

Justice Committee

Railway Policing (Scotland) Bill

Written submission from the British Transport Police Federation

The British Transport Police Federation (BTP Federation) welcomes this opportunity to share its perspective and specific concerns of BTP officers in Scotland regarding the proposed integration with Police Scotland. We commend the Scottish Justice Committee for opening this evidence gathering to all stakeholders and the public. We have limited our responses to questions which directly affect BTP officers to best represent them in this submission.

The BTP Federation sincerely hopes that the views of those most affected by the integration of the BTP in Scotland into Police Scotland, namely the BTP police officers required to transition into Police Scotland, will be given due consideration in the final decision for integration.

- 1. The Impact, if any which the devolution of railway policing will have in terms of retaining specialist skills and knowledge built up by British Transport Police Officers:*

The British Transport Police (BTP) have been policing the railway environment for over 100 years. They have a successful record of accomplishment ensuring a seamless Policing model throughout the country. BTP is a national Police service, with one command and control structure, one communications chain and one crime recording process. It is one of the most inspected and reviewed police forces in the UK and on every occasion since the creation of the British Transport Police Authority (BTPA) in 2001 these reviews have concluded that a national specialist railway policing service best serves passengers and the railway industry.

The BTP is already accountable to several departments and organisations, ranging from the Department for Transport (DFT), Scottish Government Ministry of Transport through to Her Majesty's Inspectorate of Constabulary (HMIC) inspections (including Scotland), BTPA, the rail industry, their employees, Transport Focus Groups, and the millions of travelling passengers. During a recent meeting with Mr Matheson, one of his transport civil servants spoke of being present at a meeting with our own Chief Constable consulted with all stakeholders including the SPA and Government Ministers around BTP's strategic objectives, policing plan and so on.

One of the last inspections by HMIC Scotland with the BTP Crime Audit resulted in no recommendations being made to BTP Scotland or BTP as a force, which highlights the already significant accountability within the current structures.

We would ask that the Justice Committee take account of the experience and knowledge provided by the BTP in its delivery of policing services to the railway. Passenger satisfaction is up 7 percentage points on the UK average and this no small part down to the successful policing model delivered by BTP. We would seek that these high standards are maintained for the benefit of the travelling public.

BTP is also accountable to organisations that are external to the policing environment. These are rail industry specific and include the Railway Accident Investigation Bureau (RAIB) and the Office of Rail Regulators (ORR). In the event of major incidents on the rail network, these organisations at times will take primacy until such time as scenes are handed back to the BTP when a crime is unidentified.

Each BTP officer, at every rank, is trained and experienced in policing the railway environment. The understanding of the environment is essential; a lack of experience by a manager making command decisions could be costly, but more importantly, potentially life threatening. Policing the railway environment is dangerous and it is vitally important that everyone working within it understands the associated dangers.

BTP officers have an affinity with the industry that it serves and this arises from time spent within the specialist railway environment building up skills and knowledge of the industry. This offers a service to the public, which is far more than just policing. BTP officers are able to not only protect the public in the traditional sense of the justice arena but also by assisting them with queries related to the rail environment.

BTP officer placements within the industry provide an advisory role on crime prevention, share public order knowledge, and perform safeguarding roles. At present this is added value the force provides to the industry, though it has proven to be a valuable resource to guide and advise on best practice to maximise safety and efficiency.

It is BTP Federation's view that the best way to maintain, as far as possible, the current excellent BTP service is to introduce greater accountability to the SPA through the collaborative setting of future policing objectives. This enables the excellent service delivery of the BTP to be maintained while acknowledging the Smith recommendations around greater accountability and the transfer of the functions of the British Transport Police in Scotland; but not the dismantling of the BTP in Scotland.

This would also provide a greater say in the railway policing of Scotland by the Scottish people and the Scottish Police Authority. The BTP within its current format is an established and successful model, which provides certainty of policing and structure to both the public, Train operators and the serving officers employed within.

