## Chapter 8

### PNB Procedures

#### **PNB meetings**

**195** The Police Negotiating Board is a very large body, which results in its formal meetings being procedurally cumbersome. It works most effectively through smaller working groups and committees, where most of the real business is transacted. This can leave those who are involved only in the formal meeting a little frustrated, particularly when the scheduling of business on the day of the formal meeting leaves large numbers of people waiting for reports back from the small meetings that are conducting the actual negotiations.

**196** PNB is large for two reasons. First, it reflects the tripartite nature of control of policing. The Home Office (in terms of national policy), the police authorities (in terms of governance of individual forces) and the Chief Officers (in terms of force management) all have a legitimate interest in the outcome of negotiations. The associations representing police officers are also stratified by rank (federated ranks, superintending ranks, and chief officer ranks). Each side thus has three constituents.

**197** Second, this total of six constituencies is then replicated across the three jurisdictions of England and Wales, Scotland, and Northern Ireland. The Scottish Executive and the Northern Ireland Office have interests equivalent to the Home Office; and the local authorities in Scotland and the Policing Board in Northern Ireland have interests equivalent to those of the police authorities in England and Wales. There is a separate Association of Chief Police Officers (Scotland). The federated and superintending ranks are represented by independent associations in Scotland and Northern Ireland.

**198** The dilemma for PNB is that, on the one hand, every one of the organisations now in membership has a legitimate interest in the negotiations. The case for maintaining a sufficient degree of commonality of conditions to facilitate career movements and mutual aid across national boundaries within the United Kingdom means that simply removing Scotland and Northern Ireland from the machinery is not a sensible option. On the other hand, there is a strong consensus that PNB is too large a body for its formal meetings to be a genuine negotiating forum.

**199** Despite this, PNB is a relatively efficient negotiating body, in terms of its outcomes. Matters of some complexity have been handled within demanding timetables – most recently, the agreement on the new police pension scheme. It is the processes, and especially those of the formal meetings, that are less efficient. The deficit in efficiency lies not in the transaction of the business, but in the wasteful use of the time of individuals whose main function is merely to ratify agreements reached in smaller meetings.

**200** Some benefits are claimed for the large meetings of full PNB. The presence of full representation of both sides enables finality to be reached, as a position established in a smaller working meeting can be ratified on the same day. Some members, particularly those from the smaller constituents, value the opportunities for networking and informal contact that arise. In the particular case of Northern Ireland, the process of formal ratification in full PNB serves clearly to remove the final decision on an issue from the sometimes politicised environment in which policing has to operate.

**201** Nevertheless, the reality remains that not only does full PNB not act as a negotiating body in any meaningful sense, but it now conducts its business in a way that ensures that all

real negotiations are conducted, and decisions taken, in smaller bodies that are better suited to the discharge of business.

**202** On the day of the full PNB, the actual business is conducted in what are known as “behind the chair” meetings. These are attended by the Independent Chair, Deputy Chair and Secretary, together with the Chair and Secretary (and perhaps one or two others) from each side. These meetings frequently adjourn briefly, to enable the Sides to consider their positions, or to take instructions. Sometimes, the Independent Chair will meet separately with each side to explore ways in which agreement might be reached. A similar approach is taken to the progressing of business for the meetings of the Committees dealing with matters affecting exclusively the Federated Ranks, the Superintending Ranks, or the Chief Officers.

**203** A considerable amount of business, particularly of a non-contentious nature, is dealt with through the quarterly Joint Secretaries meeting. These meetings are chaired by the Independent Secretary and are attended also by the secretariats of the staff and official sides.

**204** Recently, use has been made of conciliation as a means of progressing business. Technically, conciliation is a stage that is entered following registration of a failure to agree in full PNB. Following conciliation, if no agreement is reached, the matter can go to arbitration. In the past, conciliation was a brief formality, with failure to agree leading to arbitration. In the past two years, conciliation has been a more active process, with the Independent Chair, assisted by the Deputy Chair, chairing the conciliation. A conciliation usually involves the Independent Chair meeting separately with the Sides, as well chairing joint meetings. Sometimes, conciliation meetings are adjourned to allow the Sides to give further consideration to each others’ positions. Where it may assist resolving an issue, research into the matter in dispute may be commissioned.

