



Duty Governor Review

18 months late but it's official – 86% of governors do not think that being duty governor is sufficiently rewarded

By John Attard
PGA National Officer

AT THE PGA ANNUAL conference in 2014 we invited a diverse group of governors from different establishments up and down the country to meet with members of the PGA NEC and a job evaluation consultant to discuss the role of duty governor and how this impacts on you.

The driver for setting this up was the continued failure of the prison service to properly acknowledge the role and accurately capture the operational element of being a duty governor in job descriptions. The net result of which has been the continuing

undervaluing of what operational managers do and are rewarded for in comparison to non-operational colleagues.

This issue is not about our non-operational colleagues being paid too much for the important jobs they do but about HMPPS's stubborn commitment to a pay structure and job evaluation scheme unable to differentiate between two very distinctive branches within the prison service – operational and non-operational – and its consequent reluctance to reward operational managers properly.

The meeting was a great success and produced excellent evidence which the PGA added to a draft

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operational manager job description for HMPPS to re-evaluate. The new job description scored higher but not enough to change pay bands.

Following this, the PGA lobbied HMPPS to carry out a review of the role of the duty governor, which they agreed to do. The review started before December 2015 and was eventually shared with the PGA on 17 May 2017 – 18 months after it was commissioned. It is surprising that it took so long for HMPPS to share the report with us and with no explanation for the delay - particularly since it was baselined on 21 July 2016.

The report, produced by HMPPS, acknowledged that heads of function were under significant and unusual workload pressure as a result of having to carry out duty governor duties and that this pressure was having a big impact on how they carry out their functional head role. The review also established that the volume of work has increased, the number

of governor grades has decreased and the challenges duty governors face are real and significant. Taking into consideration the further sharp decline in prisons in the last 12 months, according to HMPPS's own statistics and the annual HMIP report published last week, this real and significant pressure can only have been multiplied.

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The review shows, without any shadow of a doubt, that the impact of completing duty governor duties on top of running a function impacts on operational managers in a way it does not impact on non-operational managers. It also showed that, "...the role [of Duty Governor] remained highly demanding and carries significant responsibility".

Having received the report and acknowledged the above observations how did HMPPS respond?

"...the role of Duty Governor remained highly demanding and carries significant responsibility."

HMPPS responded by declaring that the 2% rise in RHA in 2016, which the PGA fought for over two years, was justified. This is not the first time that HMPPS have used the 2% increase in RHA as justification for the continued ignoring of our members' calls for fair pay for the jobs they do. This is particularly pertinent in light of the current pressures, reduction in numbers, the increase in hours and the financial inducements to the uniformed staff (not without justification), and the high number of temporary promoted operational managers. This continued reliance by HMPPS on the increase of 2% in RHA as being the reward for being an operational manager is frustrating to say the least.

The RHA payment that HMPPS refers to as a payment for being operational confounds logic and assaults common sense as well as the English language. RHA has nothing to do with the additional work or responsibilities operational managers do or have. If this was the case then RHA would not be paid to non-

operational managers, which it clearly is.

The letter that accompanied the report stated, “Whilst I accept that the duty governor role is not directly associated with RHA, what it does do is provide remuneration for the call outs and out of hours working that is expected of being on call whilst undertaking the duty governor role.” So, there it is, operational managers are paid RHA for being on call. Operational managers are not paid RHA for duty governor, adjudications, having less time to run their functions, having to study for and pass a three stage JSAC, having to be knowledgeable in a greater range of competencies, and having greater responsibilities and exposure to greater risks and stresses than our non-operational colleagues. It is helpful to have that confirmed not that we needed it as we believe that the following non-operational staff get RHA:

- Chaplains
- Estates

The volume of work for operational managers whilst undertaking the role of duty governor has increased in recent years

- Regional CT Leads – These can be either Op or non Op
- Regional Office ‘Operations’ managers – These can be Op or Non Op
- Catering manager
- Industries manager
- Non-operational bands 7/8/9 who are on-call for the Command Suite
- Area psychologist
- Controller and Deputy Controller – irrespective of operational background
- Intelligence Analysts - non-operational
- And possibly/probably others

HMPPS accepted the “compelling case” to adjust the level of RHA and therefore supported the PGA case through the Pay Review Body evidence submitted in 2016 that an increase to 17% (same as uniformed staff) was appropriate. This decision was based on the following observations, in HMPPS’s own words:

- The volume of work for operational managers whilst

undertaking the role of duty governor has increased in recent years.

