



Lincolnshire POLICE & CRIME COMMISSIONER

SAFER TOGETHER

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PROTOCOL – MANAGING REQUESTS FOR FINANCIAL ASSISTANCE SUBMITTED BY POLICE OFFICERS AND POLICE STAFF INVOLVED IN LEGAL PROCEEDINGS

1. GENERAL PRINCIPLES

- 1.1. The Home Office has provided guidance to Police and Crime Commissioners (PCCs) in respect of financial assistance to police officers or police staff involved in certain legal proceedings, which has been interpreted to include Coroner's Inquests, in addition to criminal and judicial review proceedings. The original Circular 43/2001 for Police Authorities was published in September 2001 in the light of the Divisional Court judgement of 31 March 1999 in the case *R v South Yorkshire Police Authority* (1999). Circular 43/2001 has now been withdrawn and replaced with Circular 010/2017 published on 4 October 2017 (*still current as at 22/04/22*).
- 1.2. The link to the latest Circular is appended at the end of this Protocol. The Circular reminds PCCs of the discretionary powers provided by S88 of the Police Act 1996 to pay all, part, or none of the costs following a court awarding damages against individual police officers. S88 of the 1996 Act is specifically in regard to "unlawful conduct of constables" and does not include police staff including police community support officers and civilian custodians, although it would include special constables.
- 1.3. However, the Circular also refers to the more general power under paragraph 14 of Schedule 1 of the Police Reform and Social Responsibility Act ("PRSRA") 2011 which enables PCCs 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 related to them performing their job.
- 1.4. This discretionary power also potentially enables payment for 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
- 1.5. Another section of PRSRA, paragraph 8 of Schedule 2 gives PCCs the discretion to make payments in relation to legal costs of, damages awarded against (or sums in settlement for) members of police staff.
- 1.6. The decision to provide financial assistance to police officers and police staff will always be at the sole discretion of the PCC but taking account of any recommendations from the Chief Constable. The PCC when considering applications must be satisfied that (in light of the Chief Officer's

recommendations) the officer or staff member acted in good faith and exercised reasonable judgement. This will ensure that the PCC complies with the advice set out in the latest circulars, and its obligations under the Police Act 1996 and Schedules 1 and 2 of Police Reform and Social Responsibility Act 2011("PRSRA") 2011. In accordance with its fiduciary duties the PCC must also consider the reasonableness of the fees applied for and this Protocol establishes the level of proportionate and acceptable fees.

- 1.4. The PCC in reaching his/her decision will take into account the conduct of the officer(s) or staff member(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. The PCC will also take account of any misconduct or disciplinary charges relevant to the request for financial assistance pending against any applicant officer/staff member and the outcome if determined at the time of the application and decision.

2. NOTIFICATION OF APPLICATIONS FOR FINANCIAL ASSISTANCE

- 2.1. Requests for financial assistance should be submitted by individual police officers or police staff. Any request should normally be made not less than 28 days before any hearing. The PCC will only approve applications that have been submitted less than 28 days before a hearing or made retrospectively in wholly exceptional circumstances. All applications should be submitted in writing to the PCC's Chief Executive. Based on historical requests for financial assistance it is anticipated that requests will in the main involve cases of deaths in custody or following police contact, fatal road traffic collisions and serious incidents such as fatal shootings.
- 2.2 The PCC will not approve requests for financial assistance merely for routine attendance at a coroner's inquest or public inquiry. The PCC will only provide assistance in such proceedings where he/she is reasonably satisfied on the available evidence that the officer/staff member acted in good faith and exercised reasonable judgement but that his or her actions are nevertheless likely to be subject to close and / or critical scrutiny.

3. PROCEDURE

- 3.1. All requests for financial assistance must be submitted in accordance with this Protocol and should be sent in writing at the earliest possible opportunity to:

Chief Executive
Office of the Police and Crime Commissioner for Lincolnshire
Police Headquarters
Deepdale Lane
Nettleham
Lincoln
LN2 2LT

- 3.2 All requests should include:

- a. Details of the relevant incident including date and officer(s)/staff member(s) ("applicant(s)") concerned.
 - b. Details of legal proceedings eg inquest, judicial review.
 - c. Date(s) or anticipated date(s) of any hearing or inquest.
 - d. Case plan / strategy document.
 - e. An explanation as to why the applicant(s) require separate legal representation.
 - f. An explanation as to why the applicant's staff association or union is not providing legal representation.
 - g. If applicable, an explanation as to why the application has been submitted in less than 28 days before a hearing or made retrospectively.
 - h. Clarification whether the applicant has legal expenses insurance.
 - i. An indication from the applicant whether it is his or her view that he / she was acting in the lawful execution of his / her duty.
 - j. An indication as to whether the applicant or those representing them foresee a potential conflict of interest between the applicant and the Force and if so, the basis for that potential conflict.
 - k. An estimate of the total costs and disbursements to be incurred.
- 3.3 Any changes to the case plan/strategy document which impacts on the case particularly regarding costs and/or conflicts of interest should be notified to the PCC's Chief Executive as soon as practicable.
- 3.3.1 It is imperative that all applications submitted adhere to the above procedure and to this Protocol generally. Where notification of a request has not been made in accordance with this Protocol, the PCC may decide not to support the application for financial assistance and the applicant's redress may lie with the relevant staff association or union.
- 3.4 The PCC will consider the request and take a decision whether to grant or refuse payment.

