

REQUEST FOR DMPC DECISION – DMPCD 2016

Title: Application for financial assistance for the legal representation of a former police officer

Executive Summary:

The Directorate of Professional Standards is requesting that the Deputy Mayor of Policing and Crime consider an application for financial assistance for a former police officer in the sum of £307.919 (inclusive of VAT) for separate representation in criminal proceedings.

The Deputy Mayor for Policing and Crime (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 an efficient and effective police force. The DMPC has delegated authority, under 4.10 of the MOPAC Scheme of Delegation, to consider the current application for financial assistance.

Recommendation:

The DMPC is asked to approve the application of financial assistance made by the Applicant for the sum of £307.919 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

17/3/2016

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 para 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.
- 1.2 The criminal proceedings are concluded. The factual background giving rise to the criminal trial and this application is set out in the exempt report.
- 1.3 The Applicant represents that he satisfies the criteria for entitlement to financial assistance for the following reasons; (1) he was performing his official duty as a police officer; (2) he was acting in good faith; (3) there was no neglect or willful default on his part; and (4) he exercised reasonable judgement. The facts provided by the applicant in support of their representation for financial assistance are set out in the exempt report.
- 1.4 The Commissioner's position in relation to the Applicant's representations for financial assistance is set out in the exempt 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 Police Federation, acting for the police officer, has submitted a final invoice of the costs of the separate representation in support of this application for financial assistance. The Police Federation has agreed to meet 10% of the full cost (£342,132.37) of defending the criminal trial.
- 3.2 The costs will be met from the 1996 Police Act Expenditure budget held within DLS. However should this budget over spend, any over spends in this financial year will be met from the overall DLS revenue budget.

4. Legal Comments

- 4.1 The DMPC has 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 arose between the Commissioner and the Police Officer/Staff which gave 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".

4.4 Home Office Circular 43/2001 outlines the Home Secretary's approval of guidance to Police and Crime Commissioners on financial assistance to officers in legal proceedings in the light of the Divisional Court judgment of R v South Yorkshire Police Authority (1999). This judgement confirmed that Police and Crime Commissioners have power to meet the defence costs of Police Officers in civil and criminal proceedings, including judicial review proceedings and any other type of legal proceedings. This includes, financial assistance to police officers in defending criminal prosecutions initiated by the Crown Prosecution Service.

5. Equality Comments

5.1 There was significant media and family/community interest in this criminal trial 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

None.

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>
Head of Unit: Dave Hays has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.		✓
Legal Advice: The Legal team have been consulted on this proposal.		✓
Financial Advice: Strategic Finance and Resource Management has been consulted on this proposal.		✓
Equalities Advice: The equalities issues are set out in the report above.		✓

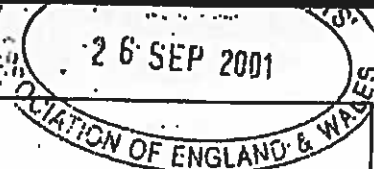


Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

Home Office Circular

26 SEP 2001



HOC 43 /2001 (Amended 21/9/01)

**THIS CIRCULAR IS ABOUT: GUIDANCE TO POLICE AUTHORITIES ON FINANCIAL
ASSISTANCE TO POLICE OFFICERS IN LEGAL PROCEEDINGS**

FROM: POLICE RESOURCES UNIT

EXPIRY DATE: N/A

SCANNED	
SP. DELIVERY	
CUSTOMER	NOTED

**DATE FOR
IMPLEMENTATION:**

THIS CANCELS HOC: 4/1998

FOR MORE INFORMATION CONTACT:

PAUL HARNBY

PRU

TEL: 020 7273 3606 OR

SHERYL JONES

PRU

TEL: 020 7273 2864

THIS CIRCULAR IS ADDRESSED TO:

**CHIEF OFFICERS OF POLICE FOR ENGLAND
AND WALES**

COPIES ARE BEING SENT TO:

CLERKS TO POLICE AUTHORITIES

Dear Chief Officer

This circular publicises the Home Office's approval of guidance on police authorities providing financial assistance to officers in legal proceedings in the light of the Divisional Court judgement of 11 March 1999 (R v South Yorkshire Police Authority). This circular replaces HO circular 4/1998 which is now cancelled.

Introduction

1. It is important that police officers should be able to carry out their duties in the confidence that their police authority will support them by providing financial assistance in legal proceedings taken against them and provoked by them, if they act in good faith and exercise their judgement reasonably. The following guidance, which has been prepared in

consultation with ACPO, CPOSA, the Superintendents Association, the Police Federation and the Association of Police Authorities, should be read against this principle.

