

**REQUEST FOR DMPC DECISION – DMPCD 2014 116****Title: Application for financial assistance for legal representation****Executive Summary:**

The DMPC agree the application for financial assistance in the sum of £25,600 (plus VAT) made by the Applicants for separate representation in a forth coming inquest.

**Recommendation:**

That the application be granted for the reasons set out in the Exempt Report.

**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**

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

### **Decision required – supporting report**

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

- 1.1 The Exempt Report is exempt because it falls within an exemption specified in Article 2(2) of the Elected Local Policing Bodies (Specified Information) Order 2011, the Data Protection Act 1998 and/or the Freedom of Information Act 2000 e.g. because the information amounts to personal data, is confidential or commercially sensitive. Further, parts of it are subject to Legal Professional Privilege.
- 1.2 Inquest proceedings will commence in early 2015 – it is likely to last for 2 weeks. A Pre-Inquest Hearing is listed for the 6th of October 2014. The police officers concerned have both been accorded the status of an Interested Person (IP) by the Coroner. It is very likely this case will attract media publicity.
- 1.3 The factual background giving rise to the proceedings are as follows: The deceased was convicted of an offence and sentenced to detention in a young offender institution and released early on licence. The licence was later revoked and a recall to custody was issued. On the 10th of April 2012 police attended an address where it was thought the person was living.
- 1.4 Two police officers gained entry to the premises and located the person on licence recall. The person was in night attire and allowed to change into day clothes. At this point police were not directly supervising the individual and it is believed the person attempted to escape via the bedroom window. The person fell from the window and died.
- 1.5 The Directorate of Legal Services confirm that the Applicants satisfy the criteria for entitlement to financial assistance namely: they were performing their official duties; they were acting in good faith and there was no willful neglect on their part; and they exercised reasonable judgment. The facts provided by the applicants in support of their representation for financial assistance are set out in the exempt report.
- 1.6 The Commissioner's position in relation to the Applicant's representations for financial assistance is set out in the Exempt Report.
- 1.7 There is a clear conflict of interests between the position of the Commissioner and the Applicants and accordingly the Applicants requires separate legal representation and financial assistance. This point is supported by DLS and outlined in the part 2 report.

#### **2. Issues for consideration**

- 2.1 For the DMPC to consider whether there was a conflict of interest requiring separate representation and financial assistance and whether the financial assistance will secure an efficient and effective force
- 2.2 The DMPC has power to grant the application if he is satisfied that funding the Applicant's legal expenses in the proceedings is likely to secure the maintenance of an efficient and effective police force.

#### **3. Financial Comments**

- 3.1 The solicitors acting for the Police officer applicant have submitted an estimate of the total costs of the separate representation in support of the application for financial assistance in the sum of £25,600 plus VAT.

3.2 The MPS will meet the cost of additional counsel and legal fees from the 1996 Police Act Expenditure budget found within DLS.

#### **4. Legal Comments**

4.1 The DMPC has a discretion under Section 3(6) and para. 7 of Schedule 3 of the Police Reform and Social Responsibility Act 2011 to fund police officers' legal expenses in proceedings if they consider that providing the funding secures an efficient and effective police force, (see also R -v- DPP ex parte Duckenfield (2000) 1 WLR 55). The DMPC has delegated authority under para. 2.20 of the MOPAC Scheme of Delegation, to consider the current application for financial assistance.

4.2 A conflict of interests arises between the Commissioner and the Police Officer/Staff which gives rise to the need for separate representation and financial assistance for the reasons set out above.

4.3 Home Office Circular 43/2001 provides guidance which applies to MOPAC. Para. 12 states "police officers must be confident that Police Authorities (now Police and Crime Commissioners) will provide financial support for officers in legal proceedings where they have acted in good faith and have exercised their judgement reasonably. Police Authorities will need to decide each case on its merits, but subject to that, there should be a strong presumption in favour of payment where these criteria are met".

#### **5. Equality Comments**

5.1 There will be media and family/community interest in this case and the MPS cannot discount the inferences and potential for disquiet and distrust that can be brought about by any related activity such as stated above. Unless the community concerns associated with this case are managed effectively there is the potential for the family/community to distrust the police. To continue policing with the consent of the population it serves, the police will always seek to be open and transparent in the decisions we make.

#### **6. Background/supporting papers**

Exempt report at part 2

**Note:** Article 2(2) of the Elected Local Policing Bodies (Specified Information) Order 2011 states that that Order does not apply to information if its publication:

- (a) would, in the view of the chief officer of police, be against the interests of national security;
- (b) might, in the view of the chief officer of police, jeopardise the safety of any person;
- (c) might, in the view of the chief officer of police, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice; or
- (d) is prohibited by or under any enactment.

**Public access to information**

Information in this form is subject to the Freedom of Information Act 2000 (FOIA) and other legislation. Part 1 of this form will be made available on the MOPAC website within 1 working day of approval. Any facts/advice/recommendations that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of **this** form to be deferred? NO

If yes, for what reason:

Until what date (if known):

Is there a **part 2** form? YES

If yes, for what reason: An exempt report containing confidential and personal information has been submitted in Part 2.

**ORIGINATING OFFICER DECLARATION:**

<i>Tick to confirm statement (✓)</i>	
<b>Head of Unit:</b> Sue Leffers has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓
<b>Legal Advice:</b> The MPS legal team have been consulted on this proposal.	✓
<b>Financial Advice:</b> The Head of Strategic Finance and Resource Management has been consulted on this proposal.	✓
<b>Equalities Advice:</b> The equalities issues are set out in the report above.	✓