- The number of operational incidents in prisons over recent years has increased significantly.
- The number of operational managers has reduced by over 200 (PGA think it is closer to 500)
- Reportable incidents have more than doubled in the three years to June 2015
- The proportion of time spent by operational managers on operational/incident-related duties has significantly increased.

There are two very important comments to make about these observations: 1) RHA, is not an operational allowance, it is to “...provide remuneration for the call outs and out of hours working that is expected of being on call”, 2) the 2% increase to RHA was paid to everyone, including those listed above, who receive RHA including non-operational managers. The reasons it is paid to everyone getting RHA, and not just operational managers, is because the pay banding system used

by HMPPS does not distinguish between operational roles and non-operational roles. There is simply no mechanism for rewarding or recognising the difference between operational managers who take on the additional risks and responsibilities listed above and those who do not. This includes the carrying out of C&R training and providing the operational resilience that HMPPS relies upon when staff walk out.

When operational managers were asked if they thought the role of Duty Governor is sufficiently rewarded 86% said no.

It is common knowledge that PGA members have had concerns about JES and have mandated the PGA NEC to challenge it. This review acknowledges that it should be recognised that the role of operational manager has become more difficult and challenging since the inception of JES and HMPPS may want to look at ways of ensuring that staff are rewarded appropriately. Since one of

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the purposes of the review was to form a basis for further discussion and decisions around potential reward solutions and union negotiations, we welcome this report and HMPPS doing something positive with it, not least acting on the review's closing statement in its conclusion: "Steps need to be taken to ensure that the increase in work carried out by Duty Governors is appropriately rewarded, if this continues to be undertaken without additional resource."

The report, commissioned by HMPPS, has to be commended for its honesty in acknowledging the significant challenges operational managers are under, particularly compared with our non-operational colleagues.

The aims of the review included establishing whether JES was fit for purpose and whether improvements can be made. It was also to consider other innovative reward strategies if appropriate. The review, in

the PGA's view, shows beyond doubt that JES is not fit for purpose. Despite our best attempts, over a period of years, to persuade HMPPS to address this issue it has either been unwilling or unable to do so.

What is disappointing is that the review's report was signed off a year ago but, to the PGA's knowledge, no action has been taken to address the serious issues it raises. Furthermore, conditions for our members have deteriorated.

The review has been shared on the PGA website and attached to this newsletter via email. The letter that accompanied the report is also shared. It will be for individual members to form their own views but the PGA NEC will, as mandated, continue to challenge and will use the review as the strongest evidence yet of the inequality of HMPPS's pay and reward system.

Decisions on how to proceed have already been taken and we will update the membership as we progress the matter.

PGA Annual Conference 2017

30 Year Anniversary

This year looks likely to be the most highly attended conference since the PGA was formed in 1987.



Shaun Williamson, Finance Officer, finalising details for the 2017 PGA Conference with Radisson Blu's Gemma and Charlotte

THE PGA ANNUAL conference will be held at the Radisson Blu hotel in Derby. This is a third year in a row we have used this venue which has proved to be easy to get to for the majority of members, is modern and accommodating with good facilities.

The number of booking forms coming into the PGA office from governors informing us that they are

attending is unprecedented. We have also had a significant increase in the number of

Governing Governors informing us of their intention to attend. This, we feel, is a reflection of the incredibly difficult conditions governors are working in and a need to seek a combination of support, assurances that their union is aware and, possibly, answers.

The guest speakers this year include, Richard Burgon MP, Shadow Justice Secretary, Ronnie Armour, the Director General of the Northern Ireland Prison Service, and Michael Spurr, the Chief

Executive Officer of HMPPS.

It is always a privilege to hear from the Chief Executive Officer and it will be interesting to hear the Shadow Justice Secretary's views on the current state of the Prison



Service. This will also be the first time the Director General of the Northern Ireland Prison Service has addressed

conference, which is a very positive sign of the closeness of our respective services. Northern Ireland has challenges that are very different to those in England, Scotland and Wales but many of their challenges are also no different. Membership of the PGA in



Northern Ireland is around 95% of eligible staff.

Last year the PGA conference made primetime, mainstream news when the membership voted for the NEC to seek an

independent public inquiry into the state of our prisons with the aim to stop the decline and to make recommendations to reverse this unacceptable trend. That public inquiry has not taken place and the state of prisons continues to decline. We wrote to the new Secretary of State for Justice, David Lidington MP and repeated our request. Violence in our prisons is at an all-time high and is a sorry indictment of the position we have been put in, which cannot continue. What's more, we

still do not fully understand how we got in this position beyond the fact that nearly £1 billion was cut from prison budgets in the last six or so years.

