



Provision of Legal Assistance for Police Officers Policy

The Office of the Police and Crime Commissioner (OPCC) is committed to the principles of equality and diversity. No member of the public, member of staff, volunteer or job applicant shall be discriminated against on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

Introduction and General Principles

1. This note sets out the process to be followed when a request for financial assistance with legal costs is submitted to the Police and Crime Commissioner (the Commissioner).
2. Home Office Circular 43/2001 although written to assist police authorities, is still reliable in providing guidance to police and crime commissioners on financial assistance for police officers in legal proceedings. This Circular was issued in the light of the judgement of the Divisional Court in R v South Yorkshire Police Authority where it was held that police authorities (now police and crime commissioners) 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.
3. Paragraph 1 of the circular states as follows:-

“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 progressed by them, if they act in good faith and exercise their judgement reasonably”.
4. The judgement was based on an interpretation of Section 6 of the Police Act 1996 and Section 111 of the Local Government Act 1972 i.e. that the police authority must secure the maintenance of an efficient and effective police force for its area and it may do anything which is calculated to facilitate or is conducive or incidental to that function. These sections have now been replaced by equivalent provisions under the Police Reform and Social Responsibility Act 2011.
5. Paragraph 12 of the Circular advises police and crime commissioners to decide each case on its merits but, subject to that, there should be a strong presumption in favour of payment when the officer has acted in good faith and exercised their judgement reasonably.

6. The Commissioner, when considering applications relating to public enquiries and tribunals must be satisfied (in light of the chief officer's recommendations) that the officer acted in good faith and exercised reasonable judgement. (HOC 43/2001, Section 6 of the Police Act 1996 and Section 111 of the Local Government Act 1972). The Commissioner should also consider the reasonableness of the fees applied for.
7. As part of his consideration of an application, the Commissioner will take into account the conduct of the officer(s), in particular whether they have co-operated fully with any investigation and given satisfactory explanations at interview. Failures in either of these may result in applications being refused.

Notification of Applications

8. In relation to inquests, when a Coroner is notified and confirms that officers are "interested parties" that should be the trigger for the immediate notification of the application. It must, except in wholly exceptional circumstances, be not less than 28 days before the hearing.
9. In the case of other legal proceedings involving police officers applications for assistance must be made not less than 28 days before the hearing.
10. All notifications of applications for funding should be sent to:

Chief Executive
Office of the Police and Crime Commissioner West Midlands
Aqua House
20 Lionel Street
Birmingham
B3 1AQ
11. All notifications should include:-
 - Details of the incident(s) giving rise to the legal proceedings
 - Date(s) or approximate date(s) of the inquest/other hearing
 - An indication from the officer as to whether it is his or her view that they were acting in the lawful execution of his/her duty
 - In the case of inquests, indication as to whether the officer or those representing the officer foresee a potential conflict of interest between the officer and the Force and if so, the basis for that potential conflict
 - An estimate of the total costs
12. On receipt of the application the Chief Executive shall work with the Legal Adviser and prepare a report for the Commissioner indicating his recommendation as to whether the application should be approved. In preparing this report, the Chief Executive and Legal Adviser shall gather and consider any necessary background documentation and reports, and may also consult the Force Director of Legal Services.

13. The Commissioner will consider the advice and decide if the application should be supported. If it is decided that the application is to be refused then appropriate reasons for the refusal must be provided.

Outcome of Applications

14. If there is approval of the application, at the end of the proceedings the applicant or their representative should provide a final costing. If these costs are reasonable and within the agreed estimate, payment will be authorised by the Chief Executive on behalf of the Commissioner.
15. If during preparation of the case, the estimate appears to be inadequate the applicant or their representative should immediately notify the Chief Executive. The applicant must provide an indication of the current level of costs, the reason for the increase and fresh estimate.
16. The Chief Executive will then determine whether the increased estimate is reasonable and may approve or reject it providing appropriate reasons for any rejection.
17. In complex or long running cases regular progress reports must be provided to the Legal Adviser.



Guidance to police authorities on financial assistance to police officers in legal proceedings

This circular replaces: 4/1998

This circular is being sent to:

- Chief Officers for Police (England & Wales)

Copies are being sent to:

- Clerks to the Police Authorities

Dear Chief Officer

This circular publicises the Home Secretary's approval of guidance to police authorities on financial assistance to officers in legal proceedings in the light of the Divisional Court judgement of 31 March 1999 (R v South Yorkshire Police Authority). This circular replaces HO circular 4/1998 which is now cancelled.

Introduction

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 progressed 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

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.

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.

Police authorities are reminded that the discretionary powers 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.

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.

In reaching this decision, the court considered Section 6 (1) of the Police Act 1996 and Section 111 (1) of the Local Government Act 1972. Section 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". Section 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 Act, 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". Section 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 circumstances, taking legal advice on their power to do so as necessary. Ultimately it is for the courts to decide whether Section 111 of the Local Government Act 1972 would extend police authority discretion to fund pre-litigation defence.

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.

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.

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.

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.

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

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