

**ANNUAL CONFERENCE
SOUTHPORT 2015**

**CONFERENCE
PAPERS 1-3**

**FAIR PAY &
PENSION JUSTICE**



CONFERENCE PAPER 1

CONFERENCE PAPER ONE – ACM 3/2015
PROCEDURES FOR DEALING WITH CONFERENCE MOTIONS
AS APPROVED BY ANNUAL CONFERENCE

Introduction

Following the acceptance of conference paper 6 of 2013 and the procedures for dealing with conference motions, concerns have been raised following decisions at conference which potentially undermined the Rules and Constitution and Standing Orders.

If Conference accepts this paper then it will replace conference paper 6 of 2013 and form the basis for all procedures when submitting motions to the Standing Orders Committee for inclusion in any conference agenda.

The interpretation of the rules is vested in Conference when it is in session as set out in rule 29.4 (a) but this does not mean that conference can simply do as it sees fit. Conference must have due regard for any potential legal and or external challenge which may be brought in respect of the decisions reached, decisions which could bring the union into disrepute or potential financial implications.

The purpose of this conference paper is to set out new and revised policies, rules and procedures to ensure that the administration of all conference agendas is achievable, that all affected branches have the opportunity to propose and consider motions in line with rules, specifically 12.4, 12.5, 12.6 and 12.7 and to minimise the risk of litigation and or challenges to the union.

All changes to current procedures and rules are set out.

The conference paper also reaffirms the policies and procedures for administering the POA's Incentives and Awards as set out in POA Circular 74/14 (attached).

Annual Conference Motion 3/2015 refers

CONFERENCE PROCEDURES

Branches will be limited to 10 Conference Motions unless the rules provide differently to ensure that a manageable agenda can be produced. (For the purposes of conference the NEC shall be classed as a branch)

- 2 All motions submitted to the Standing Orders Committee for consideration for any conference agenda must be approved at a formal branch meeting with a verifiable record of minutes, numbers of attendee's and that each motion was proposed, seconded and carried at that meeting.
3. The standard form must be used by branches when submitting Motions to the Standing Orders Committee for consideration, as approved by Conference under Rule 12.5(c). These can be obtained from Cronin House on request, but it shall be the responsibility of individual branches to ensure they have an adequate supply.

TIMESCALE FOR SUBMITTING MOTIONS

4. The period for receipt of Conference Motions shall be from 1st December to 31st January, to facilitate a Conference in May. Should any Conference be called outside of this period the timescale for the receipt of Conference Motions will be promulgated to branches in accordance with the Rules and Constitution.
5. A period for receipt of conference motions will normally be from 1st December but no later than the 31st January. Following this the Standing Orders committee will meet immediately following the closing date for receipt of motions and compile the agenda.
6. No motions will be accepted after 31st January for a Conference in May or after the date set out by the General Secretary for a Conference called outside of this date and for this reason, branches will submit motions well in advance of the closing date.
7. Each branch will contact Cronin House via telephone or email to confirm receipt of Motions submitted to ensure that there is no misunderstanding or that they have been lost in transmission.

CONFERENCE MOTIONS

8. The Standing Orders Committee will if necessary discuss motions submitted by branches for any conference if they believe the wording of a motion needs to be amended or clarified, but they must not change the subject of the motion.

The Standing Orders Committee will if necessary remind branches of Rule 12.4 in that Conference determine the principles and policies of the Union, except where these Rules provide differently.

If motions submitted by branches impinge on the rules of the union the branch will be advised to either submit rule changes or follow the rules and constitution to pursue internal matters.

If any motion/s submitted require a rule change/s the sending branch must set out the rule change/s fully to ensure branches and conference fully understand the ramifications of the proposal. The Standing Orders Committee may assist any branch in formulating these motions before the closing date for conference motions if requested to do so.