We want this year's conference to provide members with an opportunity to raise the issues impacting on them the most and to generate resolutions that will help solve them.

We are very pleased to say that Michael Spurr usually provides an opportunity for delegates to ask him questions after

his speech and we hope he will be able to do the same this year. This is your opportunity to ask those direct questions that you may not have the chance to during the year.

Legal Representation at Inquests (*Revisited*)

Don't take it for granted

This article is reprinted from the fourth edition of the PGA Newsletter, published in April 2016. We felt that the article was so powerful that it justified being shared again with our members and to provide those who missed it with an opportunity to read it this time.

THE PGA HAS BEEN contacted on a number of separate occasions by members in surprise and, in some cases, desperation regarding the lack of legal support being provided for governors at Inquests in certain situations. Despite clearly set out guidelines on the very high threshold to be applied before refusing to provide legal representation, HMPPS continues to make mistakes. The latest case was of such a concern we asked the individual member to provide a personal account. We are

very grateful to them for sharing it with us.

Read their story:

INQUEST

A personal account and reflections of a PGA member

(Some information has been redacted to protect the identification of certain individuals)

I was Duty Governor on the night a prisoner was received into custody who, I am very sad to say, subsequently took his own life. This took place in 2011. It was in 2014 that I was named as a properly interested person for the Inquest into this case. To my surprise it was decided that I would receive NO legal representation at the Inquest from Treasury Solicitors as it was deemed that there was a conflict of interest. I was also informed that I would not be entitled to funding for separate legal representation. The only

reason one would not be authorised to have separate funding for legal representation in the event of a conflict of interest is if an individual's behaviour in their role at the time of the death had been seen to be so deficient as to be deemed 'deliberately reckless, negligent or malicious'. Effectively this annexed me and further stated my behaviour had fallen well short of the professional standards expected of all HMPPS staff.

There had been a long, delayed PPO investigation, a long drawn-out police investigation, in which I and others were questioned under caution, and a subsequent crown court action brought against a member of staff into which we were called as witnesses for the prosecution. This case collapsed and a not guilty verdict was ordered to be returned by the recorder. Throughout this most difficult of times I had no contact from HMPPS either of support or condemnation and the first letter I received was the one mentioned which essentially suggested a belief I was guilty of some form of misconduct. It is worth mentioning there

had been no disciplinary hearing or prison investigation prior to this.

After the intervention of John Attard and the PGA the decision not to provide separate legal representation was deferred and I received a passed-on message from my governor that I should await further advice. That advice arrived three months after - at the close of play on a Friday, with the final pre-inquest hearing listed for the coming Monday! This effectively revoked the decision to refuse separate funding but considered that a conflict of interest still existed. With a couple of hours' notice we secured the services of Mariel Irvine, the PGA Solicitor, and a barrister. I was finally called to give evidence in 2015, which, due to the complexities of the case, was listed for three weeks with nine barristers representing the various parties and organisations concerned. It was clear from an early point that the position of the family and the advocate was more than a little hostile towards me and the service and there was a great deal of scrutiny of the multi-layered decisions being made and the management of the risk.

To this end policies, both local and national, were intensely interrogated. What is evident in such cases is the interpretation of policy by those applying it and by those, such as legal advocates, holding practitioners to account, particularly when there has been an incident, can, and in this case did, differ widely. In addition, where one policy failed to make the point they required, they moved to another policy which had a relationship with the processes which could also be applied but might say something slightly different. The thrust of this is to imply that we are experts in our fields; and that includes knowledge and application of all policies, no matter how remote some may be. There were a lot of technical arguments applied and the level of examination of the applicable policies was intense. In some cases one policy applied a particular requirement but another policy, covering the same area, did not. There appeared to be requirements removed in one policy that still remained in others, which resulted in an argument as to which one to apply. There was also an issue,

which resulted in the court being cleared while checks were made of policy leads in London, of when a particular policy came into effect. In this particular case, a policy being relied upon by the lawyers came into effect six months after the tragic incident. This point, and other technical and legal issues, were argued over many hours and continued into the following day. The importance of legal representation in such cases cannot be over-emphasised.

The family's advocate also attempted to ask me questions in relation to the police interview I had attended and asked why I had submitted a prepared statement and then answered no reply. This cleared the court of jury and myself and was set aside when we returned. It was, however, indicative of a ploy more often seen in crown court to suggest certain things to the jury and create doubt only for them to be retracted, but nevertheless the jury still heard it.

