



# The PGA Newsletter

## PGA Members denied access to ACAS by the Ministry of Justice

THE MINISTRY OF JUSTICE took the unprecedented decision yesterday to pull out of conciliation talks with the Prison Governors' Association which were due to commence today

By John Attard  
PGA National Officer

**With the criminalising of industrial action for operational staff, the only way governors can have their disputes with their employer resolved is through conciliation and then, if necessary, arbitration.**

The PGA submitted two Failures to Agree (FTA) in accordance with the Voluntary Agreement (VA), which is a legally enforceable contract. These FTAs were concerning HMPPS's continued failure to pay governors a C&R retainer whilst relying on them to cover staff walk outs, and to compensate for

a change in our T&Cs by denying access to first class travel on official business.

HMPPS processed the two FTAs and lodged them with the Advisory Conciliatory and Arbitration Service (ACAS) and requested an exchange of Statements of Case on 2 May 2017. The PGA complied.

Yesterday at 15:00 hours, with conciliation due to commence at 09:00 the following day, HMPPS wrote to the PGA to state that it would not be engaging in the conciliation process. They stated: *"During this pre-election period, it would not be appropriate for us to engage with you through the Voluntary Agreement process on issues that you argue involve clarification of*

*substantive terms and conditions of employment of Civil Servants, employed by HMPPS."*

This was a disappointment to us as a lot of work had gone into preparing for the meeting which we had forced in response to PGA members' wishes and conference mandates.

The purpose of ACAS facilitated conciliation is to provide the employer and union with a means of working together to resolve an issue and to avoid legal arbitration, if possible. It seems to the PGA that HMPPS has used the general election as an excuse to delay engaging with the PGA, resulting in continued

detriment to governor grades.

The VA requires, among other things, that disputes are resolved at the lowest possible level and that negotiations be conducted at the managerial level at which the authority to make decisions rests. For the avoidance of doubt the PGA has never entered conciliation with the Minister representing the employer.

If, at the conclusion of the conciliation, an agreement is not reached, then the matter can be referred to the Arbitrator and, at this stage, Ministerial oversight might be required. However, the arbitration hearing date will be agreed and will normally take place no later than 8 weeks from the request for arbitration. This, in effect, means that in these current cases arbitration would not take place until around **five** weeks after the result of the general election and, even then, an adjournment could still be requested if HMPPS thought it needed one. I remind the reader that it was the **conciliation** process that HMPPS refused to engage in, not arbitration. Interestingly, HMPPS made the decision not to attend conciliation the day before it

was due to commence, even though they had both PGA FTAs three weeks' prior, i.e. for two weeks since the snap general election announcement. Furthermore, we were asked to exchange our Statement of Case **the day before** HMPPS withdrew.

We should not lose sight of the issues here. The two matters on which the PGA issued FTAs to HMPPS, first class travel and C&R retainer payment, have been ongoing since 2014 and 2015 respectively. Our cases are very well evidenced and supported by the membership.

Referring specifically to the C&R retainer payment, HMPPS agreed in a joint submission with the PGA to the Prison Service Pay Review Body (PSPRB) in 2015, that governors should be paid a retainer to do C&R. The recommendation was supported by the PSPRB and was contained in their Report of 2016. HMPPS has still not paid it and did not repeat the recommendation in their evidence to the PSPRB this year. It is difficult to understand why this might be the case – it cannot be solely due to a lack of resources. Since then, for example, HMPPS has made several increases to

uniformed staffs' pay by increasing the hourly Payment Plus rate, increasing starting pay, introducing a retention allowance, introducing additional payments to encourage staff to work more hours, and paying staff an additional allowance in 31 prisons. However, there has not been a single increase in governors' pay or allowances above the PSPRB's recommendation in that time notwithstanding the significant assurances, verbally and in writing, that HMPPS would pay a C&R retainer.

With regards to first class travel we should be under no illusion of the importance of this issue – not from a travelling perspective, *per se*, but from a legal perspective. The rule of law is of significant importance. It is the legal principle that law should govern a nation, as opposed to being governed by random decisions of individual government officials. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behaviour, including behaviour of government officials. The rule of law implies that every citizen is subject to the law, including lawmakers themselves.

Government officials may well dictate that changes must be made to your entitlements, such as travelling first class but any changes must go through due process.