CONFERENCE AGENDA

9. The agenda will comprise of a number of individual headings which will be listed and placed by the Standing Orders Committee. This will be done to ensure the order of conference is maintained, with the opportunity for Motions to be heard and debated.
10. Section One of the Conference Agenda will always deal with any rule changes. These Motions will require the support of two thirds of the votes cast at Conference in accordance with Rule 29.1 all other Motions will require a simple majority.
11. It is likely that Motions may be submitted by a number of branches covering the same subject. It shall be the right of each branch to have their Motion heard, although the Chairman may draw to the attention of those branches that the Motion may fall, be subsumed or be out of order following the disposal of the first Motion.
12. The Standing Orders Committee shall only return conference Motions to branches on the following strict criteria –
 1. The content of the motion is not permitted by law.
 2. The motion involves an item of policy which was determined before the close of any Conference within the last 12 months.
 3. The motion was received after the notified closing date.
 4. The terms of the motion, if published, may adversely affect the interest of the membership, hold the Union to ridicule or seriously damage or discredit the Union.
 5. Other identified issue

The branch will be given a reason in writing as to why the Standing Orders Committee has returned the Motion with their rights and timescale for appealing outlined.

13. The Chair of Conference may call motions outside of the Conference agenda in order to move business in line with the Standing Orders Report.

APPEALS TO NEC

14. Should any branch wish to appeal to the NEC against the decision of the Standing Orders Committee to return their Motion, they must do so by advising the General Secretary in writing no later than the 21st February (or any other date identified by the Executive for a Conference outside the month of May). All appeals will be considered by the NEC at its next meeting.
15. If the appeal was rejected, following the NEC determination, each branch will be advised of the right to appeal to Conference and timescale to facilitate this appeal.

APPEALS TO CONFERENCE

16. Branches who wish to appeal to Conference against the NECs decision not to include their motion on the Conference Agenda, must do so by advising the General Secretary in writing, no later than the 31st March (or any other date identified by the Executive for any Conference outside the month of May).
17. Following the closing date for appeals to Conference each branch will receive two copies of the Conference appeals booklet, which will contain copies of all relevant information and correspondence, or be advised by POA circular that there shall be no appeals to Conference in respect of the Conference Agenda.
18. Each branch has the right to appeal to the NEC on the placement of any Motion. They must do this in the first instance by writing to the General Secretary at Cronin House no later than the 30th April. If the NEC refuses to change the placement, the branch will be advised of their right to appeal this decision to Conference before the adoption of Standing Orders. The branch must advise the Secretary to the Standing Orders Committee at least 7 days before the start of Conference in writing outlining their intention to appeal.
19. Each branch will be sent two copies of the Conference Agenda following the appeals to the NEC, as soon as practicable.

APPEALS AT CONFERENCE

20. The chair of conference will hear all appeals on placement and refusal before the adoption of Standing Orders.
21. If any appeal is successful, the Standing Orders Committee shall place the Motion on the Conference Agenda and advise Conference as soon practicable when the Motion will be heard.

EMERGENCY MOTIONS

22. Occasionally an issue of such major **National** importance may arise subsequent to the closing date for receipt of Conference Motions. On such occasions the branch **must** have placed the Motion/s before their branch and obtained a clear mandate.

The branch **must** advise the Standing Orders Committee in writing at the earliest opportunity following the branch meeting, via the Secretary at Cronin House.

23. The Standing Orders Committee shall consider the request and approve the Motion/s for inclusion in the Conference Agenda. All branches will be advised of the emergency Motion as soon as possible. If the Standing Orders Committee rejects the emergency Motion the branch shall have the right of appeal to conference prior to the adoption of Standing Orders.