2. The impact, if any which the devolution of railway policing will have in terms of cross-border security arrangements:

Borders and barriers

The BTP is the only public facing National Police Force that can work across borders with a seamless Policing model that has been proven to be successful for many years. Having two Police Forces responsible for policing the railway environment creates unnecessary borders and barriers.

The BTP Federation has concerns regarding potential for interruptions to the level of service provided for estimated 21 million passengers who make cross-border

journeys annually. These passengers expect to travel in a safe environment and to receive a seamless Policing response if or when they are victims of crime.

The BTP's current operational trunking is national with control rooms covering the north and south of the country linked to the same command and control. At present police Scotland is still in the integration phase of their radio control and it's £60 million computer project 'i6' was shelved when it became clear that the technical solution could not be delivered within expected timeframes and budget.

The ability to track and monitor the movements of potential offenders or indeed manage a cross border issue with a disrupted control infrastructure or indeed one that is not intrinsically linked could be problematic. The BTP has behavioural detection officers across the force to detect and disrupt potential terrorism and criminal offenders and these can be deployed seamlessly throughout the country without disruption.

In addition to the terrorism issue, the BTP has a national drivers' reporting line linked to its control rooms for the management of fatalities. To prevent delays and allow for the geographical challenges of the rail network drivers can contact the fatality line to provide details of what has occurred in the first instance and provide detail for those attending the scene. The seamless aspect to this is the first-hand knowledge of the rail network from control room operators which may not continue if the merger takes place.

Other issues which would be impacted by the BTP no longer having jurisdictional presence or power within Scotland include the management of the 'royal train' and nuclear freight movements.

If the bill is successful we in the BTP Federation question how Police Scotland will they operate across a border where they have no jurisdictional powers. We also question who will be responsible for the cross-border funding should Police Scotland become embroiled in operational matters. If the bill is successful the Chief Constable of BTP has stated that, because of current funding, he will not deploy officers into Scotland and indeed the bill itself prevents that interaction.

Policing priorities

Policing priorities on the railway are different to those of policing generally. The rail industry expects to see a return for the service which they are funding, and BTP officers - with a proven knowledge and affinity for the industry environment - must balance objectives that impact on security and safe travel for passengers with those objectives that ensure the smooth running of trains throughout the country.

Delays to the rail industry create a domino effect. Trains and passengers are affected not just at the location of any given incident, but could be just as inconvenienced many miles away because of the knock-on effect. If not managed safely and efficiently, such incidents can become both dangerous and expensive to the Train Operating Companies (TOCs) and passengers. Two forces dealing with the same incident could create confusion, delays and cost to TOCs and passengers alike.

There is a great responsibility given to policing the railway network to ensure safe but speedy passage to trains and passengers. Any failure to properly control such incidents could significantly impact on working relationships. BTP is tasked with providing sufficient resources to the rail network to ensure confidence from both the TOCs and the public that we can ensure business as usual in the quickest and safest way possible.

BTP has the foundations in place to ensure that all incidents are policed in a seamless and timely fashion. These same incidents are communicated without delay to the industry ensuring continuity throughout the country. There needs to be reassurance that these foundations are preserved and maintained so the rail industry and passengers alike retain clear and open channels of communication. It is critical that expectations of railway policing are managed, and the priorities of passengers and the industry throughout the country (and not solely in one region are understood.

BTP officer placements within the industry provide an advisory role on crime prevention, share public order knowledge, and perform safeguarding roles. At present, this is added value we provide to the industry, though it has proved to be a valuable resource to guide and advise on best practise to maximise safety and efficiency.

BTP's sole responsibility is policing the railways and the force has in-built resilience to deliver its dedicated specialist services. It is imperative that same level of resilience, skills and experience could be delivered in the future, to ensure the integrity of bespoke railway policing services.

3. The impact, if any on the ensuring consistency in delivering passenger safety and maintaining confidence within railway policing:

The BTP in Scotland currently delivers a successful combination of both specialist and neighbourhood style policing within its current model. This may be affected should the status of the BTP in Scotland be changed.

