

HAVE YOUR SAY!



INFORMATION TO ASSIST WITH POLL ON INDUSTRIAL RIGHTS

Police Federation/Ipsos MORI poll of members on industrial rights

The Police Federation is keen to hear the views of all police officers.

Following the failure of government to honour in full the 2.5% pay settlement for 2007/08, the Police Federation of England and Wales took the decision to poll all police officer members to gauge views on the status and rights of police officers, and whether they wish to have access to full industrial rights.

The following information is designed to give you background detail on how we reached this point, some historical information, current employment rights, information on police regulations, the rights of, and restrictions on, police officers. It is intended that this will better inform you to make your decision when completing the Police Federation of England and Wales/Ipsos MORI poll on Industrial Rights.

The poll

The poll starts on 25th March, is open to all Federated ranks in England and Wales and will be conducted online via the Police Federation website at www.polfed.org

This will make the process of calculating the results quick and easy. For those unable to complete online we will be distributing a number of blank forms to Federation Joint Branch Boards. (Please be aware that paper analysis does take longer to assess but this method is necessary to ensure everyone has the opportunity to have their say).

The paper poll will close on 25th April, and the online poll will close on 2nd May. The lead in time allows opportunity to confirm logistics with each

individual branch board. The results will be announced at our annual conference in May.

How did we get to this point?

To recap on how we got to this point. Last year the Official Side (the bosses) and Staff Side (police officers) of the Police Negotiating Board failed to reach an agreement on the police officer pay award for 2007/08 and the matter was referred to the independent Police Arbitration

The poll questions are:

1. Do you consider the decision of the independent Police Arbitration Tribunal should be binding on the government?
2. In the absence of binding arbitration on the government, do you wish the Police Federation of England and Wales to start to lobby for a change in legislation to allow police officers full industrial rights?



25,000 off-duty officers protest against the Home Secretary's decision not to honour in full the arbitration recommendation

Tribunal (PAT). The PAT decided that pay for all police ranks should be increased by 2.5% from 1st September.

In December 2007 the Home Secretary announced that she had a responsibility to ensure pay settlements are affordable and consistent with Government pay policy, including the maintenance of low inflation. She determined the pay of police officers in England and Wales would be increased by 2.5% from 1st December, not 1st September. This reduced the award in real terms to 1.9%.

To express their sense of betrayal and anger at the Home Secretary failing to honour in full the PAT decision, over 25,000 off-duty police officers turned out on 23rd January. They conducted a dignified march through the streets of London and the message was heard loud and clear by the government, politicians of all political parties, the media and the public. Regrettably, despite this growing support the government has still not reversed its decision. Again, the same rhetoric of affordability, and to give to police officers would mean the government would have to give to all other workers in the public sector.

Unlike other public sector workers police officers are different. They are not employees, but Officers of the Crown. They do not have employee status with industrial rights but instead work to Police Regulations.

If police officers are to be treated as all other workers in the public sector, should they have the same rights? It was this question that led us to conduct this poll. It is important that we know your views. We will only know this if you take part.

The results will be announced

at the Police Federation of England and Wales conference in May.

What was the pay offer for 2007/08?

In July last year, the Official Side of the Police Negotiating Board (PNB) offered 2.325% payable from 1st September 2007. This was a majority offer by the Official Side, with the Home Office indicating they would stage the payment. The Staff Side (representing all police officers) of PNB rejected this offer, and using an amended, fairer and more transparent, index of private and public sector worker salaries, put forward a counter claim of 3.94%.

Why put forward an alternative pay claim?

The alternative claim of 3.94% tabled by the Staff Side of PNB includes an element of compensation for the move from a private sector index to a public sector index at the most disadvantageous time, when public sector average increases are falling and private sector increases are rising. Previously the index used was the median of private sector pay, which in 2007 would have produced a 3.39% increase. Staff Side sought to adopt a weighted average rather than the median, reflecting more fairly the number of workers covered by the awards included.

The original pay deal

Since the late 1970s after an Inquiry by Lord Edmund-Davies, police pay has been increased annually on 1st September by an index that, amongst other things, seeks to ensure that in the absence of the right to take industrial action, officers' pay does not fall

behind other groups of workers. Whilst the index has changed over the years it has provided overall fair, not excessive, pay rises.

Why is the principle of indexation so important for police officers' pay?

- In the absence of the right to strike it compensates for the lack of bargaining strength
- It has delivered nearly 30 years of harmonious industrial relations
- Since 1994 it has been based on a representative sample of non-manual private sector pay settlements
- The private-sector index is transparent and considered fair
- It has provided fair, not excessive, annual pay increases
- It is trusted by police officers to be fair
- It enables police officers to undertake their duties with confidence of fair treatment

What is the problem?

When a decision on the police pay award goes to the independent Police Arbitration Tribunal, arbitration is binding on both sides of PNB, not the Home Secretary. The Home Secretary is required to ratify the award for it to be implemented in law.

This is the first occasion the Home Secretary has failed to ratify a police pay arbitration award. The Home Secretary can choose to ratify the award or impose an alternative pay award if she can demonstrate that it is a matter of utmost national

importance. The argument given for not ratifying the arbiters' decision was the need to keep inflation down and to keep police pay in line with a 2% public sector pay policy.