**205** Used in this way, conciliation has become a form of active negotiation. In a sense, conciliation meetings are doing what full PNB should perhaps do, were it not so large. The extent to which conciliation has been seen as an extension of a negotiating process, rather than a brief and formal precursor to arbitration, is demonstrated by the fact that in the last two years no matter that was referred to conciliation has proceeded to arbitration.

**206** In sending matters to conciliation, full PNB is consciously removing itself from further involvement in the negotiating process. If the matter is not resolved, then it may be sent to arbitration, without further reference to full PNB. If it is resolved, the involvement of full PNB is limited to a ratification of the agreement reached, to enable it to go forward to the Secretary of State so that any necessary regulations or determinations may be made.

**207** A complex matter is referred, normally, to a working group chaired by either the Independent Chair or Deputy Chair. Matters of policy or principle are dealt with in the full working group, with technical details being referred, if necessary, to a Technical Working Group. The full working group may sometimes, and technical groups will usually involve experts who are not themselves members of full PNB.

**208** The overall effect of these arrangements is that full PNB itself does not discuss anything. Everything that comes to it has been settled in advance of the meeting. The outcomes of full PNB are limited to:

- ratifying an agreement reached “behind the chair”, by Joint Secretaries, or in a working group;
- referring a matter to the Joint Secretaries, a working group or (through registering failure to agree) to conciliation;

- adjourning a matter to a later meeting, to allow one side to consider further a proposal made by the other.

**209** It is clear from this that those who attend full PNB are content for the actual negotiations to be conducted in small meetings, appropriate to the nature of the business, so long as they can have their involvement in their own Side meeting.

**210** The fact that full PNB itself appears merely to rubber-stamp decisions reached elsewhere should not disguise the fact that within one or both of the sides there may have been heated debate about the merits of an issue. However, it does not follow from this that it is necessary for the full membership of each side to be present for a formal process of ratification. The extent to which the full membership of each side is consulted on the day of full PNB is now reduced to an extent, by the (welcome) practice of the Sides holding their meetings on the day before full PNB.

**211** The greatest amount of pointless waiting for formal meetings occurs in respect of the Superintending Ranks and Chief Officers Committees. For these committees the staff side is small, and is often no larger than the number of people attending the “behind the chair” meeting. The business is transacted in the “behind the chair” meeting, and the conclusions are then repeated in front of the other official side members who have waited for the formal meeting.

**212** I recommend that PNB should reform its procedures, so that they are less wasteful of the time of those who attend. Clearly, the procedure must continue to command the confidence of the parties, so any reform should be on an agreed basis. I offer the following for consideration:

- The quorum for PNB meetings should be abolished. It should be replaced by a provision that a formal decision of PNB may be promulgated by a minute signed by the Independent Chair, the Official Side Chair and the Staff Side Chair (or their appointed deputies in the absence of a Chair). The same provision should be made for the Federated Ranks, Superintending Ranks, and Chief Officers Committees.
- There should continue to be quarterly meeting dates set for PNB, at which business should be conducted in “behind the chair” meetings, as at present. However, decisions reached in those meetings (including formal failures to agree) would be promulgated by signed minute, as proposed above. A formal record of “behind the chair” meetings would be kept by the Independent Secretariat, as is now done with working group and conciliation meetings.
- The Sides would continue to hold full meetings on the day before PNB. If a Side wished to have available on the day of the PNB meeting a number of its members, so as to be able to refer to them in adjournments of “behind the chair” meetings, that would be a matter for each Side. There would be no requirement for individuals to be present for the sole purpose of constituting a quorum of a rubber-stamping meeting.
- Full PNB should hold an annual meeting. This would be preceded by the AGMs of the Sides (as at present). The full meeting would consider the annual report of the Independent Chair and any other business tabled by either side. It would provide an opportunity for broader discussion of forthcoming issues, and could be a suitable occasion for a Minister to address the Board.
- There may be occasions on which one Side or the other would wish to present its views on a matter to the entire membership of the other Side. This is likely to arise

only in fairly rare circumstances, for example if negotiations had broken down, and resort to arbitration was contemplated. A meeting of full PNB would be called at the request of either Side.

**213** This approach recognises the reality of the way in which PNB actually conducts its business. It would mean that on the day of the meeting itself the Sides need involve only those people that they might need to consult on the progress of “behind the chair” discussions. In some cases this might mean that they did not need to have anyone available, other than the negotiators themselves. If more contentious issues were involved, a larger representative group might be needed. If matters affected England and Wales only, it might not be necessary for representatives of Scotland and Northern Ireland to stay on for the day of the joint meeting. With proper notice of business, and early identification (by the Joint Secretaries) of matters likely to be contentious, there is the potential to save the time of a considerable number of people, without any loss of effectiveness or meaningful involvement.

