



Pre-action letter forces HMPPS to attend ACAS

HMPPS refused to attend ACAS with the PGA unless the PGA took them to court

By John Attard
PGA National Officer

THE PGA SUBMITTED TWO Failures to Agree (FTA) in April this year on issues concerning your terms and conditions of employment (T&Cs) – the continued *de facto* reliance on governor grades carrying out full C&R training to provide the operational resilience relied upon by HMPPS and the removal of your entitlement to first class travel on official business.

The requirement for governor grades to carry out C&R training is not in your T&Cs and the entitlement to travel first class on official business has never been removed.

The PGA made it abundantly clear from the very outset that these issues are not about governors not willing to do C&R and not simply about

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a desire to travel in comfort for the sake of it. These issues are about protecting governors from the unilateral actions of a belligerent employer who believes it can act with impunity when it changes or attempts to change your T&Cs without

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following due process and, invariably, doing it on the cheap.

The law is perfectly clear on these matters – changes in T&Cs have to be negotiated.

In the 7th edition of the PGA Newsletter the PGA reported that we attended an ACAS-facilitated workshop with the CEO, the COO and other HMPPS delegates. I wrote that at the conclusion of the workshop HMPPS had accepted the legitimacy of our FTAs and acknowledged that C&R was not mandatory for governors to do C&R training. The CEO then wrote to the PGA after

reading the article to say that it misrepresented his position, going on to say that he recognises that it is our position that governors cannot be mandated to undertake C&R training but then stating it is not a position he accepts. This is not how the PGA recalls what was said and is certainly not supported by the many documents in our possession gathered over three years plus and shared with the membership.

The CEO's letter also went on to advise PGA officials to refrain from making statements about C&R training that increase the risk of inadvertently inducing its members from taking unlawful industrial action or it would be reluctantly obliged to take legal action. The letter helpfully concluded by suggesting we get our own legal advice on this matter, which we did.

It seems that HMPPS wants is cake and to eat it too. It wants to stifle a recognised trade union from raising important T&C issues with

its members by threatening legal action but when asked to follow the agreed procedure for resolving the dispute refuses to fully engage.

After the above workshop HMPPS wrote to the PGA and repeated what it said in the workshop, which was that the issues we were in dispute over were out of

scope of the Voluntary Agreement. The PGA strongly disagreed at the time and informed HMPPS of that. We also informed

HMPPS that it was not within its authority to decide what was or was not in scope and directed them to paragraph 17 of the Voluntary Agreement. It states: *"In the event of a dispute between the parties as to whether a matter is capable of and suitable for arbitration under this agreement, a final decision will be taken by the arbitrator."* Despite this unambiguous passage, HMPPS wrote to the PGA and said that they were not prepared to go to ACAS to discuss the issue, stating, **"...if you remain of the opinion that**

This resulted in our lawyers writing to HMPPS giving them fourteen days to engage with conciliation or the PGA would issue proceedings in the High Court

HMPPS is in breach of the terms of the VA, then, in accordance with section 4 paragraph 10, you have the right to take legal action in court...". [Our emphasis]

This was a very disappointing letter from HMPPS given that the Voluntary Agreement requires a partnership approach to resolving issues at the lowest possible level.

The PGA has acted reasonably throughout the three years these issues have been in dispute and demonstrated a patience that would test a Saint. It would appear that our willingness to work constructively and collaboratively with HMPPS was being seen not as a strength but as a weakness.

We were confident that our interpretation of the VA was correct but sought legal advice anyway, as suggested by HMPPS. This resulted in our lawyers writing to HMPPS giving them fourteen days to engage with conciliation or the PGA would issue proceedings in the High Court for a declaration that HMPPS is in breach of contract and seeking an injunction to compel HMPPS to meet its legal obligations. This letter

seems to have produced the desired outcome and HMPPS has now agreed to engage in the dispute resolution process. Our barrister, a highly respected, senior QC in the field of employment law, described this as a fantastic outcome and worth sharing with PGA members.