Senior managers within BTP have extensive experience in leading specialist teams working in a specialised policing environment. The concern for the BTP Federation is that this may not be reflected in the skills and experience of senior managers within Police Scotland. Therefore, there are likely to be cost and abstraction implications in order that relevant training can be provided.

Such a lack of knowledge and experience could also have wider cost implications. Service delays resulting from fatalities lead to fines for the Train Operating Companies (TOCs). BTP's understanding of the railway environment allows it to achieve, on average, a hand back time of 90 minutes after a fatality has occurred on the network, whilst still respecting the dignity of the deceased and fulfilling its statutory requirements. Analysis has shown that geographic forces, on average, take over 50% longer to hand back the railway to operators, which causes extra delay and cost to passengers and train operators.

Throughout the country there is one crime reporting process for victims of crime on the railway, resulting in a seamless policing response. It matters not where on the

railway a crime occurs, the victim whatever their destination will be dealt with by experienced BTP officers with one communication chain and one crime reporting process. The crime can be allocated accordingly and investigated in a timely fashion.

The delivery of reassuring victims of crime could be diluted and confidence could be affected by using two different forces dealing with two different methods of crime recording, two different communications chains deciding on who is best placed to investigate the victim's complaint.

Events Policing will also suffer. BTP officers police large numbers of supporters travelling to a raft of sporting and other events. If this became the responsibility of Police Scotland there would have to be a transfer of responsibility to BTP when those fans cross the border and likewise on their return. We question when this will occur and how. At present BTP officers have a proven track record of delivering fans to events ensuring the safety of other passengers and the smooth running of trains across the border, without interference or delays.

Confidence from the Train Operating Companies (TOCs) is reflected in their funding streams. If they do not receive a service, then they will hold Police Scotland to account and would be able to hold back funding; something Police Scotland cannot afford given their current funding gaps. However, if they are signed into a service agreement with the TOCS they must supply a policing service.

4. The possibility that officers tasked with railway policing in Scotland may be abstracted from their core rail policing duties in order to support wider operational roles within Police Scotland:

A further concern for the BTP Federation is the potential for BTP officers in Scotland to be abstracted from their core rail policing duties in order to bolster the resilience of Police Scotland. This has the potential to dilute the specialism of BTP officers, and compromise our role within the industry which funds us, as well as with the travelling public.

At Present Police Scotland and BTP work hand in hand attending incidents on both jurisdictions. If Police Scotland are first responders to an incident on the railway they will hand that incident and investigation to BTP with immediate effect and vice versa. This transfer allows for both Forces to focus on their respective jurisdiction rather than dealing with incidents outside it. This will not happen if all officers are under one umbrella. If a Police Scotland officer who is attached to the proposed Railway division, is the first responder to a local incident not relating to the railway, that officer will deal with that incident in its entirety. This abstraction takes these Railway division officers away from the environment that they should be policing. There is no opportunity of handing that incident over. This is a basic simple explanation of the service being diluted.

This example will be only be amplified in a public order or event policing situation where local resources will be required. Where BTP at present police travelling fans and hand them over to local forces once escorted from the train stations, enabling those officers to return to policing the railway. Police Scotland in the new world will

escort from the station and beyond, in some circumstances to the event preventing a return to the railway environment.

The examples above are not exhaustive there are many examples where abstractions can occur. The point is not the abstraction so much if a replacement can be found within the ranks of Police Scotland. Clearly this would be a difficult task unless Police Scotland are to train all officers in policing the railway environment. Without such training you cannot replace one uniform officer with one that is not trained.

Working in and around the railway requires officers to possess a Personal Track Safety certificate, which allows you to work in that environment. To obtain such you must be trained and regularly tested to allow you to continue working on the railway. Without a PTS certificate you cannot work on the railway. So any abstraction without trained and certificated replacements leaves the railway in a very vulnerable place hence the importance of having a specialised police force who solely polices that environment.