EMERGENCY MOTIONS AT OR PRIOR TO CONFERENCE

24. If an issue of National importance arises and the normal administration procedures could not be followed. The NEC and or delegates attending Conference wish to submit a motion the standard form must be used to allow the Standing Orders Committee to consider, as approved by Conference under Rule 12.5(c).
25. In this situation, the delegates must inform their branch of their decision as soon as possible under the provisions of Rule 20.4, in the case of an NEC sponsored emergency motion the membership will be advised by way of POA Circular.
26. The Standing Orders Committee shall consider the request and approve the Motion/s for inclusion in the Conference Agenda.
27. All branches will be advised of any accepted emergency Motion/s as soon as possible.
28. If the Standing Orders Committee rejects any emergency Motion the branch/NEC shall have the right of appeal to conference prior to the adoption of Standing Orders.

SPECIAL DELEGATES CONFERENCES

If a Special Delegates conference has been convened in accordance with Rules 12.2 (a) (b) and (c) and the agenda published for those affected branches emergency motion/s would not normally be permitted. However, if the NEC believes the matter is of such importance and it is not viable to postpone the conference and invite all affected branches conference will determine whether to accept the motion on the order paper in accordance with Rule 29.4 (a). If the motion is heard all of the membership shall be advised of the decision and outcome by way of POA Circular as soon as possible.

GENERAL

It is possible that some Motions will not be reached on the Agenda or have been remitted to the Executive. If this is the case the Executive will seek the approval of Conference to exercise its discretion as to whether to pursue these issues as part of the POA's policy. All branches will have the right to provide written submissions on these Motions, which must be received at Cronin House by the 21st June or a date determined by the NEC for a Conference not held in May. The decision of the NEC in respect of these Motions shall be promulgated to each branch via POA Circular.

CONFERENCE PAPER 2

CONFERENCE PAPER TWO – ACM 75/2015

FUTURE CONSIDERATIONS

Introduction

Conference agreed to restructure the union under the terms of Annual Conference 61/2011 and this work has been ongoing with reports and changes being prepared for and accepted by Conference as outlined and in Conference Papers one to ten of 2013.

This Conference Paper sets out the areas which will be considered through the restructuring committee if approved by Conference. The union will need to remain flexible regarding this work though, in order to accommodate any policy and rule changes adopted by Conference and the impact this may have on the work.

Why there is still a need for further restructuring

Whilst the Committee dealing with restructuring met the mandate of Annual Conference 61/2011, it is acknowledged that there is further work that can and needs to be done as the Employer and Government introduce change to working practices and policies where POA members work.

It is imperative that the POA has the flexibility to represent and support all our members at local, area and national level, no matter where they work or who they work for.

The true impact of the changes to facility time or paid time off for trade union duties or time off for trade union activities is still being evaluated.

Proposed Areas of Work for Further Review

As indicated, within the terms of Conference Motion 75/2015, there are five categories in which future restructuring should be considered. Each category will be addressed in turn.

- Representation**
- Organisation and Management structure**
- Services and benefits**
- Income and expenditure**
- Reduction in Facility Time (paid time off)**

When considering each of the points it may be necessary to amend the Rules & Constitution to achieve the proposed changes and if this is necessary they will be set out with any proposals brought to Conference.

Representation at local, area and national level

This issue was covered in the legal advice contained in Conference Paper 5 last year but the reality is that the union has to accept that whilst we have public and private sector members we now have Non-NOMS employees and members in the vast majority of prisons. We also have healthcare workers within the secure hospitals and private sector members across the country working for a number of private sector companies, all of which have different terms and conditions and policies.

The level of paid facility time for the Executive has reduced to around 50% with all lay officials required to return to operational duties unless they have been required to undertake specific time bound projects with the employer, but the volume of work has not reduced.

Local branch officials have generally had an imposed reduction of facility time to no more than 8 hours per week, although this data is somewhat patchy due to local work and/or projects. However, it is clear that the allocation of no more than 8 hours is insufficient.

The restructuring committee and Executive are now looking at proposals to bring about change to ensure that all members have appropriate representation in the workplace. This work is ongoing and will involve training and possible changes to the way we work and represent our members.

Organisation and Management structure

This area sits alongside representation and is enshrined in the current Rules and Constitution. The union must consider the current structure and organisation of the union. Whilst members may feel that the current systems work and have a view that if it's not broken don't fix it, the reality is that we must consider everything and rule nothing in or out.