**214** I consider this approach to be preferable to a round of horse-trading designed to get each Side to reduce the numbers it brings to meetings. This approach recognises that the number of people that need to be involved will vary according to the matters being considered, and that the point of their effective involvement is in Side meetings in advance of the joint meeting, or in being able to be consulted about the progress of “behind the chair” meetings.

**215** This approach also allows each side to move, if it so wishes, at its own pace towards placing more discretion in the hands of its negotiators, allowing them to operate within a broad policy laid down by the full Side meeting.

**216** Following the reforms to the machinery and procedures that I have recommended, PNB and PABEW should give attention to the way in which they communicate with the police service generally. A communications strategy should be developed and implemented, aimed at promoting a greater understanding within the service of the role and benefits of the collective bargaining machinery.

## **The sides**

### THE OFFICIAL SIDE

**217** The official side often appears to suffer from a lack of strategic direction and corporate ownership of its policies. It is not an easy body to weld into a coherent whole. Not only does it have a large number of constituents, within a number of these there is a diversity of viewpoints. The interests of a large urban force are not necessarily the same as those of a small rural force. Even after reorganisation in England and Wales, there will remain smaller forces in Scotland. Within police authorities, and local authorities within Scotland, there are political balances to be respected.

**218** Some of these differences may become less pronounced if there is a greater degree of local determination of some conditions of service. If one size no longer has to fit all, it may be easier to reach agreement on those matters that are for central determination, in the knowledge that there is some local flexibility available.

**219** Nevertheless, the official side does need to give attention to maintaining a more corporate approach. A recent example of the difficulties that can arise came with the tabling of official side proposals on police pay in late 2005. Even after a paper had been provided to the staff side, it was necessary for the official side to hold a fairly lengthy discussion to ensure that the position set out in writing would be supported by all parts of the official side in the

first joint meeting. In the past there have been criticisms of a lack of continuity of official side representation, leading to inconsistencies in the approach to negotiations. This difficulty is compounded if an official side constituent is unrepresented at some meetings, as has sometimes been the case with ACPO.

**220** One suggestion put to me, by the APA, was that the police authorities alone, as the bodies responsible for the provision of police services, should comprise the official side, with the Home Office and the Chief Officers acting as advisers to them. I reject this view. The Home Office is responsible for much of the overall strategy that informs negotiations on pay and conditions, particularly in circumstances in which official side proposals reflect policies set out in White Papers for which Home Office Ministers have responsibility. There is a need for the chief officers, as the managers of the police service, to have ownership of the policies relating to conditions of service that they must implement. Even under current arrangements, there are problems of a lack of ownership of some agreed policies – the problems of implementation of the superintending ranks 2003 pay settlement may arise in part from this.

**221** The problems of establishing a greater corporate ownership of policy will not be solved by reducing to an advisory nature the status of some of those who must have ownership of the policy. The tripartite control of policing is a reality that must be recognised in the composition of the official side.

**222** There is a window of opportunity to give a greater strategic direction to the work of the official side. In England and Wales, the National Policing Improvement Agency (NPIA) is being established to provide strategic leadership and advice to the police service as a whole. A significant part of the area of work in the Home Office that now deals with matters that come to PNB (and PABEW) is due to transfer to NPIA. When this occurs, it would be sensible for NPIA to join the official side. As the NPIA is an Agency of the Home Office, it would be possible for it to join the official side as a representative of the interests of the Secretary of State, thus no new legislation would be required. Similarly, should the Scottish official side constituents of PNB wish to involve the new Scottish Police Services Authority, the Authority could occupy one of the Scottish official side seats.

**223** It would be sensible for the NPIA also to become a member of the Police Advisory Board for England and Wales, particularly given the enhanced role I have recommended for PABEW in Chapter 7.

**224** The balance of organisational representation needs to be considered. ACPO is now mainly represented on the official side by senior human resource professionals. Their expertise is welcome, but it is necessary also for the official side to have the benefit of senior operational experience. APA is represented largely by police authority members; it may wish to consider whether its representation would be strengthened if a part of it was drawn from the professionals who serve as Chief Executives of police authorities.