There are at least five flaws/anomalies to this argument:

- Failure to recognise unique restrictions placed on police
- Delivers lower than apparent public pay policy (1.9% not 2%)
- Waste of taxpayers' money undertaking superfluous negotiations with decision already made
- Decision makes police officers, the group with less bargaining rights than others, the worst affected group of workers
- Lastly, and most grating is the decision to honour in full and back date the pay for Scottish Police, and that Police Staff, including PCSOs, have been awarded 2.5%

What is arbitration?

Police Officers in the United Kingdom are prohibited by statute from the right to strike. Under the Constitution of the Police Negotiating Board, therefore, matters on which no agreement can be reached, and which cannot be resolved by conciliation, may be referred by either Side to arbitration. Pension matters are, however, not arbitrable. Arbitration is carried out by a standing Police Arbitration Tribunal (PAT). The PAT consists of three arbitrators appointed by the Prime Minister. Any decision of the arbitrators is treated as though it were an agreement of the Police

Negotiating Board. The decision is therefore binding on both the Staff Side and Official Side of the Police Negotiating Board, but not binding on the Home Secretary.

What is industrial rights and industrial action?

Having industrial rights allows the employee to take industrial action. Industrial action is an act, done by either an employee or an employer, which prevents the operation of the contract of employment. Forms of action by employees include strikes, go slow, overtime bans and work to rule. The usual form of action by the employer is a lockout. Whether done by the employer or by the employee the act constitutes a breach of contract, but the law protects both the employer and employees, in certain circumstances from court proceedings. This is when the action is deemed to be lawful industrial action. Most trade unions will ballot members before any decision to strike is taken.

What is the Office of Constable?

- The Office of Constable means a police officer has the additional legal powers of arrest and control of the public given to him or her directly by a sworn oath and warrant: they have not been delegated these powers simply because they have been employed as an officer. Police Officers are not employees.
- Each sworn constable is an independent legal official rather than simply an agent of the police

All sworn police officers of all ranks legally are constables, since it is from this office that they derive their powers

Restraints upon the Office of Constable?

- Section 91(1) of the Police Act 1996 provides:- "Any person who causes, or attempts to cause, or does any act calculated to cause, disaffection amongst the members of any police force, or induces or attempts to induce, or does any act calculated to induce, any member of a police force to withhold his services, shall be guilty of an offence....."
- There is also a common law criminal offence of misconduct in a public office where an officer wilfully neglects to perform a public duty or misconducts themselves to such a degree as to amount to abuse of the public's trust and without reasonable excuse or justification.

Can police officers strike?

- Section 91 of the Police Act provides that there will be a criminal offence committed by:-
 - a) Those who cause, or attempt to cause, amongst members of the Police Service disaffection, and
 - b) Those who induce them to "withhold their services".
- There would be a breach of Section 91 if anybody were to encourage or promote any of the following:
 - a) strike action;
 - b) an overtime ban (this would extend to both to a ban on compulsory and voluntary overtime);
 - c) a "work to rule" which

would in effect be a withdrawal of goodwill; where the incitement to do so by the Federation or by a member of other members might well be viewed as causing disaffection contrary to Section 91.

Can police officers withhold services?

It has been suggested that if police officers could withdraw their consent to certain activities (such as withdrawing their Firearms Certificate or Driving Permit) then this is something they could be encouraged to do. However:-

a) Any incitement to members to do so would most probably breach the terms of Section 91 (“causing disaffection”, if not inciting members to “withhold services”); and

b) There is a (albeit very limited) risk that because of the unlawful motive behind the withdrawal of their Fire Arms Certificate or Driving card (industrial action being unlawful) a member might leave him/herself open to claims for misfeasance in public office (if their actions were to lead to, say, injury to a third party)

c) Depending on the circumstances the individual officer and any person encouraging them might incur criminal liability for misconduct in a public office.

How are Constables (Office Holders) Different to other employees

- Employment Law requires all employees to be “protected” by a contract of employment. Constables are not employees.
- Police officers’ conditions of service are provided by Police Regulations, Police Conduct Regulations, Police Performance Regulations, many reflect similar or identical provisions to employment law but from a police perspective. The Police (Health & Safety) Act 1997 requires Chief Officers to provide safe working environments for police officers.
- Some employment law specifically applies to police officers, some does not eg Sex Discrimination Act, Race Relations Act
- Once employed a police

officer (out of probation) cannot lose their job unless there is accompanied misconduct, poor attendance or poor performance and even then only having followed prescribed procedures. Police Officers therefore cannot complain of constructive dismissal

Restrictions on private lives of police officers

There are many restrictions on the private lives of police officers, as a result of being Officers of Crown, including:

- Police officers are accountable for their actions whether on duty or off duty
- Police officers must abstain from any activity which is likely to interfere with the impartial discharge of their duty
- Police officers cannot take an active part in party politics
- Police officers must have permission of the Force if they have a business interest
- There are also limitations on the family business interests of police officers.



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