It is surprising and incredibly frustrating that HMPPS has had to be dragged kicking and screaming to the conciliation table and, potentially, through the arbitration process, rather than work with the PGA in accordance with the spirit and intention of the agreement we both signed up to.

What has been of value from a PGA perspective is that this exposes to our members the lengths HMPPS will go in order to frustrate meaningful progress rather than meet its obligations. The fight the PGA is having to protect our members, particularly when it comes to recognising the ever-increasing reliance on

governor grades, is bared for all to see.

The conciliation meeting, which will be facilitated by ACAS, will take place after the conference. Let's be clear, this meeting is taking place because **HMPPS wants the substantive issues ruled out of scope in case they lose**. If ACAS rule the issues are out of scope then we will need to decide on another tactic

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for addressing them. If ACAS determines that the issues are in scope then we will commence another round of conciliation talks and then arbitration at some point in the future. It is at this stage that a decision will be made – whether or not governors can be made to do C&R without changes to their T&Cs being negotiated and likewise, whether the entitlement to travel first class on official business can simply be removed without negotiation.

HMPPS has successfully adopted a strategy of delay, fob off, and kicking the can down the road rather than meet its moral and legal obligations to prison governors who have given

so much in the worst of conditions experienced during most of our working lifetimes. The PGA's policy of strategic patience, on the other hand, has been less successful and it is time to change it. HMPPS must not doubt the PGA's resolve to take them on and our readiness to take issues to court has been demonstrated. We have seen conditions in prisons deteriorate, our numbers shrink, and governors taken for granted while others are being rewarded. The derisory pay recommendations HMPPS made were not supported by the PSPRB (again) and were critical of HMPPS whilst acknowledging the positive contribution of the PGA.

If HMPPS continues with its current policy of being antagonistic rather than collaborative we will still, it would appear, have a long way to go but the light at the end of the tunnel draws closer. The number of incidents in prisons appears to continue to grow, along with their seriousness. The reliance on our members also continues to grow. That needs to be recognised with more than just words.

PGA Conference 2017 Press Release

30th PGA Annual Conference *10 -11 October 2017*

The 30th Annual Conference of the Prison Governors Association will take place between 10 and 11 October, 2017, at the Radisson Blu East Midlands Airport Hotel, Derby, DE74 2TZ.

2017 has been the most challenging period prisons have faced for many decades. Violence statistics have been the highest on record, along with suicides peaking at the beginning of the year whilst self-harm levels remain the same. The 12 months to June 2012 saw self-inflicted deaths in prisons come down to 53 - the lowest in the last decade. Since the cuts the total number of self-inflicted deaths, which may have been avoided before the cuts totalled 176. This is the number of self-inflicted deaths in the last five years over 53. That is the equivalent of more than double the lives lost in the Grenfell Tower

tragedy, which justifiably resulted in a public inquiry. The common theme in both cases being the saving of money, it would appear, and answers to avoid a repeat of this calamity need to be provided.

The Chief Inspector of Prisons reports a worsening position in many of our prisons with poor regimes, poor relationships and poor infrastructure, much of which is linked to lack of resources, both human and financial. With 40 prisons of concern, 10 of which are very concerning the future remains bleak. Sadly, the level of incidents and the regularity in which they happen seems to have inured us somewhat and has become the norm in many prisons.

Prison governors continue to work harder and excessive hours in an attempt move prisons forward, sometimes succeeding sometimes not. Many of them feel demoralised and undervalued with a pay and reward package that

does not reflect the complexities and risks in the operational line. Many are frustrated, tired, angry and as yet do not see any benefits from the alleged Reform promised by the Government.

There have been five Justice Secretaries in the last seven years and the Prison Safety and Reform Programme in MOJ does not appear to be the answer. Prison governors, as yet, have seen nothing tangible coming out of the programme to ease the burden on prisons and the void between policy and operations is vast. A serious concern is how governors can own something that is done to them by people with absolutely no understanding of a very unique environment?

This year will see the highest number of governors attend the conference since its inception, reflecting the pressures they are under and their desire to seek answers as well as support from colleagues.

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