#### THE STAFF SIDE

**225** The staff side is generally well organised. The different national interests are well coordinated, not least through the secretary of the Scottish Police Federation acting as the Deputy Staff Side Secretary. As with trade unions, the pressures on and priorities of the staff side are sometimes driven by the dynamics of membership organisations with accountabilities to electorates and conferences.

#### The secretariats

#### INDEPENDENT SECRETARIAT

**226** The concept of the independent secretariat is important to the working of PNB, and the secretariat is seen generally as helpful. It is housed within the Office of Manpower Economics, which provides also the secretariats of the pay review bodies. Unfortunately, within OME the role of secretary to PNB/PABEW is seen as less attractive than the role of secretary to a review body.

**227** The main reason for this is that review bodies, as noted in Chapter 7 above, have a proactive role, and this provides the secretariat with greater scope for initiative. By contrast, the negotiation process is driven by the parties, who may see the independent secretariat more as a body that should respond to their commissioning of work, than as a proactive source of advice.

**228** OME undertakes research to support the pay review bodies and PNB. The work undertaken for PNB is, to some extent, less predictable than that undertaken for the pay review bodies. Some of it is similar, and similarly predictable, for example work to provide indexation of a pay settlement into future years, or surveys of comparative rates of pay. Other work is dissimilar, and less easy to plan for. A proposal tabled by one side or the other may give rise to a need to establish, on a neutral basis, information concerning current practice with respect to a condition of service. In some cases, the need for agreed data may only become apparent after the stage of failure to agree has been reached. This can arise in conciliation if it becomes apparent that a significant reason for the failure to reach agreement was the lack of agreed information about what is actually happening in the field. A survey may then be commissioned, which will require input from OME statisticians to design, analyse and interpret. By the time the need has arisen, the matter may have reached a stage where fairly urgent action is required to avert a breakdown. This type of work is difficult to plan in advance.

**229** The costs of the secretariat are met partially from OME resources (which come from the Department of Trade and Industry) and partly through a grant in aid from the Home Office. There appears to be some scope for disagreement about where some costs should fall. Most recently this was illustrated by the need to resolve where the cost of an uprating survey should fall. OME could not justify the expenditure, as it felt that the uprating was no longer soundly based. Notwithstanding that view, the parties considered it essential that the uprating proceed on the previously agreed basis, as that was provided for in an earlier agreement. This is an example of an occasion when the pragmatic approach of negotiation and the evidence based approach that OME takes to review body processes can be at variance. In this case, the cost was met, exceptionally, by the Home Office.

**230** Despite these occasional tensions, OME is the right location for the Independent Secretariat. The secretariat functions are sufficiently close to the functions of a review body secretariat to make common management sensible, and the OME has the necessary independence from the Sides. Crucially, it possesses the expertise to manage pay surveys, and to provide statistical support.

**231** A number of things can be done to overcome such problems as have arisen.

**232** First, there should be a memorandum of understanding between OME and the two Sides, so as to define the services that the Independent Secretariat will provide, to define what additional work can be met from within OME budgets, and to provide for the resolution of any disagreements arising from the professional advice of OME statisticians.

**233** Second, there should be clarity as to funding. In particular, it should be clear which items are expected to be covered from OME (DTI) resources, and which are to be met by the Home Office. At a time when civil service budgets are tightly constrained it is important that

there are no misunderstandings about the responsibility for the funding of aspects of the work of PNB.

**234** Third, consideration should be given to opening the post of Independent Secretary to persons who might fill the role on secondment from one of the organisations represented on PNB or PABEW. It is understandable that the role might not always be attractive to a person who saw their next career move being to the post of secretary to a pay review body. However, for a person whose next career move would be within a police or police related body or government department, the opportunity to gain the inside experience of the workings of the national pay determination machinery might be considerably more attractive.

#### THE OFFICIAL SIDE SECRETARIAT

**235** Some consultees questioned whether the Employers Organisation for Local Government remained the appropriate home for the official side secretariat. This is a matter for the official side itself. It may be a matter to be considered once the future structure of police force governance is fully determined following force reorganisation in England and Wales, and the new relationship with local government has been clarified.

**236** In the meantime, the advantages of the present arrangements should not be overlooked. Police negotiations share official side negotiators with the fire service. This arrangement gives the official side access to a professional team. The police service alone would be unlikely to warrant an entire dedicated team, no matter where the negotiators were based. If police negotiators are to divide their time with other functions, it is better that the other functions are also negotiations, thus ensuring the availability of expertise. It is also helpful, in the context of the modernisation agenda, that the official side secretariat of PNB also performs the same function in relation to the Police Staff Council.