If the Executive and or restructuring committee agree to any proposed changes, these will be brought back to Conference in the form of motions, Conference Papers and rule changes to determine the way forward in agreement with the membership.

It remains the aim of the union, through the restructuring committee, to review the organisational structure of the POA.

Employment issues are a matter for the General Secretary.

The committee accepts that existing terms and conditions of POA employees should not be changed without agreement.

Services and benefits

The union provides a number of services and benefits to members as part of their membership and whilst it is accepted that the vast majority of members do not necessarily access or use the benefits, they do provide value for money and can significantly offset the subscription costs for members.

Good and effective communications are vital to local officials and members and whilst the union currently has a website, facebook page, forum, diary and Gatelodge magazine, to name but a few of the communication strands, technology has moved on and we intend to review both internal and external communication methods.

The Executive have consistently looked at how communications can improve and whilst the use of social network sites, new contacts with the media and other organisations have improved our communication, it is still accepted that this area has to be kept under constant review.

Further consideration must be given to using any tools and processes that will assist POA members in communicating more effectively for the future. Indeed one such tool we are currently considering the benefit of is a POA App which could be downloaded and used by members for a variety of issues.

The annual cost of producing the Gatelodge magazine must also be constantly reviewed along with the POA diary given to members. If there are other ways to provide these benefits and services the committee will consider them.

One of the most valuable services that the union provides to its members is our legal service through the offices of Thompsons. The Executive continually monitor the expenditure in this area and it would be fair to say that considering the impact on legal services across the trade union movement and legal services, following the introduction of the Jackson report, the POA has adapted our systems and supported members to ensure they have access to justice.

Thompsons will provide a report on our legal services which should be considered by the members.

The POA currently pay employment tribunal fees through our loan arrangement which can cost members up to £1200, we cover legal costs in respect of criminal cases and the sums involved for members following means testing has been on average £8000, we ensure all members receive 100% compensation following accidents at work, we are one of the few unions to have such arrangements. These are only a snap shot of the services and benefits we provide to members and their families, but as part of restructuring we are always looking to improve all membership services.

Income and expenditure

The NEC is ultimately responsible for the income and expenditure of the union, but every member and local branch official also plays a part. The POA is a trade union first and foremost but we can't escape the fact that we must operate as a business on a non-profit making basis. We operate to promote and protect the interests of our members and employees.

The Finance Officer will update conference on the year end accounts and provide a report to Conference on savings realised through restructuring to date.

Last years' increase in subscriptions was necessary and this years end accounts demonstrate that. The membership base has stabilised but that has required hard work and face to face recruitment drives, this has to continue.

The restructuring committee and Executive will continue to look at ways to save money, but this will not be at the expense of representation and support of members.

Reduction in Facility Time (paid time off)

The impact of the reduction in facility time has to be considered when the restructuring committee put forward any changes.

The aims and objectives of the union are set out in our Rules and Constitution and any proposals must uphold those principles.

The union must protect and promote the interests of the membership, irrespective of what impact paid time off or changes to legislation brings. The restructuring committee and executive will keep these in mind when considering any change.

Conclusion

The need to restructure the union remains high on the Executives agenda. The restructuring committee will continue to seek improvements and report back to Conference.

CONFERENCE

PAPER 3

CONFERENCE PAPER THREE –
EMERGENCY MOTION TO BE PLACED AT CONFERENCE
DURING STANDING ORDERS REPORT
(see Emergency Motion Booklet).

MEDIA POLICY OF THE PRISON OFFICERS' ASSOCIATION ('THE POA')

Introduction

The National Executive Committee of the POA ('the NEC') has decided that it is necessary to have an agreed Media Policy to protect the interests of the union and members.

The employer and the Cabinet Office have tried to prevent members speaking to the press and to this end the POA has sought legal advice which is contained for information and to ensure individuals are protected providing they have obtained authority and follow the policy.

