

**DMPC Decision – PCD 1425**

**Title:** Request for authorisation to settle a civil claim against the Metropolitan Police Service (MPS)

**Executive Summary:**

The Deputy Mayor for Policing and Crime (DMPC) is asked to consider a request to settle civil claims.

The Deputy Mayor for Policing and Crime has the discretion to authorise financial settlement of claims where it would be conducive to the maintenance of an efficient and effective police force

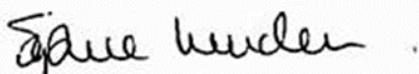
**Recommendation:**

The Deputy Mayor for Policing and Crime is recommended to: authorise settlement of civil claims for the reasons set out below and in part two.

**Deputy Mayor for Policing and Crime**

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

**Signature****Date**

31/03/2023

## **PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC**

### **1. Introduction and background**

- 1.1. Following the Judgment in *Allard v Chief Constable of Devon & Cornwall Police* 2015 ('Allard') officers from the Dedicated Source Unit (MO3) and SO15 issued legal proceedings against the Commissioner claiming financial compensation for unpaid overtime and compensatory leave when they received contact whilst off duty pursuant to the Police Regulations 2003 and Determinations. They also claim unsociable hours and on-call allowances and damages for compensatory leave which accrued but was not granted.
- 1.2. 274 officers made a claim against MPS. Nationally, around 1,200 claims were made against almost all police forces. Allard established that a telephone call taken when off duty constitutes a recall to duty allowing an officer to claim overtime. However, it did not determine quantum or provide guidance on how the Regulations would apply to these specialist roles.
- 1.3. The claims were consolidated as the Police Overtime Claims Litigation ('POCL'). Six lead cases were appointed originally, three of which (non MPS claims) now settled before trial. The remaining lead cases were DC KSO (full time handler), DC KWS (part time handler) and I KBS (Inspector Controller). The balance of the claims nationally were stayed pending the outcome of the test litigation
- 1.4. The litigation was divided into four categories, as follows:
  - a) Category 1 (Lead CHIS Handler and Controller cases): 3 claims against MPS: DC KSO, DC KWS and I KBS
  - b) Category 2 (non-Lead CHIS Handler and Controller cases): c.1,200 claims against 43 forces, 73 outstanding claims against MPS.
  - c) Category 3 (non-CHIS Handler or Controller cases): 70 claims against 15 forces, up to 41 claims against MPS.
  - d) Category 4 (Undercover/ Cover Officer cases): 101 claims against 25 forces, 28 claims against MPS, 1 of which is a lead claims. These claims are subject to separate test litigation as they raise separate issues to that of CHIS handlers and Controllers and those in analogous roles (category 3 claims).

#### The judgment – *KSO & Ors v Commissioner of Police of the Metropolis*

The judgement was handed down on 10 October 2022 with the following findings:

- a) For all recalls before 1 April 2012 and for recalls on rest days, bank holidays and annual leave only post 1 April 2012 each recall entitles the officers to a 4-hour period of overtime. If a further call is received within that 4 hour period that will start a fresh period of 4-hours but there can be no double counting.
- b) Any period of work triggers the entitlement to overtime. Thereafter, once triggered it is to be determined in 15-minute increments.

- c) An Inspector is recalled to duty when contacted out of hours in relation to intelligence received by a handler which requires a decision about dissemination or other consequential action and/or when they were contacted out of hours by handlers, operational teams of officers or other agencies. In addition, they are recalled when contacted out of hours in relation to other managerial responsibilities. Inspectors can only claim overtime in respect of recalls on annual leave, which limits the impact of this finding.
- d) An inspector is only entitled to recover overtime for recalls on annual leave.
- e) The determinations did not permit an inspector to claim compensatory leave (or damages in lieu of) for work performed on public holidays or rest days where the duty is performed by reason of a recall or requirement to do duty.
- f) A failure to grant additional leave within a reasonable period of time does give rise to a claim for breach of statutory duty which can be converted into damages in relation to the same.
- g) In respect of part time officers recalled to duty prior to the 1 April 2012, that does not meet the prescribed conditions in Annex G(3)(a), paragraph (3)(m) does not have the effect of applying a deemed four-hour minimum period to the length of that recall for the purposes of the officers' entitlement to payment at plain time.
- h) An officer is on-call when they are required to be available to perform their duties outside of their rostered tours of duty and whether they are required to do so is to be assessed by reference to the substance of their duties rather than by whether they have been designated on a rota as on-call for the period in question. The court rejected the argument that the criteria is as set out in the on call agreement. For the MPS and the balance of MPS claims this means that unless there is evidence to the contrary most officers will have been on call save for on extended leave until the formal on call system was implemented in November 2016 for MO3 and May 2017 for SO15.
- i) The court accepted that the length of recall will be the call plus an average processing time. Where there were several calls arising out of the same CHIS or same circumstances, those calls should be clustered so that it amounts to 1 recall as opposed to each and every call giving rise to a brand new recall of either 4-hours or 15 minutes.
- j) The court accepted that to quantify the balance of claims this can be demonstrated by general and/or average frequencies or durations of out of hours duties.
- k) Any amount paid will be subject to tax and NI deductions.

- l) The court determined that the rate of interest to be applied is the Bank of England Rate for the cost of borrowing for the claim periods which is on average around 6.79%.

## **2. Issues for consideration**

- 2.1. For the DMPC to consider whether to authorise settlement of a civil claim identified in part 2, and whether the settlement will secure an efficient and effective Police Service

## **3. Financial Comments**

- 3.1. The cost of any settlement, if agreed, would be met from the centrally held third party claims provision budget. This claim forms part of the Third Party Service Provision.

## **4. Legal Comments**

- 4.1. The DMPC has delegated authority under section 4.10 of the Scheme of Consent and Delegation 2016, to consider the current application
- 4.2. MOPAC has the power to pay any sum required in connection with the settlement for any claim made against the Commissioner under Section 88 of the Police Act 1996.

## **5. GDPR and Data Privacy**

- 5.1. The processing of personal data has been minimised as part of this decision and is held within Part 2 of the report.

## **6. Equality Comments**

- 6.1. To continue policing with the consent of the population it serves, the police will always seek to treat everyone fairly and openly. Race or equality issues do not appear to have an impact in this matter.

## **7. Background/supporting papers**

- 7.1. None

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the MOPAC website following approval.

If immediate publication risks compromising the implementation of the decision it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

**Part 1 Deferral:**

Is the publication of Part 1 of this approval to be deferred? Yes

If yes, for what reason:

Until what date: Annual Review

**Part 2 Confidentiality:** Only the facts or advice considered as likely to be exempt from disclosure under the FOIA should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a **Part 2** form – YES

**ORIGINATING OFFICER DECLARATION**

	Tick to confirm statement (✓)
<b>Financial Advice:</b> The Strategic Finance and Resource Management Team has been consulted on this proposal.	✓
<b>Legal Advice:</b> The MPS legal team has been consulted on the proposal. required.	✓
<b>Equalities Advice:</b> Equality and diversity issues are covered in the body of the report. AND The Workforce Development Officer has been consulted on the equalities and diversity issues within this report.	✓
<b>Commercial Issues</b> Commercial issues are not applicable	✓
<b>GDPR/Data Privacy</b> <ul style="list-style-type: none"> <li>GDPR compliance issues are covered in the body of the report an</li> <li>A DPIA is not required.</li> </ul>	✓
<b>Director/Head of Service:</b> Judith Mullett has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓

**OFFICER APPROVAL****Chief Executive Officer**

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

**Signature**

*Hanahucherd.*

**Date** 28/03/2023