Terms and conditions of employment cannot be ignored simply because they are inconvenient or it will cost the employer if they are complied with. If it is the desire to permanently remove this entitlement for our members then this should be done through negotiation and compensated for, if agreed. Our T&Cs cannot just be ignored. When the **suspension** to first class travel was initially introduced it was with the **agreement** of the PGA. The suspension expired three years ago and the entitlement still exists in an extant PSI. You are, therefore, entitled to travel first class on official business.

If we do not assert our contractual rights they will wither on the vine and we will risk other contractual entitlements going the same way.

The way HMPPS has behaved over the last few years in regards to how governors have been treated is shocking and is

difficult to comprehend. Their behaviour is that of a schoolyard bully picking on the weaker kids. The PGA has for a long time, but particularly since the appointment of the new Justice Secretary, adopted a policy of strategic patience, that is to allow MoJ time to demonstrate its commitment to making improvements to prisons and prison governors' total reward package and working conditions. This policy does not appear to be working and it is necessary to review it. We will continue to remind you what your terms and conditions are and the risks to our negotiation position if you choose to regularly work beyond what is expected or required.

As operational managers we cannot take industrial action. This then places a particular duty on our employer and government to adhere assiduously to the industrial relations procedural agreement drawn up between the Prison Service and the PGA. This latest episode would suggest that HMPPS is doing the opposite. This is more than just a legal duty it is also a moral duty. Prison governors up and down the country are busting a gut to

keep the service going at a time when deaths in custody, self-harm and serious assaults are at their highest on record whilst it appears that HMPPS is busting a gut to make sure you are not rewarded for it.

We will continue to push HMPPS to reward you appropriately and will keep you informed of any progress.



HMPPS gives the PGA just hours' notice it is pulling out of conciliatory FTA talks concerning C&R payment and T&Cs.

Prison Governors' Association  
Clive House  
London  
SW1H 9EX

Telephone numbers:

Office: 020 3193 5770  
020 3193 6739

Email Addresses:

john.attard@hmps.gsi.gov.uk  
dave.hoskins@hmps.gsi.gov.uk  
duncan.scales02@hmps.gsi.gov.uk  
james.bryanto1@hmps.gsi.gov.uk

Website: [www.prison-governors-association.org.uk](http://www.prison-governors-association.org.uk)



President:

Vice President:

National Officers:

Finance Officer:

Membership Officer:

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Andrea Albutt

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Dave Dyson

Phil Morrey

Nigel Ironside

Gary Alcock

James Bryant



Twitter: @PGA\_Prisons AND @PGA\_NEC

**Her Majesty's Prison and Probation Service**  
*Executive Director HR's Office*  
5<sup>th</sup> Floor  
102 Petty France  
LONDON  
SW1H 9AJ

John Attard  
National Officer, PGA  
[via email]

Email: martin.beecroft@noms.gsi.gov.uk

**Martin Beecroft**  
Executive Director HR

3<sup>rd</sup> May 2017

Dear John,

### **PGA FAILURES TO AGREE**

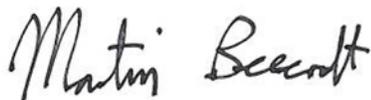
Following a call between Michael Spurr and Nick Pascoe earlier today, I am writing to confirm HMPPS' latest position with regard to the PGA's submission of two Failures to Agree (First Class Travel and C&R Training) on 13<sup>th</sup> April 2017.

During this pre-election period, it would not be appropriate for us to engage with you through the Voluntary Agreement process on issues that you argue involve clarification of substantive terms and conditions of employment of Civil Servants, employed by HMPPS. I am sorry to inform you at this late stage but we will not be attending the planned conciliation meeting with ACAS on 4<sup>th</sup> May 2017. ACAS have been informed and our apologies given.

I understand you will feel frustrated by this decision and I appreciate the work you have undertaken preparing for conciliation. However, HMPPS need to be in a position where decisions on these matters are taken with support of the Government of the day, a matter which will not be decided until 8<sup>th</sup> June. After the new Government has been informed we will then be in a position to reply to you on these two matters.

Please accept my sincere apologies for this change and the timing of informing you, which could not be avoided in the circumstances.

Yours sincerely,



**MARTIN BEECROFT**  
**EXECUTIVE DIRECTOR HR**