

## **Policy: Provision of Legal Assistance for Police Officers**

### **Equality Statement**

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

### **Application**

This policy applies to Police Officers and Police Staff.

### **Introduction and General Principles**

1. This policy sets out the process to be followed when a request for financial assistance with legal costs is submitted to the Police and Crime Commissioner
2. Home Office Circular 010/2017 (attached at appendix) provides guidance to police and crime commissioners on financial assistance for police officers in legal proceedings. The local policing body has discretion to provide financial assistance for damages or costs arising from unlawful conduct, and also has discretion to provide financial assistance for the costs of defence and 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. the circular states:  
“It is important that police officers are able to carry out their duties in the confidence that their local policing body will support them by providing necessary financial assistance in legal proceedings they are involved in, if they act in good faith and exercise their judgment 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 These sections have now been replaced by equivalent provisions under the Police Reform and Social Responsibility Act 2011.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. 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 10/2017, 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.

### **Requests from Police Staff**

8. Civilians working as police staff are increasingly used in operational roles for example, as Police Community Support Officers. Local policing bodies should reasonably consider applications for financial assistance from police staff.
9. Local policing bodies should reasonably consider applications for financial assistance from police staff. Paragraph 8 of Schedule 2 to the PRSRA 2011 largely replicates section 88 of the Police Act 1996 except that it is in relation to police staff, in that it gives local policing bodies discretion to make payments in relation to legal costs or damages awarded against members of police staff (rather than against the Chief Constable), or sums in settlement.
10. The position on liability of local policing bodies in relation to civilian staff is therefore very similar to that in relation to police officers, and requests will be considered in the same way.

### **Notification of Applications**

11. 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.
12. In the case of other legal proceedings involving police officers applications for assistance must be made not less than 28 days before the hearing.
13. All notifications of applications for funding should be sent to the Chief Executive.
14. 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
15. On receipt of the application the Chief Executive shall prepare a report for the Commissioner indicating his recommendation as to whether the application should be approved. In preparing this report, the Chief Executive shall gather and consider any necessary background documentation and reports, and may also consult the Force Director of Legal Services.

16. 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**

17. 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.
18. 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.
19. The Chief Executive will then determine whether the increased estimate is reasonable and may approve or reject it providing appropriate reasons for any rejection.
20. In complex or long running cases regular progress reports must be provided to the Chief Executive

<b>Version No</b>	<b>Date</b>	<b>Author</b>	<b>Post</b>	<b>Reason for issue</b>	<b>Date agreed by PCC</b>	<b>Review Schedule</b>
1.0	Jul 2018	Polly Reed	Head of Business Services	General Review		Bi-Annual
1.1	May 2021	Andrea Gabbitas	Head of Business Services	General review		Bi-annual

## **Introduction**

This circular replaces Home Office Circular 43/2001 (the Home Office guidance to police authorities on financial assistance to police officers in legal proceedings). Home Office circular 43/2001 is now withdrawn.

It is important that police officers are able to carry out their duties in the confidence that their local policing body will support them by providing necessary financial assistance in legal proceedings they are involved in, if they act in good faith and exercise their judgment reasonably. The Home Office has prepared this guidance following a consultation with the Police Superintendents' Association and the Police Federation of England and Wales, the Chief Police Officers' Staff Association, the Association of Police and Crime Commissioners, the Police and Crime Commissioner Treasurers' Society, the Association of Policing and Crime Chief Executives and the National Police Chief's Council.

## **Legislation and Supporting Case Law**

The Divisional Court judgment of 31 March 1999 (*R v South Yorkshire Police Authority*) determined that police authorities had the power to fund the legal representation of officers in proceedings. This includes the power to fund legal costs for officers in private prosecutions, judicial review proceedings and criminal prosecutions initiated by the Crown Prosecution Service.

Police authorities have been largely replaced by local policing bodies, and the statutory power that police authorities relied upon to fund legal representation in proceedings has been replicated for local policing bodies. Therefore, local policing bodies also have the power in principle to fund the legal representation of officers in proceedings.

Section 88 (1) of the Police Act 1996

The judgment of 31 March 1999 considered in part, section 88(1) of the Police Act 1996. There are two amendments made by the Police Reform and Social Responsibility Act (PRsRA) 2011 to section 88 of the Police Act 1996 that for the purposes of this circular are worth noting:

- a) Under section 88, any settlement of a claim made against the chief officer is now approved by the local policing body rather than the police authority.
- b) Under section 88(4), the local policing body, rather than the police authority, now makes the decision as to whether it is appropriate to pay out of the police budget any damages or costs awarded against police officers for unlawful conduct.