#### THE STAFF SIDE SECRETARIAT

**237** The staff side secretariat appears to function efficiently, and no issues were raised with me concerning it.

## Chapter 9

### Chief Officers

**238** There are two matters particular to the chief officer ranks that require consideration in the context of a general review of the extent to which the negotiating machinery is fit for purpose.

**239** The first of these concerns the determination of the pay of individuals in the chief officer ranks. The overall agreement for the pay of Chief Constables places forces in fourteen groups, ranked largely by size, and setting a pay rate for each group. The pay of Deputy Chief Constables is then set at a fixed percentage of the rate for the Chief Constable of the force. Assistant Chief Constables are paid on an incremental scale.

**240** Recently, the Chief Officers Committee of PNB has had to consider two proposals relating to the pay of individuals. One concerned the pay of chief officers in the City of London Police, in respect of which the staff side proposed an increase in the relativity with rates in the Metropolitan Police. This was not agreed. The other was a proposal from the Metropolitan Police Service for an increase in the pay of the Deputy Assistant Commissioner (DAC) dealing with counter terrorism. This was not supported by the official side, and so did not proceed to the full committee.

**241** In the absence of a proper system for evaluating individual posts, it is invidious for the committee to sit in judgement on individuals. Without proper evidence, there is a danger that judgements will be subjective. Force reorganisation may well present a number of cases in which new individual rates of pay have to be determined. A system whereby the pay of a Deputy Chief Constable is set as a fixed percentage of the Chief Constable may not be adequate to deal with larger forces having more than one post at Deputy Chief Constable level. Just as the Metropolitan Police found that there were different job weights at DAC level, so may newly merged forces have a range of differently weighted jobs within the chief officer ranks.

**242** It appears to me that the present structure is too rigid to deal adequately with these changing circumstances. There would be merit in adopting a system comparable to that used for the senior civil service. The senior civil service grading structure was abolished, and replaced by a series of pay ranges. Individual posts are evaluated and, on the basis of a job evaluation score, are allocated to a pay range. Within the police service, such a system would provide much greater flexibility to deal with jobs of differing weight, and would provide a basis for dealing with individual proposals such as those mentioned in paragraph 240 above. This is a matter for determination through the Chief Officers Committee, and I recommend that the Committee gives consideration to a structure within which chief officer posts are allocated to pay ranges by evaluated job weight. The posts to be treated in this way should be those of Chief Constable, Deputy Chief Constable, Assistant Chief Constable, and the equivalent ranks within the Metropolitan Police.

**243** The second matter concerns the manner of determination of rates of pay. In chapter 7 I discussed the arguments for and against a pay review body arrangement for police officers. Whilst I considered this inappropriate generally, different arguments may apply to the chief officer ranks.

**244** The highest Chief Constable salary within the current structure is (at 1<sup>st</sup> September 2005) £159,135. This is paid to the Chief Constables of West Midlands and Greater Manchester, and to the four Assistant Commissioners within the Metropolitan Police. Three

posts are paid more than this, the Commissioner and Deputy Commissioner of the Metropolitan Police, and the Chief Constable of the Police Service of Northern Ireland.

**245** Pay rates for the most senior public sector posts are set by the Senior Salaries Review Body (SSRB). Three of the most senior posts dealt with by the SSRB sit at the apex of their respective services. These are the Head of the Home Civil Service, the Chief of the Defence Staff and the Lord Chief Justice. The Commissioner of the Metropolitan Police is a post of similar standing, at the apex of the police service. There would be logic in the pay of the post being determined through the same mechanism as is used for the comparable senior posts in other services.

**246** Any change to the current arrangements for determining chief officer pay is a negotiable matter, for decision by the Chief Officers Committee of PNB. However, it is arguable that the responsibilities of operational command at the most senior level should be rewarded by rates of pay determined by the same broad method as is used for determining the remuneration of senior operational command roles in the forces, and the most senior posts in the civil service and the judiciary. At this level, the argument that the right to negotiate is a part of a package that includes denial of the right to strike carries little weight, as it would not be expected that the most senior managers would contemplate such action anyway.

**247** The pay range from the bottom of the Assistant Chief Constable scale, to the highest Chief Constable salary is comparable to the pay ranges dealt with by the SSRB for the senior civil service, the judiciary, and the senior armed forces. The survey work undertaken by SSRB to establish pay comparators is likely to overlap with similar survey work undertaken for the Chief Officers Committee.

