

**LINCOLNSHIRE POLICE AUTHORITY
HUMAN RESOURCES COMMITTEE
15 JUNE 2010**

SUBJECT	
PROTOCOL FOR MANAGING REQUESTS FOR FINANCIAL ASSISTANCE	
REPORT BY	CHIEF EXECUTIVE
CONTACT OFFICER	ANNETTE WOOD POLICE AUTHORITY LEGAL ADVISOR
SUMMARY AND PURPOSE OF REPORT	
To propose a protocol in respect of managing requests for financial assistance submitted by police officers and police staff involved in legal proceedings.	
RECOMMENDATION	<p><i>That:</i></p> <ol style="list-style-type: none"> 1. <i>the report and attached appendices be noted;</i> 2. <i>the Committee decide whether the protocol as drafted should be limited to individuals holding certain defined posts only or more widely available;</i> 3. <i>the protocol attached as appendix B be approved, subject to any amendments recommended by the Committee;</i> 4. <i>the protocol to be forwarded to the Force, Police Federation, Unison, Superintendents' Association and CPOSA for consultation purposes;</i> 5. <i>the protocol be reviewed by the Committee in the light of any feedback as a direct consequence of the consultation</i> 6. <i>the Committee consider whether to make representations to the Association of Police Authorities regarding Home Office Circular 43/2001 in terms of the appropriateness of legal expenses being met by Police authorities rather than claimants' staff associations/unions</i>

A. SUPPORTING INFORMATION

1. BACKGROUND

- 1.1 The Human Resources Committee agreed on 23 January 2009 that the Authority's Chief Executive be delegated authority in consultation with the

Chairman of the HR Committee to consider any requests for the reimbursement of police officer's legal expenses in respect of representation at a coroner's inquest.

- 1.2 The Human Resources Committee requested that a protocol be developed for the future handling of similar requests. Since 2007 there have been two requests to the Authority.
- 1.3 It was later agreed that in the Authority's new committee structure, the protocol would fall within the terms of reference of the Professional Standards Committee. This was reviewed by the full Authority on 26 March 2010 where a decision was made that the protocol should be referred to the Authority's HR Committee for further consideration and debate. The Authority also delegated powers to the HR Committee to approve the protocol on its behalf.
- 1.4 Home Office Circular HOC 43/2001 publicised the Home Secretary's approval of guidance to police authorities on financial assistance to officers in legal proceedings. This guidance was prepared in consultation with the Association of Chief Police Officers, Chief Police Officers' Staff Association (CPOSA), the Superintendents' Association, the Police Federation and the Association of Police Authorities. The circular notes that "*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 Deputy General Secretary of the Police Federation wrote to the Authority's Chief Executive on 5 August 2009 asking for a copy of the Authority's protocol for dealing with such situations.
- 1.5 The Professional Standards Committee on 21 September 2009 considered a draft protocol developed with the Home Office guidance in mind and with protocols published by other police authorities. The Committee raised a number of questions and concerns following which, advice was sought from the Authority's legal advisers.
- 1.6 A revised protocol was produced and was initially considered by the full Authority on 26 March 2010; a copy of that protocol is at appendix A and Home Office Circular HOC 43/2001 is attached as appendix C.
- 1.7 Attached as appendix B is a redraft of appendix A.

2. MATTERS FOR CONSIDERATION

- 2.1 The protocol as drafted extends to considering requests for financial assistance (payment of reasonably incurred legal costs) to police officers, police community support officers and civil custodians who are involved in legal proceedings commenced against them as a direct consequence of the performance of their duties.