It is also worth noting that section 88(1) and section 88(4) of the Police Act 1996 now cover any unlawful conduct rather than just torts committed by officers, by virtue of the changes made to section 88 by section 102 of the Police Reform Act 2002.

Section 111 of the Local Government Act (LGA) 1972 and paragraph 14 of Schedule 1 to the PRSRA 2011

The Judgment of 31 March 1999 relied upon section 111(1) of the LGA 1972, which enabled police authorities to finance both criminal and judicial review proceedings and other types of legal proceedings. Whereas police authorities were local authorities for the purposes of section 111 of LGA 1972, local policing bodies are not. However, local policing bodies have a similar power to act under paragraph 14 of Schedule 1 to the PRSRA 2011, which provides that a local policing body may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the functions of commissioner. This closely follows the wording of section 111 of the LGA 1972. Therefore, it is the view of the Home Office that local policing bodies have the same power as police authorities formally had under s111 of the LGA 1972 to meet the costs of legal representation of police officers involved in proceedings, including private prosecutions and criminal prosecutions initiated by the CPS.

Duties on, and options for, Local policing bodies to pay legal costs

Under section 88(2) of the Police Act 1996 the costs of any proceedings against the Chief Constable because of their liability for the unlawful conduct of constables under their direction must be paid out of the police fund. Therefore, local policing bodies do not have any discretion over the duty to pay (except that they must approve any settlement which is made before it is paid out of the police fund).

However, under section 88(4) of the Police Act 1996, where a case is settled for a sum of money, or damages or costs are awarded against a member of a police force (rather than the Chief Constable) in relation to unlawful conduct, local policing bodies do have discretion to pay all, part, or none of the costs.

In addition, under the general power to act in paragraph 14 of Schedule 1 to the PRSRA 2011, a local policing body has the power to pay all, part, or none of the defence costs of legal representation of police officers involved in proceedings, including private prosecutions and criminal prosecutions initiated by the CPS, as long as the prosecution is related to the officer performing his job. However, whether it was appropriate to make these payments will depend on the circumstances of the case and it will be for individual local policing bodies to make this decision, taking their own legal advice as necessary.

The discretionary powers under paragraph 14 of schedule 1 to the PRSRA 2011 should also apply to police officers who were members of the force at the time of the action which gave rise to the claim, but who are no longer members at the time of the legal proceedings.

Local policing bodies should carefully consider Section 88(4) of the Police Act 1996 and paragraph 14 of Schedule 1 to the PRSRA 2011 when considering whether to fund all, part,

or none of the costs for individuals other than the Chief Constable. Local policing bodies should reasonably consider all such requests.

### **Duty on local policing bodies to pay legal costs for police staff**

Civilians working as police staff are increasingly used in operational roles for example, as Police Community Support Officers. Local policing bodies should reasonably consider applications for financial assistance from police staff. Paragraph 8 of Schedule 2 to the PRSRA 2011 largely replicates section 88 of the Police Act 1996 except that it is in relation to police staff.

In particular, paragraph 8(2) of Schedule 2 to the PRSRA 2011 replicates section 88(4) of the Police Act 1996 in that it gives local policing bodies discretion to make payments in relation to legal costs or damages awarded against members of police staff (rather than against the Chief Constable), or sums in settlement.

The position on liability of local policing bodies in relation to civilian staff is therefore very similar to that in relation to police officers. However different statutory provisions apply to each and it is important that local policing bodies seek their own legal advice before making decisions on the provision of financial assistance for police officers or police staff, if necessary.

### **Conclusion**

In summary, police officers and staff must be confident that local policing bodies will provide financial assistance, whether in full or part, for officers facing legal proceedings where they have acted in good faith and have exercised their judgment reasonably. This applies to police officers who were members of the force at the time of the action which gave rise to the claim, but who are no longer members at the time of the legal proceedings. There are a number of different statutory provisions that apply when considering whether a local policing body should provide financial assistance to police officers and police staff. Therefore it is important that local policing bodies consider seeking legal advice on each case and decide each case on its own merits. Local policing bodies should consider whether individuals seeking financial assistance are facing proceedings that require them to be legally represented.

Police forces should include within their policing and budget plans reasonable contingencies for unforeseen or unexpected events in their area including unexpected costs arising from legal proceedings. However, if forces face significant and exceptional events, there is an established process by which local policing bodies can apply for Special Grant funding to help with these costs. Special Grant is discretionary, and the presumption of Home Office funding should not be used as the basis for local policing bodies' decisions in respect of financial assistance to officers or staff facing legal proceedings.