

Additional material to assist with the Police Federation of England and Wales poll of police officers April/May 2008

Points to consider about full employment rights for police officers

Introduction

The police service needs to be seen in this political climate as flexible, progressive and open to change and willing to face challenges. The following are points that will need to be considered in relation to the Police Federation of England and Wales poll on whether, in the absence of binding independent arbitration, police officers want the Police Federation to lobby the government for a change in legislation to allow them access to full industrial rights.

Police officers are already covered by most individual employment rights, either directly or indirectly. They can bring claims in the Employment Tribunal under the anti-discrimination legislation which includes discrimination on grounds of sex, race, disability, sexual orientation, religion and age. They are covered by the Working Time Regulations and the whistle blowing legislation. In relation to pay and leave rights, provisions equivalent to or better than the statutory minimum are found in the Police Regulations 2003 and determinations e.g. maternity leave and pay, sick pay.

Some of the rights which do not apply to police officers are not applicable (such as the right to a statement of terms and conditions).

In relation to other rights that do not apply to police officers, the framework for police officers' rights is different. This reflects the difference in their status as office holders from employees who work under contracts of employment. Thus, police officers cannot (with very limited exceptions related to whistle blowing and health and safety) bring unfair dismissal claims. However, unlike ordinary employees, police officers cannot be dismissed outside the express provisions of the relevant regulations (i.e. after probation, only for misconduct, efficiency or retirement under the Pensions Regulations). In misconduct and efficiency cases there are detailed regulations setting out the procedures that a police force must follow in dealing with a police officer.

Points to consider:

- Being treated as an employee may erode the uniqueness of the police officer role on which terms and conditions are based
- There is little support from any political party for giving police officers the right to strike or industrial rights
- Having employee status may allow affiliation to the Trades Union Congress (TUC)
- If police officers were to have employee status they could get more access to employment tribunals

- Police officers can only be dismissed following Police Regulations. If unfair dismissal right is introduced it might be easier for police officers to be dismissed. Employees can make a claim for unfair dismissal, but in most cases a successful claim for unfair dismissal leads only to an award of compensation and the maximum compensatory award is capped in most cases at £63,000. There is no guarantee that a claim of unfair dismissal by an employee will result in them getting their job back.
- Debate, negotiation and agreement through the Police Negotiating Board (PNB) can, on occasions, take a length of time. Access to general employment rights would bring any new benefits at the same time as State provision for ordinary employees, thereby avoiding any delays at PNB. Although the opportunity to have provisions tailored for police service through the PNB may be lost
- With employee status, resolution of problems could be more costly in legal support, as there is a greater likelihood of cases ending up in courts
- If police officers have employee status then the processes and purpose of the Police Federation, PNB and the Police Arbitration Tribunal may change

Please see below, at Appendix 1, a chart that compares the statutory employment rights of being a police officer versus the statutory rights of being an employee.

APPENDIX 1

Statutory Employment Rights

STATUTORY RIGHT	APPLICABLE TO EMPLOYEES ONLY	APPLICABLE TO POLICE OFFICERS & EMPLOYEES	POSITION UNDER POLICE REGULATIONS /DETERMINATIONS
Right not to be discriminated against on unlawful ground (e.g. sex, race, disability, age, sexual orientation)		YES	
Written statement of employment particulars	YES		Relevant particulars found in Regulations
Itemised pay statement	YES		No reference but provided in practice
Protection against unlawful deductions from wages	YES		Any failure to pay or unilateral deduction can be challenged as breach of regulations
Guarantee payments	YES		N/A
Protection in relation to Sunday trading and Sunday betting	YES		N/A
Protection for making a protected disclosure		YES	N/A
Protection against detriment for exercising rights in respect of Health & Safety cases		YES	N/A
Protection against detriment for exercising statutory rights	YES		Not generally relevant as most of relevant rights do not apply
Time off for public duties	YES		Not dealt with in regulations, discretionary in practice
Time off to look for work or arrange training in the event of redundancy	YES		N/A

Time off for ante-natal care	YES		YES
Time off for dependants	YES		YES
Time off for pension trustees	YES		N/A – the police pension scheme does not have trustees. There is consultation via PNB.
Time off for employee representatives	YES		Some provision in Federation Regulations and “facilities time” by local agreement
Time off for young person for study or training	YES		N/A
Time off for members of a European Works Council	YES		N/A
Remuneration on suspension on medical grounds	YES		N/A
Remuneration on suspension on maternity grounds	YES		Entitlement to pay would remain
Ordinary maternity leave	YES		YES
Additional maternity leave	YES		YES
Parental leave	YES		YES
Right to notice	YES		Unlike ordinary employees police officers cannot simply have their service terminated on notice.
Written Statement of reasons for dismissal	YES		Police officers can only have their service terminated on limited grounds (see below) and in practice written reasons would have to be provided.
Right not to be unfairly dismissed (or selected for redundancy)	YES		Police officers can only have service terminated on limited grounds – conduct, efficiency or retirement under Pension Regulations. Conduct and Efficiency Regulations have detailed procedural safeguards
Right to a redundancy payment	YES		N/A – there is no power to make a police officer redundant

Right to an insolvency payment	YES		N/A
Protection of acquired rights on the transfer of an undertaking	YES		N/A
Right to be accompanied in grievance or disciplinary meeting	YES		Right to be accompanied in grievance in practice and expressly provided for in Conduct Regulations in relation to disciplinary meetings
Right to be informed and consulted through representatives about collective redundancies	YES		N/A – there is no scope for collective redundancies
Right to the minimum wage	YES		Pay significantly higher than minimum wage
Right to rest breaks, daily and weekly leave, paid annual leave and to maximum weekly working time		YES	Generally better than the minimum rights under the Working Time Regulations
Right for part-time workers not to be treated less favourably than comparable full-time workers		YES	Provision for part time working, including right to return to full time work
Right to belong or not to belong to a trade union duties	YES		Right to be member of Police Federation. General prohibition on union membership.
Time off for trade union activities	YES		Some provision in Federation Regulations and “facilities time” by local agreement
Time off for carrying out trade union duties	YES		As above
Right not to suffer deductions of unauthorised union subscriptions	YES		N/A