

POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE DECISION RECORD

To be completed in cases where a decision is required

DECISION OF POLICE AND CRIME COMMISSIONER

Date: 10 04 2013

Officers present: Angela Perry

Received in OPCC Date: 11 03 13

OPCC Ref: 1067

EXE0017/13

Title: Recovery of Legal Defence Costs

Summary of Issue:

The Police Federation has applied for the reimbursement of legal costs that they have incurred in the support of two officers against whom legal action was taken. A defendant in a case, in which the two officers were prosecution witnesses, took a private action against the two officers for allegedly perverting the course of justice.

When the two officers appeared before the Leicester Crown Court on 28 January 2013, the application to dismiss the charges was successful.

Home Office Circular No 43/2001: "Guidance to Police Authorities on Financial Assistance to Police Officers in Legal Proceedings" states:

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.

The Leicestershire Police and Crime Commissioner's Corporate Governance Framework, states, as part of section 1.1 that:

The key roles of the Police and Crime Commissioner are to:

- *approve any requests for financial assistance to officers in legal proceedings*

The costs incurred in this case are £6,409.90

Recommendations presented:

It is recommended that the Police and Crime Commissioner authorises the reimbursement of the legal costs of £6,409.90 incurred in the defence of the two police officers who were subject of these proceedings.

Key discussion points at meeting

Background to the case, the authority to decide and the recommendation.

It was resolved that :

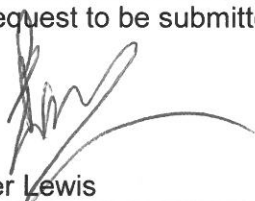
The Police Federation be reimbursed £6,409.90 for the expenditure incurred in defending the two police officers who were subject of legal action.

OFFICE OF PCC APPROVAL

Chief Executive or Chief Finance Officer:

I have been consulted about the proposal and confirm that appropriate advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner

Signature



Name Peter Lewis

Date 10 04 2013

Publication Scheme

Decision of Monitoring Officer:

As Monitoring Officer for the Office of Police and Crime Commissioner for Leicestershire I have determined that :

It is appropriate to publish this record of decision made by the Police and Crime Commissioner : Yes / ~~Part Redacted~~ / No

It is appropriate to publish the contents of the assessment of the decision by either of the senior post holders in the Office of the Police and Crime Commissioner for Leicestershire (i.e. either the Chief Executive or Chief Finance Officer) :
Yes / ~~Part Redacted~~ / ~~No~~

It is appropriate to publish details of the decision by the Police and Crime Commissioner for Leicestershire : Yes / ~~Part Redacted~~ / ~~No~~

Reasons for any non Publication (referencing appropriate legislation):

Signature 

Name PAUL STOCK

Date 15/4/13

Police and Crime Commissioner for Leicestershire

Having received the advice set out above and reviewed relevant documentation my decision in regard of this matter is:

Supported / ~~Not Supported~~

Signature 

Date 14/8/13

**Police Federation
of England and Wales**



**Ffederasiwn Heddlu
Lloegr a Chymru**

Established by Act of Parliament

Federation House, Highbury Drive, Leatherhead, Surrey KT22 7UY
Telephone 01372 352000 Fax 01372 352044
www.polfed.org

FROM THE DEPUTY GENERAL SECRETARY'S OFFICE

Our Ref:

PCC Sir Clive Loader
Leicestershire Police Force HQ
St Johns
Enderby
Leicester
LE19 2BX

LEICESTERSHIRE OFFICE OF POLICE & CRIME COMMISSIONER	
11 MAR 2013	
FILE REF	1067
FAO	

8th March 2013

Dear I

RECOVERY OF CRIMINAL DEFENCE LEGAL COSTS -

ON - Leicestershire

Constabulary

You will be aware that the above proceedings have now concluded.

Please refer to my letter dated 12 November 2012 whereby the Chief Executive of the Leicestershire Police Authority was placed on notice in respect of the above matter (copy attached).

The costs of **£6,409.90** for the legal representation of your officer's at these proceedings have initially been met by the Police Federation. I enclose copies of the accounts paid and copy correspondence detailing the proceedings from our instructed Lawyers, , for your perusal.

As previously stated, I wish to draw your attention to Home Office Circular No: 43/2001: 'Guidance To Police Authorities On Financial Assistance To Police Officers In Legal Proceedings' the concluding paragraph of which reads as follows:

'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



Represent • Influence • Negotiate

there should be a strong presumption in favour of payment where these criteria are met'

The purpose of this letter is to request that the Office of the Police and Crime Commissioner reimburse the Police Federation of England and Wales our costs for the assistance we provided to your officer's, who faced a private criminal prosecution connected to their performance of police duties. As soon as we receive confirmation of your agreement to reimburse these costs we will submit a non vat invoice to you.

I look forward to hearing from you at your earliest convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S.A. Smith', written in a cursive style.

Stephen A Smith
Deputy General Secretary

encl

FILE COPY

Our Ref:

Your Ref:

Chief Executive
Leicestershire Police Authority
St. Johns
Enderby
Leicester
LE19 2BX

12th November 2012

Dear Sir / Madam

**Notification – Financial Assistance –
(Leicestershire Constabulary)**

Our above named members are subject to a private prosecution being brought by _____ who was a defendant in a case in which _____ were prosecution witnesses. The allegations of perverting the course of justice which have been brought against the officers arise from that original prosecution.

Our members were involved in this incident as a direct consequence of the performance of their lawful duties and intend to vigorously deny the allegations on the basis that they acted in good faith and exercised their judgement reasonably. Our members, as far as we are aware, are not subject to any conduct proceedings in respect of this matter.

The Police Federation of England & Wales have appointed _____ Solicitors to act on behalf of the Officers. Any questions in relation to the nature of representation, the basis for maintaining they acted in good faith and estimates of costs should be referred to the above legal advisors.

I wish to draw your attention to Home Office Circular No. 43/2001: **'GUIDANCE TO POLICE AUTHORITIES ON FINANCIAL ASSISTANCE TO POLICE OFFICERS IN LEGAL PROCEEDINGS'** the concluding paragraph of which reads as follows:

'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.'

The Police Federation of England and Wales, on behalf of our members hereby request that you consider funding our legal costs incurred by these proceedings (upon which we will provide you the case budget details) and/ or provide confirmation that the Chief Constable will provide direct financial assistance to these officers in respect of this case.

We look forward to hearing from you within 14 days.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S.A. Smith', written in a cursive style.

Stephen A Smith
DEPUTY GENERAL SECRETARY

HO Circular No. 43/2001
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

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 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

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 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

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 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.

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 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". 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 s 111 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