The NEC is aware that some members of the union have and/are facing criminal proceedings for disclosing information to media.

Legal framework

1. There are conflicting legal rights and obligations that govern the actions of prison officers, union officials and other employees of institutions such as prisons who wish to make comments in the media:
 - a. Everyone has a right to freedom of expression. This is a qualified right (which means that state organisations can restrict expression providing that is proportionate). However, there is an important public interest in the public being informed about what is happening in prison (See, by analogy, *R (Hirst) v Secretary of State* [2002] 1 WLR 2929 at [53]). As a consequence, a powerful justification is required to stop a person with direct experience of prisons commenting on important issues regarding the state of prisons.
 - b. The Civil Service Management Code ('the code') provides that:

Civil servants must not take part in any activities or make any public statement which might involve the disclosure of official information or draw upon experience gained in their official capacity without the prior approval of their department or agency. They must clear in advance material for publication, broadcasts or other public discussion which draws on official information or experience. [4.2.4]

A breach of the code could result in disciplinary proceedings. However, it must be read consistently with the rights to freedom of expression. As a consequence, authority must be granted for public statements unless there is a clear justification for refusing it.
 - c. The provision in the code that states that authority should be sought for disclosure reflects the approach of the courts. In *R v Shayler* [2003] 1 AC 247 it was held that the existence of a right to apply for approval before disclosing material was sufficient to ensure that the Official Secrets Act 1989 was compatible with the rights of a person to freedom of expression.
 - d. Employees of private sector prisons are likely to be subject to similar duties by reason of their employment contracts.
 - e. A duty of confidentiality essentially arises where information is communicated in circumstances in which the nature of the material implies it is confidential, the person who receives the information knows that it is confidential and the person to whom the duty of confidence is owed has not given consent for disclosure (e.g. *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41). In a prison context much of the information received by prison officers is likely to be subject to this duty. That is because the circumstances in which the information was obtained are likely to imply that the information is confidential. The existence of the code implies that information obtained in the course of a person's employment as a prison officer is likely to be regarded as confidential. However, the duty of confidentiality can be outweighed by the public interest.

- f Duties are owed under the Data Protection Act 1998 to individuals (including prisoners) to keep 'personal data' (i.e. data that identifies an individual) confidential. These duties are not imposed directly on most prison officers (but on the 'data controller', who is the person with responsibility for the control of data). However, they may justify actions taken by the Prison Service to maintain confidentiality such as disciplinary action based on the code.
- g. The criminal law imposes restrictions upon prison officers when they disclose material regarding their employment to the media. In particular:
- i. It is an offence under section 2 of the Bribery Act 2010 for a person to receive or agree to receive any advantage for the improper performance of a public function. In light of the legal framework above (including the code), it is highly likely that the disclosure of any material gathered in the course of employment at a prison in return for any advantage will be an offence. That is because disclosure will be improper in light of the legal framework described above.
 - ii. An offence of misfeasance in public office is committed where a public officer (such as a prison officer) deliberately misconducts himself to such a degree as to amount to an abuse of the public's trust. Disclosure of confidential information for benefit is likely to amount to an offence. Similarly, deliberate disclosure intended to cause serious harm (because, for example, it may undermine a person's personal security) is likely to amount to an offence.
 - iii. It is an offence under section 55 of the Data Protection Act 1998 for personal data to be disclosed without the consent of the data controller. There is a public interest defence (among other defences).
- h. The above legal framework applies to any person who is employed by the state to work in prisons (or many other environments). As a consequence, for example, it would apply to those employed as an Operational support grade. It does not merely apply to prison officers. However, additional duties potentially apply to those who are members of a regulated profession as well as being state employees. For example, nurses are subject to *The Code: Professional standards of practice and behaviour for nurses and midwives*¹. Church of England clergy employed as chaplains may be disciplined². This guidance will not seek to set out all of the professional regulation that applies as it is assumed that all POA members will know when they are subject to professional obligation. The key point is that professional rules may impose additional obligations. In general a regulated professional such as a nurse will owe a duty of confidentiality to those who they are providing services to. A breach of those duties may result in professional disciplinary proceedings.