4. FEES

- 4.1. The PCC will approve financial assistance based on the following charging base:
- 4.1.1 The following fee basis reflects the rates applicable within Lincolnshire based on the guideline rates applied by local courts wef 1/10/21:
- | | |
|------|--|
| £255 | Solicitors with over 8 years post qualification experience including at least 8 years litigation experience |
| £218 | Solicitors and Legal Executives with over 4 years post qualification experience including at least 4 years litigation experience |
| £177 | Other solicitors and legal executives and fee earners of equivalent experience |
| £126 | Trainee solicitors, para legals and other fee earners (for example unqualified clerk) |

The above rates are per hour and also subject to the addition of Value Added Tax. They will only change in line with any amendment to the local court rates, see <https://www.gov.uk/guidance/solicitors-guideline-hourly-rates> .

- 4.1.2 The PCC will not meet fees in respect of senior fee earners attending at interim and pre-trial hearings where counsel also attends. The task of sitting behind counsel should be delegated to a junior fee earner.
- 4.1.3 No fees will be paid for secretarial and/or administrative work, including photocopying.
- 4.1.4 Solicitors should preferably be instructed from firms within the locality of the PCC. Where firms are instructed from outside the locality, local solicitor agents should be utilised wherever possible. The PCC will not pay disbursements such as hotel/accommodation or travel expenses (mileage or train fares)
- 4.1.5 Prior approval is required from the PCC's Chief Executive in consultation with the PCC's Chief Finance Officer as follows where the PCC will be requested to reimburse the officer/staff member:
 - (1) All disbursements, including Counsels fees
 - (2) The instruction of two or more Counsel to represent an individual officer/staff member

If prior approval is not obtained the PCC will have total discretion as to reimbursement.

In all cases where it is proposed to instruct Counsel to either advise or represent an officer/staff member at a hearing the PCC should be notified in advance of Counsel undertaking any work, unless this is not practical due to the urgency of the particular matter.

In all cases the instructing solicitor will be responsible for all disbursements.

- 4.1.6 Billing. Bills to be submitted quarterly or at £5,000 plus VAT (whichever is the sooner) and in the following format:
 - (1) Interim bill / Final bill.
 - (2) Dates (from x and to y).
 - (3) Names of fee earners and grades.
 - (4) Correspondence (i.e. number of letters and telephone calls).
 - (5) Time engaged and work undertaken (attending client / opponent / witness / court / experts / preparation/perusal of documents).
 - (6) Travel (if applicable).
 - (7) Disbursements (with supporting vouchers).
- 4.1.7 In any one case where there is an expectation that costs may exceed in total £10,000 plus VAT the PCC must be notified. In the absence of notification the PCC will have a total discretion as to payment/ reimbursement (see also 5.2).

4.1.8 The PCC will keep all cases under regular review.

5. OUTCOME OF APPLICATIONS

- 5.1. If the request for financial assistance is approved the Chief Executive will notify the officer/staff member who submitted the request in writing within 7 working days of the PCC's decision. At the conclusion of the legal proceedings concerned the officer's/staff member's representative ("the representative") should provide a final bill to the PCC. If the costs incurred are reasonable and within the estimated costs submitted and agreed by the PCC, payment will be authorised by the PCC's Chief Finance Officer.
- 5.2. In respect of requests that are approved but where sometime after approval the representative considers that the costs estimate provided was inadequate the representative should immediately notify the Chief Executive. In the absence of such notification the PCC may decide that costs over and above the original estimate will not be met by him/her. An explanation must be provided for any increased estimate of costs to be incurred and the representative must provide an indication of the current level of costs and disbursements, the reason for the over-run and a revised estimate to the conclusion of the case.
- 5.3. The PCC will be asked to consider the revised request and make a decision based on the information provided by the representative whether the increased application will be supported or not.
- 5.4. In complex and long running cases the representative should provide regular updates to the PCC's Chief Executive as to the state of work in progress.
- 5.5. If a request for financial assistance is not be supported or if a subsequent increased application is not granted, the reasons for the PCC's decision will be communicated in writing by the Chief Executive to the representative within 7 working days of the decision.

6. REVIEW AND MONITORING

- 6.1 This Protocol will be subject to regular review to ensure it remains current and requests for financial assistance will monitored annually. This will be overseen by the Chief Executive.

<https://www.gov.uk/government/publications/0102017-guidance-to-local-policing-bodies-on-providing-financial-assistance-to-police-officers-and-staff-facing-legal-proceedings/0102017-guidance-to-local-policing-bodies-on-providing-financial-assistance-to-police-officers-and-staff-facing-legal-proceedings>

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