**248** There would be merit in the Chief Officers Committee considering whether it would be beneficial for the pay of some or all of the chief officer ranks to be determined by, or on the advice of the SSRB. If my view that there should be a more flexible pay structure is accepted, it would follow that all chief officer pay rates should be determined in the same way.

**249** Technically, chief officer pay remains the statutory responsibility of PNB. However, a range of options could be considered, from PNB commissioning advice from SSRB, to PNB inviting the Home Secretary, by regulation, to delegate certain of its responsibilities for Chief Officer pay to SSRB.

## Chapter 10

### Scotland and Northern Ireland

**250** My terms of reference are concerned with a modernisation agenda that is driven by policies promulgated with respect to England and Wales. The Police Negotiating Board is, and always has been, a UK wide body. To facilitate career moves between forces throughout the United Kingdom, and mutual aid across the national boundaries within the United Kingdom, it is sensible to maintain a broad comparability of conditions of service. Consultees in both Scotland and Northern Ireland valued PNB, and were anxious to play a constructive role within it.

**251** I consider that PNB should remain a UK wide body. It is, however, sensible to look at the ways in which greater local flexibility might work in Scotland and Northern Ireland. This needs to be considered in the context of arrangements for devolved government, and the possibility that, at some times, governments in London, Edinburgh and Belfast may be pursuing different policies towards the provision of police services.

#### SCOTLAND

**252** Scotland is pursuing an approach to the organisation of police forces that is different to that now under discussion in England and Wales. Although there are several relatively small forces, amalgamation has not been proposed. Instead, a more federal approach is being taken to the provision of some common services, with the establishment of a Police Services Authority<sup>8</sup> to deliver these.

**253** In the future, policing may be affected by the reform of the Scottish public sector, planned for 2007 – 2011, which could involve some rationalisation of common services between different parts of the public sector.

**254** The broadly federal approach to policing within Scotland means that some issues that in England may be decided at the level of a strategic force, may be determined at a country level in Scotland. This can apply both to the way in which issues of capacity are addressed, and to some aspects of collective bargaining. With regard to the former, piloting of approaches to the use of PDRs, and associated training, is being handled on a Scotland-wide basis. With regard to the latter, the official side paper “Rewarding Skills and Performance” published in October 2005 provided for “*special consideration of issues which reflect the particular circumstances of Scotland and Northern Ireland*”. With respect to both countries it is necessary to consider the machinery that will be used for this purpose.

**255** The Police Advisory Board for Scotland is chaired by the Scottish Executive Minister for Justice. Those I consulted within Scotland were content with this arrangement, and I make no proposal to change it. However, there are some concerns as to how matters arising from PNB negotiations on pay and conditions might be handled, if Scotland does not adopt an aspect of an overall settlement. This could arise if a condition of service was designed to reflect a need particular to England and Wales, or it could be concerned with the use in Scotland of a flexibility that might be exercised at force level south of the border.

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<sup>8</sup> The Police, Public Order and Criminal Justice (Scotland) Bill provides for a single authority to have responsibility for the Scottish Crime and Drugs Enforcement Agency, the Scottish Police College, the Scottish Criminal Records Office, a new combined Forensic Science Service and a Scottish Police Information Strategy. The Bill was introduced to the Scottish Parliament on 30<sup>th</sup> September 2005.

**256** At this stage, it is not possible to say whether the outcome of current negotiations in PNB will be that there are issues that require separate or further resolution for application within Scotland. However, there is a clear potential for there to be issues requiring such resolution, and the machinery must be able to cope with this.

**257** Should it be required, a Scottish working group of PNB should be established to deal with implementation issues that are particular to Scotland. This should be chaired by the Independent Chair (assisted by the Deputy Independent Chair), and the members should be drawn from the Scottish constituents of the two Sides. If either Side wished to include one or more of the officers of that Side, that would be a matter for them. There is no reason why such a group should not meet in Scotland if this were more convenient to a majority of those attending.

**258** Should the nature of the matters determined through this group be such that there was a continuing need for it to meet to deal with implementation issues, then it could be constituted on a more permanent basis, as a standing committee of PNB.