The suggestion of ring fencing officers in a special transport division within Police Scotland assumes that the current level of officers shown will remain. If those numbers moving across are, as we expect, reduced we question how Police Scotland will manage the 'backfill' issue. In June 2016, the Scottish Government's consultation paper around the proposed merger makes mention (at point 68) that the national single service will allow for greater flexibility for police officers should they choose to move into other policing specialisms. That does not represent a safeguarding of and commitment to rail policing and would potentially impact on Police Scotland's 'business as usual' policing delivery for communities because extensive numbers could be needed to 'plug the gaps'.

Furthermore, the Scottish Government commissioned 'Evaluation of Police and Fire Reform' Year One summary report refers to police Scotland currently being in a transitional phase and trying to consolidate their position following the legacy integration. Page 18 of the report highlights the success of national services arising out of the legacy integration but states this has been to the detriment of frontline routine policing because of the officers removed to national specialist posts.

5. The implications, if any, for BTP officers who are currently contracted officers when they are transferred to Crown Servants including any implications with regard to terms and conditions and Pensions:

Status of officers

BTP officers are employees of British Transport Police Authority. BTP officers are employed under Contracts for Employment issued in accordance with the Employment Rights Act 1996. The contracts spell out the basic Conditions of Service for officers.

The status of BTP officers was considered in the case of Spence and BTP in 2001. This case concerned a former officer who attempted to bring an unfair dismissal case against the Force. The Employment Appeal Tribunal held that whilst BTP officers held the powers and privileges of Constables and the definition of Police

Service was fulfilled, such officers are in fact employees. It was held that BTP officers are engaged under Contract of Employment in a Police Service. Since BTP clearly meets the definition of a Police Service its officers are therefore excluded from Section 200 of the Employment Rights Act 1996 and do not have the right to bring unfair dismissal proceedings.

The status is further confirmed in the Railways and Transport Safety Act 2003. Section 24 of the Act grants the BTPA the Authority to appoint and employ Constables within the Force. Section 24 (3) and (4) confirms that Section 29 of the Police Act 1996 should apply to BTP Constables and that all BTP officers must be sworn in as Constables thus confirming that BTP officers are both employees and office holders.

Tom Winsor refers to the status of BTP officers in Section 6.1.38 in part 2 of his Report. He states “unlike Home Office Forces BTP Officers are employees of BTPA and can be made redundant...” he states in paragraph 6.1.39 that, “whilst BTP officers are employees of BTPA, they do not have some of the ordinary rights associated with the status”.

The employment status of BTP officers is different to officers in Home Office Forces. Those officers are not employed in the strict sense of the word. They are Crown Servants and office holders. They are not employed under a contract of employment. The Terms and Conditions of their service are set out in Police Regulations. The office of Constable means that a Police Officer holds legal powers given to him directly by having sworn an oath of allegiance to the crown. This ensures separation of powers and political independence. Each sworn Constable is an independent legal official and each Police Officer has a personal liability for that action. A Chief Officer of a Force also has a level of corporate responsibility. It is this element which has provided a quandary in legislation and case law.

BTP Federation is unaware of any legal mechanism to transfer employee status to that of Crown Servants. Officers from BTP who wish to continue employment in BTP Scotland could find a strong argument for a claim of redundancy.

Pensions issues

There are currently three main pension schemes that affect members of the BTPFSF, namely the 1970 (30 year), 2007 (35 year) and the CARE (career average) schemes. None of the three pension schemes mirror exactly any of the Home Office schemes or Police Scotland schemes, but the closest is the CARE scheme. Police Scotland only offers Career Average Schemes to new joiners. The Smith Commission report was very clear that there should be no detriment suffered arising out of any devolution issues, officers currently in either of the BTP 1970 or 2007 schemes would suffer a detriment if moved to a career average scheme.

Additionally, there is the issue of employer contributions, trustees, the set-up of the pensions' management committee, 1970 and 2007 scheme members paying different levels of contributions in comparison to Police Scotland colleagues.