Guidance on legal framework described above

2. The following principles are clear from the legal framework identified:
 - a. Information or knowledge obtained in the course of employment by the Prison Service or similar organisation must never be disclosed in return for payment (or other advantage). Disclosure in these circumstances is highly likely to amount to an offence under the Bribery Act 2010. It may also amount to misfeasance in public office. It will also bring the profession of prison officer into disrepute.
 - b. Security information (or other information which needs to be kept confidential to protect against physical or emotional harm) should never be disclosed. There is a significant risk that disclosure in these circumstances will amount to misfeasance in public office. Again it will also bring the profession of prison officer into disrepute.
 - c. Information obtained from prison records and that identifies a particular prisoner (or any other person about whom records are held) should never be disclosed. That is because it is almost certainly an offence under the Data Protection Act 1998. Although there is a public interest defence, it will be difficult to justify disclosure without seeking authority from management.
 - d. There is nothing objectionable in prison officers or other employees of the state making comments about legitimate matters of public concern where the matters that are being commented on are a matter of public record. For example, it would be unobjectionable for prison officers to comment on figures regarding the levels of violence in prison saying that they are unacceptable. There is a powerful public interest in such disclosure and it is not based on confidential information.
 - e. Where a prison officer or other person employed in a prison environment wants to comment on information obtained during the course of employment, they should seek approval from management. For example, if a prison officer wishes to say that their personal experience is that violence is frequent, approval should be sought. The difference between this and comments on the figures regarding the levels of violence is that a prison officer is commenting on their experiences.
 - f. If permission is refused to speak to the media by the employer, the employee should appeal the decision using the grievance procedures. Individuals can only be refused permission to speak to the media where there is a sufficiently good reason to justify restrictions upon freedom of expression.
 - g. In theory, there may be circumstances in which the public interest requires the media to be supplied with material without waiting for approval. This is likely to be exceptional. If there is reason to believe that there may be justification for such disclosure, advice should be sought from the Governor or Director of your place of work. Anyone taking such action should be aware that they will be at risk of legal action.
 - h. If a POA official, employee and or member is refused permission to speak to the media by the Prison Service, they should seek permission from the NEC before speaking to the media. The NEC decision is final in accordance with the POA's Rules and Constitution. If a POA official, employee and or member is refused permission but proceeds to comment, they will not be eligible to apply for legal advice and support should they be investigated by the employer and or any other organisation.

- i The POA will vigorously defend its members' rights to speak to the media.

Authorised media comments on behalf of the union, in a person's capacity as a POA official, employee and or member.

3. The above guidance applies when a POA member wishes to make comments to the media in a personal capacity. The following additional guidance applies where a person wishes to comment as
 - a. An employee of the union.
 - b. An official of the union.
 - c. A member of the union.
 - d. In any other context in which there is a risk that the comments made will be attributed to the union.

4. It is essential for the effective advancement of members' interests that the union presents a consistent message. As a consequence, approval must be sought before comments are made to the media where there is a risk that the comments made will be attributed to the union. In particular, before any comment is made to the media:
 - a. In England and Wales, approval must be given by the National Chairman, the General Secretary or the NEC. The power to give authority may be delegated by the NEC to named officials.
 - b. In Scotland, approval must be given by the Scottish National Committee and/or the Scottish Chair.
 - c. In Northern Ireland, approval must be given by the Northern Ireland Area Committee or the Northern Ireland Chair.

5. For the avoidance of doubt, no approval will be given in circumstances in which principles 2(a), (b) or (c) above would be breached.

Adopted by the NEC on 15 April 2015, Presented to Annual Conference 2015.

¹ <http://www.nmc-uk.org/The-Code/The-Code-in-full/#professionalism>

² <http://www.common tenure.org/>