## NORTHERN IRELAND

**259** The position in Northern Ireland is different from that in Scotland, with a single force covering the whole country. In terms of size, it is akin to the strategic forces planned for England and Wales. There are local conditions of service in existence. Whilst these are the subject of PNB agreements, they reflect the particular difficulties of policing in Northern Ireland arising from the troubles. The initiative for these conditions, and much of the discussion of them takes place at force level.

**260** The formal machinery in Northern Ireland is the Police Advisory Board for Northern Ireland (PABNI). At present, this is chaired by a UK Minister, as justice matters (including policing) are not yet delegated, and the Northern Ireland institutions are suspended for the time being.

**261** PABNI does not work well, largely for the reasons (summarised in paragraph 16) that PABEW did not work well when it was chaired by a Minister. Recently, PABNI went for eighteen months without meeting, because of the difficulty in finding time in a busy Ministerial diary. Those I consulted in Northern Ireland favoured a move to the PABEW practice of having an independent chair. With an independent chair, PABNI could operate in a manner similar to PABEW with respect to the non-negotiable conditions of service. It could also provide a negotiating forum for locally determined conditions of service, dealing with matters of detail that do not warrant the use of Ministerial time. As in England and Wales, there would be separate meetings, arranged as required, at which the associations representing police officers could make representations directly to the Minister.

**262** It should be for consideration by the constituents of PABNI as to whether an independent chair should be drawn from within Northern Ireland, or whether there would be merit in following the PABEW practice of the Independent Chair of PNB also chairing the Advisory Board. The greater the extent to which PABNI is dealing with matters delegated to local determination from PNB, the stronger is the case for maintaining a link between the two bodies through common chairmanship.

**263** Should it be decided to move to independent chairing of PABNI, the Minister should retain a power equivalent to that retained by the Home Secretary with respect to PABEW. The power is to direct the Board to consider, and to seek to reach agreement by a set deadline, of such matters of importance to the police service as the Minister may specify.

**Current Role of the PNB in Local Disputes**

The Board provides assistance, on request, to parties in dispute locally about the interpretation of agreements reached by the Board or its standing committees, or about the application of Police Regulations made pursuant to decisions of the Board.

The following note sets out the procedure used.

**Requests for Guidance**

1. In cases where negotiations between local parties are in progress and have not been exhausted, enquiries or disputes may be brought to the PNB by the Secretaries of the Staff or Official Side, or through the Independent Secretary to the Board. Where a local party writes in the first instance to the Independent Secretary, he or she will immediately circulate the correspondence to the Secretaries of the Staff and Official Sides and seek their views on the matter under dispute. It will normally be possible for the joint Secretaries to provide authoritative advice on the interpretation or application of PNB agreements. Where the Sides are agreed on such matters, it will not normally be necessary to inform the Chair.
2. Similar guidance may be given in cases involving disputes over Police Regulations covering Board matters; however, the right of parties to such disputes to challenge the interpretation or application of Police Regulations through legal channels is unaffected by any advice given by the PNB.
3. If the Secretaries of the Staff and Official Sides are unable to agree on the advice to be provided in any cases covered in the two paragraphs above, either of them may refer it to the relevant standing committee of the Board or the Board itself.

**Conciliations**

4. Where local procedures for resolving disputes have been exhausted, it may be appropriate to undertake a form of conciliation or determination which will be carried out by the Secretaries of the two Sides and the Independent Secretary. The procedures will be initiated by the Independent Chair of the Board, or by the Deputy acting on his or her behalf. Requests for conciliation may be made by either Side Secretary, or directly through the Independent Secretary. The following procedures will be followed:
  - the Independent Secretary will write to the Independent Chair of the Board, informing him or her that the dispute has been brought to the PNB and asking him or her to initiate the conciliation process;
  - once he/she has received the Chair's approval to initiate conciliation, the Independent Secretary will write to the local parties and ask them to confirm that local procedures have been exhausted, and for a statement of their case;
  - when this has been received, the Independent Secretary will inform the Chair, and with his/her agreement call a meeting between the Secretaries of the two Sides of the Board or the standing committee that made the agreement that is in dispute to review the basis of the dispute and to decide how best to resolve it.
5. The Board will seek to resolve requests for guidance and conciliations within two months of the matter first being raised. Where this is not achieved, the Secretary will inform the Chair. The procedures for resolving disputes beyond this point will depend on the nature of the particular case under consideration.