- 2.2 Members are invited to consider whether the protocol should extend to any other categories of police staff? Members will wish to note that at the meeting of the Full Authority on 26 March 2010, the Director of Finance and Administration suggested that the protocol should be widened to include all employees of the Force, with each case judged on its merits. The Chief Constable concurred stating that there had been numerous new roles created within the “police family” that had operational significance since the circular had been published back in 2001. He considered that it would be unfair not to extend the provision of financial assistance to encompass those new roles.
- 2.3 Historically requests for assistance have been made by officers who during the course of their duties have come into contact with a member of the public and such contact has directly or indirectly resulted in fatal injury to the member of the public.
- 2.4 The Committee might consider adding to the protocol provision:
- “The Authority reserves the right to consider requests from holders of posts not covered by this protocol if the circumstances otherwise meet the criteria and the post holder has no other means of funding legal representation.”
- 2.5 Clause 1.3 of the protocol provides that decisions of the Authority whether or not to provide financial assistance in any particular case, whilst being at the “sole discretion” of the Authority is also based on “taking account of any recommendations from the Chief Constable.” Members have questioned whether it is appropriate to take account of recommendations from the Chief Constable concerns being as to a potential conflict of interest. However the Committee is reminded that the Home Office Circular specifically (see section 8) refers to the decision whether to make financial assistance available “bearing in mind the recommendations of chief officers”.
- 2.6 Clause 3.4 (appendix A) refers to “extreme claims.” When the draft protocol was prepared it was questioned what was meant by “extreme claims”. This phrase has been included by other police authorities in their protocols. The Committee may wish to consider a redraft of clause 3.4 as has been incorporated into appendix B:
- “It is imperative that all applications submitted adhere to the above procedure and this protocol generally. Where notification of a request has not been made in accordance with this protocol, the Authority may decide not to support the application for financial assistance and the officer’s redress may lie with the relevant staff association or union.”
- 2.7 Clause 3.7 (appendix A) provides for “decisions in principle” where it is not feasible to convene a Committee meeting. Again this appears in protocols operated by other police authorities. The Committee may wish to consider alternatives. For example the Committee may consider that all decisions should be made by the Committee. Alternatively if a decision needed to be made and there was insufficient time to convene a meeting, members could be consulted electronically for a decision and / or the Committee might consider delegating decision making as an exception to the Committee’s Chairman and Vice-

Chairman who would be expected to consult with the Authority's legal advisers before making a decision. Appendix B has been drafted on the basis that members of the HR Committee will make all decisions.

2.8 Clause 4 deals with fee levels to be approved. Again clause 4 of appendix A replicates protocols operated by other police authorities. The suggested fee rates are not in line with hourly rates recommended by the Master of the Rolls which are the standard guideline rates adopted by courts, generally.

2.9 The guideline hourly rates for Lincoln based on the most recently published (2009) are as follows:

£198.00 Solicitors with over 8 years post qualification experience including at least 8 years litigation experience

£174.00 Solicitors and Legal Executives with over 4 years post qualification experience including at least 4 years litigation experience

£144.00 Other solicitors and legal executives and fee earners of equivalent experience

£109.00 Trainee solicitors, paralegals and other fee earners (for example unqualified clerk)

These are guidelines and High Court cases by example can justify a senior level whereas attendance at pre-trial hearings with counsel should be delegated to a more junior fee earner.

Clause 4 in appendix B has been redrafted.

2.10 The Committee may also wish to consider a cap on the level of financial assistance to be provided in any one case and whether a further application would be considered once that level has been expended. See clause 4.1.7 of appendix B.

2.11 Members are invited to consider adopting a protocol in line with appendix B subject to any further amendments approved.

2.12 The protocol once approved by the Committee should be forwarded to the Force unions and staff associations for consultation.

B. FINANCIAL CONSIDERATIONS

There has been no specific provision for meeting officers' expenses in either the current or forthcoming financial years. However to date requests for reimbursement of expenses has been minimal.

The Authority's existing insurance arrangements in respect of public liability would, subject to certain exclusions and requirements, cover such payments subject to an excess of £250,000.

C. LEGAL AND HUMAN RIGHTS CONSIDERATIONS

In March 1999 a Divisional Court judgement (R v South Yorkshire Police Authority) confirmed that Police Authorities have the power to meet the defence costs of police officers in private prosecutions, judicial review proceedings and any other types of legal proceedings. In reaching this decision the court considered s.6 of The Police Act 1996 and s.111 of the Local Government Act 1972.

D. PERSONNEL, EQUAL OPPORTUNITIES AND DIVERSITY ISSUES

(including any impact or issues relating to Children and Young People under the Every Child Matters (ECM) framework.)

HOC 43/2001 notes that 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. As indicated in the body of this report the HOC relates to police officers and not police staff. The Authority in agreeing a protocol for police officers and police staff would be treating serving officers and support staff equally in appropriate circumstances. Each case will be decided on its own merits but subject to a presumption in favour of payment where relevant criteria are met.

E. REVIEW ARRANGEMENTS

The protocol provides for regular review of the protocol.

F. RISK MANAGEMENT

Financial risks are potentially minimal and set out above. There is no requirement to have a protocol for managing requests for financial assistance but there are benefits of having a process in place.

G. LIST OF BACKGROUND PAPERS

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