Other matters were touched upon, training being one. I could reference the fact that eight weeks prior to the death we had a SAU visit

for Safer Custody and received a green rating, a great deal of time being spent in the reception department with staff, an area where some staff were saying in this case they were unaware of policy. It is worth remembering the value of these audits if you are unfortunate to get mixed up in such matters.

There was a clear belief from the advocates that ACCT is robust and virtually, fool proof. That is, if someone is on an ACCT, they cannot harm themselves or take their life, or someone in a double cell rather than a single cell equally cannot take their life. We know these things fundamentally to not be so. The ACCT process offers a much greater opportunity of support through crisis management, identifying issues, resolving problems and in so doing reduce risk. This may diminish likelihood that someone will take their own life or self-harm but, with the best will in the world, will not totally eliminate that risk.

After some four hours I emerged from the witness box. This can only be compared to being on trial with your job, picking

away at decisions, policy application, your functional role, an expectation that because you carry the role, head of function, operational manager or duty governor that you have the answers to all the questions and ultimately you are responsible under article two of the Human Rights Act, the right to life, for all the prisoners in your care. If it were so clear and obvious to apportion blame the prisons would be full of prison managers, that is not the case but it feels as though there has been a shift in investigation, scrutiny and analysis of policy and decision-making. It clearly is not that straightforward but nevertheless it will not prevent the prison ombudsman, police, courts, coroners and legal institutions pulling to pieces the work we do on a daily basis.

PGA Member

PGA Comment

It is a sad fact that many of us will find ourselves, or will have already had the experience of, giving evidence at an Inquest. Our condolences extend to all the staff,

friends and family of those directly affected by the death of any prisoner as these will inevitably be traumatic occasions. Having had personal experience of giving evidence as a governor grade at an Inquest, I can only concur with much of what is captured in this excellent personal account for which I am very grateful. The degree to which one's knowledge is tested can be extreme. This personal account began with the news that HMPPS would not provide legal representation or authorise the funding of separate legal representation as a decision had been made that our colleague was deemed, by implication, to be "deliberately neglectful, reckless or malicious". This is a very serious accusation and most certainly should not have been made without a thorough investigation, the gathering of solid evidence and followed by a disciplinary hearing, if appropriate. That did not happen in this case but nevertheless HMPPS felt able to make that assertion. HMPPS, after the PGA intervention, did subsequently authorise separate legal representation (just hours

before the pre-inquest review) and issued an apology. Whilst we should be pleased that the right decision was eventually reached we cannot go without remarking that a similar thing happened only a year before. PGA intervention in that case also resulted in the decision being overturned. The Civil Service Management Code sets out the requirements in respect of civil servants who “may be involved in legal proceedings or formal enquiries as a consequence of their employment”. It would not be unreasonable to expect that in such serious matters; particularly those that will unavoidably impact on staffs’ families as well as the staff themselves, that HMPPS would be particularly conscious of the importance of getting this decision right. When governors are carrying out their duties in the challenging conditions that working in prisons presents, then they are entitled to be supported when things do not go according to plan or if mistakes are made. We operate in an increasingly scrutinised setting where our decisions are subject to forensic analysis. This

frequently takes place after the event, with the benefit of hindsight and by those with no or limited first-hand prison experience. I am pleased that in this case, and the previous case referred to, our members were supported and came through their experiences. We hope that HMPPS will be more diligent in future decisions so that governors do not go through the stress of worrying about no support as well as the stress of the event itself. It is also worth pointing out that the bill to HMPPS for our member’s legal representation was over £35,000.

If you would like to share your personal experiences, for the benefit of colleagues, please write to us.

LAW EXPRESS – The PGA Legal Helpline

1) *The legal advice helpline (Law Express) can be reached on 01275 378700. You will need to quote your PGA membership number.*

2) *Any PGA member and their immediate family can telephone the PGA Legal Helpline seeking*

advice on a wide range of issues including the following: -

Business legal advice

- *Employment Law*
- *Commercial Law*
- *Company Law*
- *Contract Law*
- *Health & Safety*
- *Marketing Law*
- *Taxation Personal legal advice*
- *Employment Law*
- *Family Law*
- *Wills and Probate*
- *Estate Planning*
- *Consumer Law*
- *Motoring Law*
- *Property Law*
- *Personal Injury*
- *Debt Management*
- *Immigration*
- *Taxation*

3) *Law Express should always be the first port of call on any individual’s legal matter. They operate on a 24-hour basis but will often take basic details to allow a legal advisor with a particular expertise in the relevant field to make contact. Their advice is excellent. They will give general guidance including whether in certain circumstances there is a potential case.*

4) *Law Express does not progress legal cases.*

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