### **Disputes about the interpretation of a PNB agreement**

6. Where a dispute results from the local parties' disagreement about the interpretation of a particular PNB Agreement, it will normally be appropriate in the first instance for the joint Secretaries to provide written guidance through the Independent Secretary direct to the local parties concerned. Where the joint Secretaries are agreed on such guidance, the Independent Secretary will inform the Chair of the Board, and provide an agreed written interpretation to the local parties.

7. Where the joint Secretaries are not agreed on the interpretation of a PNB agreement they may refer the matter to the appropriate standing committee of the Board or to the Board, where it will be dealt with under the procedures outlined in paragraphs 31-35 in the PNB constitution.

### **Disputes about the application of a PNB agreement or Police Regulations**

8. Where a dispute stems from disagreement about the application of a PNB agreements in particular circumstances (including disputes about management's use of an unqualified discretion provided to the Chief Constable in a Police Regulation or a PNB agreement) it will normally be appropriate to call the parties to a formal conciliation. Such a conciliation will only be practical if the parties to the dispute are committed to finding a solution; a solution cannot be imposed.

9. If the Side Secretaries agree that conciliation is appropriate, the Independent Secretary will inform the Chair, and invite the parties to participate in a conciliation. He or she will then arrange a meeting in which the local parties concerned may put their case to the joint Secretaries who will seek to reach an agreed solution to the dispute. The Independent Secretary will notify formally the local parties of the outcome of the conciliation in writing having first cleared the joint Secretaries' advice with the Chair of the Board.

10. In the event that the local parties are unwilling to participate in a conciliation, or do not accept the advice provided through the conciliation process, the Independent Secretary will advise the Chair of the Board accordingly. At the request of both Sides, the Chair may write to the local parties to ask them to review their decision, but in the event that this request is not successful a solution cannot be imposed on the parties.

11. This does not of course remove the right of either Side to request that the PNB agreement itself, on which the local dispute is based, should be reviewed by the standing committee concerned or by the Board. In the event that agreement cannot then be reached on the basis of the PNB agreement or Regulation concerned, the matter may then proceed to arbitration as provided for in paragraphs 36-40 of the PNB Constitution.

## **Persons and Organisations Consulted**

I am grateful to the many individuals and organisations who gave me the benefit of their views and experience on the matters that are the subject of this report. I list them below. Without their assistance, the report could not have been written. I am grateful also to Professor Gillian Morris, the Independent Deputy Chair of PNB, who read and commented on the report in draft. The responsibility for the recommendations, and for any errors and omissions, is mine alone.

### **Official side**

#### **Police forces**

Robert Quick, ACPO.  
Martin Tiplady, Metropolitan Police Service  
Christine Twigg, ACPO.  
Rob Drennan and Michael Cox, PSNI.  
Sir William Rae, Andrew Cameron and Ian Latimer, ACPO(S).

#### **Police authorities**

Bob Jones, Fionnuala Gill and Andrew Honeyman, APA.  
Rachel Whittaker, Metropolitan Police Authority.  
Sam Hagen and Members of the HR Committee, Northern Ireland Policing Board.  
Allan Falconer, CoSLA

#### **Government departments**

Andrew Dodsworth and Sara Aye Mounq, Home Office.  
Jeremy Crump, Home Office.  
Robert Crawford, Northern Ireland Office.  
Cathy Jamieson MSP, Minister for Justice (Scotland).  
Robert Gordon, Scottish Executive Justice Department.

Sarah Messenger and Graham Baird, Official Side secretariat.  
Malcolm Doherty, Chair, Police Staff Council.

### **Staff and trade union sides**

Jan Berry and John Francis, Police Federation (England and Wales)  
Joe Grant and Doug Keil, Police Federation (Scotland).  
Terry Spence, Police Federation (Northern Ireland)  
Phil Aspey and Pat Stayt, Police Superintendents Association (England and Wales).  
Tom Buchan, Carol Forfar and colleagues, Police Superintendents Association (Scotland).  
Guy Thompson and colleagues, Police Superintendents Association (Northern Ireland)  
Tim Brain and Nigel Arnold, CPOSA.  
Ben Priestley, UNISON.  
Hugh Lanning, PCS.

#### **Others**

Peter Neyroud, NPIA.  
Robin Field-Smith, HMIC  
John Whittaker, Cabinet Office.

Alan Wright, Office of Manpower Economics.  
Keith Masson, Office of Manpower Economics (Senior Salaries Review Body).  
Mark Baker, formerly Independent Deputy Chair PNB.

I am grateful also to a number of individuals who provided me with comments in less formal settings.