Legal proceedings

2. Under section 88 (1) of the Police Act 1996 which re-enacts section 48.(1) of the Police Act 1964, chief officers are liable for torts committed by officers under their direction and control. Section 88 (2) provides that any damages or costs awarded against the chief officer and any costs they incur themselves (which are not recovered) should be met from police authority funds.
3. Alternatively, a court may award damages against individual police officers. Section 88 (4) of the Police Act 1996 empowers a police authority "to such an extent as appears to it to be appropriate" to pay any damages or costs awarded against officers (this includes both officers of other forces serving in the police area under mutual aid arrangements and special constables), any costs incurred by the officers themselves and any sum paid in connection with the settlement of a claim. It is for police authorities to decide whether and when to make assistance available, and the extent of such assistance, taking account of the circumstances of a particular case.
4. Police authorities are reminded that the discretionary power in section 88 of the Act, enabling them to provide financial assistance to officers involved in legal proceedings, cover only claims in tort. Sections 88 (4) and 88 (5) may also apply to police officers who were members at the time of the action which gave rise to the claim but who are no longer members.
5. Home Office Circular 4/1998 made a distinction between civil, criminal and other types of legal proceedings. In March 1999 a Divisional Court judgement confirmed that Police Authorities do have the power to meet the defence costs of police officers in private prosecutions, judicial review proceedings and any other type of legal proceedings. This includes, for example, financial assistance to police officers in defending criminal prosecutions initiated by the Crown Prosecution Service.
6. In reaching this decision, the court considered s. 6 (1) of the Police Act 1996 and s.111 (1) of the Local Government Act 1972. S. 6 (1) of the Police Act 1996 provides that "every Police Authority established under section 3 shall secure the maintenance of an efficient and effective police force for its area". S.111 (1) of the Local Government Act 1972 provides that "without prejudice to any powers exercisable apart from this section but subject to the following provisions of this section, a local authority shall have power to do anything (whether or not involving expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive to or incidental to, the discharge of their functions". S.111(1) enables Police Authorities to finance both criminal and judicial review proceedings and any other type of legal proceedings. Officers may be asked to complete a questionnaire served by a member of the public with a view to progressing proceedings under the Race Relations Act 1976 as amended or the Sex Discrimination Act 1975 or the Disability Discrimination Act 1995 arising from the provisions of services. It is for Police Authorities to decide whether assistance with legal advice might be provided in these

* Applies to, amongst others, claims against individual police officers under the Human Rights Act 1998.

circumstances, taking legal advice on their power to do so as necessary. Ultimately it is for the courts to decide whether s111 of the Local Government Act 1972 would extend police authority discretion to fund pre-litigation defence.

7. Section 111 (1) of the Local Government Act 1972 applies to all police authorities (except the City of London police) by virtue of Section 146A of the 1972 Act (as inserted by Schedule 14 to the Local Government Act 1985 and amended by Schedule 4 of the Police and Magistrates' Courts Act 1994). It applies to the Metropolitan Police Authority by virtue of section 28 of schedule 27 to the Greater London Authority Act 1999. As regards the City of London Police, the Common Council of the City is the police authority and Section 111(1) of the Act of 1972 applies to the Common Council directly, i.e. without application by any subsequent enactment.
8. It is for individual police authorities to decide in the particular circumstances of a case, and on the basis of legal advice if necessary, whether, when and to what extent, to make financial assistance available to officers in criminal proceedings.
9. ~~It is for police authorities~~ (bearing in mind the recommendations of chief officers) to decide whether to make financial assistance available to officers (either former or serving) involved in Public Inquiries and Tribunals. ~~Police authorities~~ will therefore need to consider whether section 111 (1) of the Local Government Act 1972 provides sufficient scope to enable financial assistance to be given in any particular case. In this respect tribunals may include ~~certain employment tribunals~~ where it is clear that officers have acted in good faith in pursuance of their duties and the interest of the force as a whole is involved. Officers, if progressing complaints, should be encouraged to exhaust the grievance procedure before recourse to legal proceedings.
10. There are specific provisions in the Race Relations Act 1976 and the Sex Discrimination Act 1975 for compensation, costs and expenses awarded against the chief officer of police and any sum required for settlement, if approved by the ~~Police Authority~~, to be paid from the police fund.
11. There is no ~~express statutory authority~~ for providing financial assistance to an officer wishing to initiate court proceedings. The considerations set out in paragraphs 6 to 8 above apply to such cases.

Conclusion

12. In summary, police officers must be confident that Police Authorities 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 own merits, but subject to that there should be a strong presumption in favour of payment where these criteria are met.

PAUL HARNBY

