



PROTOCOL FOR HANDLING FINANCIAL ASSISTANCE APPLICATIONS

1 General Principles

- 1.1 Police officers are regularly involved in court proceedings and occasionally may find themselves named in proceedings as a defendant or an interested party.
- 1.2 It is important that police officers should be able to carry out their duties with confidence that, if they act in good faith and exercise their judgement reasonably, the Police and Crime Commissioner for South Yorkshire ('the PCC') and the Chief Constable would support them in any legal proceedings in which they are named as a defendant or an interested party; with the PCC providing some level of financial assistance under the Police Act 1996. The PCC will be guided in such cases by the principles set out in Home Office Circular 43/2001 or any amendment to this Circular.
- 1.3 This Protocol deals with the handling of applications for financial assistance made by officers towards the cost of providing legal representation where legal proceedings are brought against them.
- 1.4 The decision to provide financial assistance with legal representation will be at the sole discretion of the PCC. When considering such an application, the PCC must be satisfied that (in accordance with the Chief Constable's recommendations) the officer acted in good faith and exercised reasonable judgement. The PCC should consider whether any financial assistance should be provided and, if so, at what level. The PCC will have due regard to the finite resources available to him (the annual budget available for policing

Notes to Paragraph 1.2:

- (i) This Circular applies to Police and Crime Commissioners as successor bodies to Police Authorities.
- (ii) Section 88 (1) of the Police Act 1996 has been extensively amended by the Police Reform Act 2002 and the Police Reform and Social Responsibility Act 2011. It is no longer confined to torts, but extends to any unlawful conduct.
- (iii) Section 1(6) of the Police Reform and Social Responsibility Act 2011 places a duty on a police and crime commissioner (local policing body) for a police area to:-
 - (a) Secure the maintenance of the police force for that area, and
 - (b) Secure that the police force is efficient and effective.

This requirement is equivalent to that placed on police authorities under section 6(1) of the Police Act 1996.

- (iv) Schedule 1, paragraph 14 (1) of the Police Reform and Social Responsibility Act 2011, sets out the incidental powers of police and crime commissioners.

These powers are equivalent to those conferred on police authorities under section 111 of the Local Government Act 1972.

and crime services in South Yorkshire), and the effect that an application might have on other budget commitments.

- 1.5 As part of the PCC's considerations, the PCC will take into account the conduct of the officer, in particular whether he/she has co-operated fully with any investigation and has given satisfactory explanations at interview. A failure to co-operate in this regard may result in an application being refused.

Civil Proceedings

- 1.6 Where a person suffers loss or damage as a result of a legal breach by another, he/she can bring legal proceedings in the civil courts. The remedy in such cases is usually an award of compensation.
- 1.7 In circumstances where an officer chooses to bring civil proceedings (i.e. as a Claimant), a police officer will be expected to meet the costs of such proceedings; it is unlikely that it would be an appropriate use of public funds to support an officer in bringing what is essentially a private claim for compensation. However, where an officer wishes the PCC to fund a civil action in which he/she is a Claimant, the officer should follow this Protocol.
- 1.8 Where an officer is discharging his/her duties in good faith and exercising his/her judgement reasonably, there is significant protection for an officer who is named as a defendant in a civil action. The principle of "vicarious liability" means that, in most contexts the employer is responsible for the acts and omissions of his or her employees when those acts and omissions are in the course of their employment. The employer's responsibility extends to the payment of any compensation that may be awarded by a civil court.
- 1.9 Police officers are not employees, but section 88 of the Police Act 1996 (as amended by the Police Reform and Social Responsibility Act 2011) provides that a chief officer is liable for any unlawful conduct of officers under his or her direction

and control in the performance or purported performance of their duties, in the same way as an employer is liable for employees.

- 1.10 While in practice claims are usually brought against the Chief Constable, a person can nevertheless bring a claim against an individual officer either as an alternative to bringing the claim against the Chief Constable or in conjunction with such a claim, naming both the Chief Constable and the officer as co-defendants.
- 1.11 In such circumstances, where the officer has acted in good faith, it is custom and practice for South Yorkshire Police's Legal Services Department to meet with the officer and agree to take over conduct of any claim on the understanding that the officer continues to provide every assistance to South Yorkshire Police in responding to the claim. Where the individual officer agrees to this approach, South Yorkshire Police's Legal Services Department will notify the person bringing the claim of the principle of vicarious liability and the effect of section 88 of the Police Act 1996, and advise that, should damages and costs be payable, any payments will be met by the Force, and not the officer.
- 1.12 Section 88 of the Police Act 1996 caters for this scenario by providing the PCC with discretion to pay out of police funds any damages or legal costs that may be awarded against an officer in such circumstances. It is important that the PCC's Office receives full and timely information where this situation arises.
- 1.13 For police staff, similar provision is made by Schedule 2, Paragraph 8 of the Police Reform & Social Responsibility Act 2011.
- 1.14 In circumstances where it would not be appropriate for South Yorkshire Police's Legal Services Department to act on behalf of the officer, and an officer wishes to ask the PCC to meet the costs of any civil court proceedings, then this Protocol should be followed.

Criminal Proceedings

1.15 If a police officer is individually prosecuted for a criminal offence that is alleged to have been committed in the course of his/her duties, and the officer wishes the PCC to give consideration to a request for financial assistance, then he/she should follow this Protocol. Information may be required from the Crown Prosecution Service or other prosecuting authority (or the Senior Investigating Officer) on the questions of whether the officer can be said to have discharged his/her duties in good faith and exercised his/her judgement reasonably. This is especially relevant in cases where the Chief Constable has limited knowledge of the criminal investigation in question.