Pensions are a major concern for many BTP officers, who would need precise figures with regards to the yearly cost for the employer contributions for the 1970 and

2007 schemes. They would need reassurance that these two schemes will continue in their present state. Obviously, this is less problematic for those officers who are on the CARE scheme than the 1970/2007 schemes.

There is potential for considerable financial detriment to BTPF members, and a clear difference in contribution levels between the BTP scheme and Police Scotland's scheme.

The BTPF scheme is a private trust scheme, and the potential for detriment extends beyond current serving officers as these changes will not just affect BTP Scotland officers, but BTP officers and retired officers on schemes that they leave. Scottish officers will no longer be contributing to the support of the retired officers in Scotland, leaving BTP to pay for retired Scottish officers without further contributions from BTP officers in Scotland.

BTP pensions allow officers to benefit from continuing to work past 55 without detriment to their pensions. In fact, those officers choosing to work past the age of 55, and in some cases past 60, may have already taken their pension and may be still contributing to their scheme. This could create problems, and age discrimination may become an issue because of any pension alterations.

Additionally, there may be officers protected by the equality act who are able to continue working in a role that offers reasonable adjustments. SPA should continue with those adjustments, and allow those officers to continue employment. The SPA should provide assurances for those in roles currently provided with reasonable adjustments under the Equality Act.

There is potential for a significant cost implication from pension assimilation from the different pension schemes of BTP officers. If the Scottish Government were to become a participating employer for the purposes of managing the pension schemes, then there may be a further cost implication around the negotiation of complexities with the Railway Pension Company Trustee Limited (RPCTL). The SPA would also be expected to manage the estimated £92 million pension liability currently administered by the BTPA.

Protections and privileges

BTPF members have redundancy/resettlement conditions within their T&C's, which should also transfer across with any transition of BTP officers in Scotland to Police Scotland as part of the no detriment assurance from Scottish Government. There are also a number of other protections and privileges currently afforded to all BTP officers, including the free travel provision for officers and their families, which alone has an estimated value of approximately £20,000 per officer.

Impact on the wellbeing of officers

The strength of feeling from Scottish BTP officers not wanting this merger cannot be underestimated. The level of uncertainty it has created has caused real anxiety for officers as they still do not know what the financial future holds for them in terms of their pensions, allowances etc.

The process around proposed integration has, in their minds, been one of 'engagement but not consultation'. The proposed consultation paper in June 2016 concentrated on how best to merge, not whether there should be a merger. Officers in Scotland feel extremely let down by their government who they feel have pressed ahead with a decision on their futures both financially and career wise without offering any evidence as to why a merger is best, what advantages it brings for the travelling public and the financial implications to them and their fellow taxpayers.

The 'engagement not consultation' has been flawed from the outset and has created resentment because it has failed to deliver any finite details on future financial security. Correspondence has spoken of 'potentials' and 'a desire to'; statements which are not definitive. On the back of all this they read in their own local media the perilous financial situation of Police Scotland.

Conclusion

The proposals contained within the Railway Policing (Scotland) Bill, and its accompanying policy documents/memos are very vague. The intention is to retain the specialist railway policing function, but within Police Scotland for greater accountability. This might have been justifiable if the policing on the rail network in Scotland was poor and unsuccessful, but the clear evidence shows this is not the case. Both in Scotland and the rest of the UK, this model of policing has been very effective.

If this proposal is implemented, it will create a barrier/border which does not exist at present. There is no evidence that Police Scotland routinely carry out cross border policing, so why would a Railway Policing sub division within Police Scotland be any different. Why would BTP officers from the rest of the UK cross the border when they no longer have authority, and were they needed, who will pay for that service?

This process has created great uncertainty for BTP officers in Scotland, who have put their plans on hold. There no trust from officers, who believe that the Scottish Government are going ahead with this regardless. There is no buy in from officers; they see the very public issues that Police Scotland are facing and don't see how policing of the rail network will be improved by the merger. Something built on false premise is hard to sustain and so will be retaining that specialist policing capability.

British Transport Police Federation
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