Inquests

1.16 There may be occasions when an officer is named as a 'properly interested person' in an inquest. In most circumstances, the Chief Constable will also be named as an interested person and will be represented by South Yorkshire Police's Legal Services Department. The expectation will be that South Yorkshire Police's Legal Services Department will also represent the interests of any officer who is named in an inquest as an interested person.

1.17 In circumstances where South Yorkshire Police's Legal Services Department believes there would be a conflict of interest or potential conflict of interest if they were to act for both the Chief Constable and an officer named as an interested person, and that officer wishes the PCC to meet the financial costs of any representation in court proceedings, then this Protocol should be followed.

2 APPLICATION PROCEDURE

2.1 As soon as a police officer is advised that proceedings are being brought against him/her or a Coroner notifies him/her that he/she is a 'properly interested person' in an inquest, and he/she wishes the PCC to consider an application for financial

assistance, then an application must be submitted to the PCC's Chief Executive immediately, at:

The Office of the South Yorkshire Police and Crime Commissioner, Carbrook House, Carbrook Hall Road, Sheffield, S9 2EH (by email FAO The Chief Executive to Info@southyorkshire-pcc.gov.uk).

2.2 The timeliness or lack of timeliness of a financial assistance application will be a factor the PCC is entitled to consider when assessing any application. The PCC reserves the right to reject on timeliness alone any application that is received retrospectively or less than 28 days before any hearing.

2.3 All applications should include:

- a) Details of the case, including all parties to the proceedings and issues involved
- b) Date(s) or approximate date(s) of any hearings
- c) Submissions from the police officer as to whether, in his/her view, he/she was acting in the lawful execution of his/her duty, acting in good faith and exercising reasonable judgment
- d) Details of any conflict or potential conflict of interest between the officer and the Force
- e) An estimate of his/her projected solicitors' costs, counsels' fees and disbursements
- f) A case plan (where appropriate)
- g) Details of the funding available from his/her relevant staff association for in respect of the proceedings
- h) An indication of whether the applicant is eligible for legal aid

2.4 This Financial Assistance Protocol has been agreed between the PCC and Chief Constable, and the detail of applications, and timing of requests, will be the subject of scrutiny by the PCC's staff before being passed to the PCC for consideration and decision-making.

3 CONSIDERATION OF THE APPLICATION

3.1 Upon receipt of an application with full supporting information, the Chief Executive will obtain the recommendation of the Chief Constable as to whether:

(a) He/she is of the view that the officer was acting in the lawful execution of his/her duty, acting in good faith and exercising reasonable judgment; and

(b) There is any conflict of interest or potential conflict of interest between the officer and the Force (where applicable).

N.B: Paragraph 1.15 provides for situations where information at (a) above may be required from a prosecuting authority.

3.2 The Chief Executive will also invite the PCC's Chief Finance & Commissioning Officer to prepare a report on the likely financial impact of the application on the PCC's budget.

3.3 On receipt of the Chief Constable's recommendation and the PCC's Chief Finance & Commissioning Officer's report, the Chief Executive will submit the application for financial assistance and supporting documents under cover of a legal advice report to the PCC for decision-making. If the issues are complex or potentially contentious, the Chief Executive may well obtain counsel's advice to append to her report to the PCC at this stage.

3.4 The PCC will make his decision and provide rationale in writing, usually on a decision record. The PCC's decision will cover whether or not financial assistance is granted, and the level of such assistance, together with any conditions on funding (eg: determining lawyers' hourly rates, the requirement for case plans to be approved in advance of work being undertaken etc).

3.5 On receipt of the PCC's decision, the Chief Executive will inform the applicant or his/her legal representatives of the PCC's decision in writing, together with the financial limit of funding or any conditions attached to the funding. Where the application is not supported by the PCC, the reasons for the lack of support will be communicated in writing to the applicant or his/her representatives.

4 BILLING / MONITORING/REVIEW

4.1 Where approval is granted, bills should be submitted per month, and in the following format:

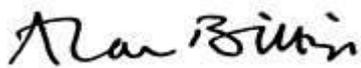
- Whether it is an interim bill (with number in sequence) or final bill
- Period of payment (from x to y)
- Grades/Names of fee earners and charging rates
- Number of letters and telephone calls
- Time engaged on different categories of activity, including travel time
- Counsels' fees
- Disbursements

4.2 At the end of the legal proceedings, the applicant or his/her representative should provide a final costs figure. If the costs incurred in the final bill are reasonable and within the agreed estimate, and in accordance with any conditions attached to the PCC's funding decision, payment will be authorised by the Chief Executive on behalf of the PCC.

4.3 If at any time during the proceedings, the estimate of costs appears to be insufficient, the applicant or his/her representative must apply to the PCC for additional funding through the Chief Executive immediately. The applicant must provide an indication of the current level of costs, and revised projection of costs to be incurred up to the conclusion of the case, together with the reason for the revision.

- 4.4 The PCC will then formally consider the information provided as a request for additional funding, and indicate in writing whether the increase is supported or not, and if not with reasons.
- 4.5 In the more complex and long running matters, regular updates must be provided to the Chief Executive as to the case's progress and work planned.
- 4.6 The PCC's contribution to the applicant's legal costs may be withdrawn and/or clawed back if the applicant has:
- (a) Misled the PCC about his/her case;
 - (b) Failed to provide adequate evidence of the costs incurred; or
 - (c) Otherwise conducted his/her case unreasonably.
- 4.8 The PCC reserves the right to establish audit arrangements and to have the applicant's costs reviewed by a legal costs draftsman as appointed by the PCC, and to pay such costs only to the extent that the PCC is satisfied that they are reasonable, and have been reasonably and properly incurred.

Signed:



Police and Crime Commissioner for South Yorkshire

Date: July 2017

Date for Review – June 2020