

**DECISION NO: PCCG-2014-018**

**OFFICE OF POLICE AND CRIME COMMISSIONER**

**TITLE: Legal Expenses Reimbursement Protocol**

**DATE: 13<sup>th</sup> March 2014**

**TIMING: Routine**

**PURPOSE: For decision**

<b>1.</b>	<b><u>RECOMMENDATION</u></b> The Commissioner is advised to consider the protocol for agreement and implementation.
<b>2.</b>	<b><u>INTRODUCTION &amp; BACKGROUND</u></b> Home Office Circular 43/2001 outlines the Home Secretary's approval of guidance to police authorities (the guidance has transferred to Police and Crime Commissioners since November 2012) on financial assistance to officers in legal proceedings. The overriding premise in the advice is that police officers should carry out their duties in good faith and exercise their judgement reasonably although the payment is discretionary. There is a strong presumption in favour of payment where the officer was acting in good faith and was on duty. However, it is also important that the request is reasonable.  The principles set out in the Home Office Circular relate to the financial assistance to Police Officers and Special Constables but for the purposes of the protocol attached at Appendix 1 the arrangements will apply equally to police staff who also find themselves subject to claims especially as they are increasingly undertaking roles previously occupied by warranted officers.
<b>3.</b>	<b><u>ISSUES FOR CONSIDERATION</u></b> The protocol formalises the process by which applications come to the Police and Crime Commissioner making it clear of the circumstances when applications can be made and the information required.
<b>4.</b>	<b><u>NEXT STEPS</u></b> Should the protocol be approved a copy will be sent to ACPO and the Staff Associations.
<b>5.</b>	<b><u>FINANCIAL CONSIDERATIONS</u></b> Each individual application will be considered and should the Commissioner agree to provide financial assistance, an appropriate limit will be set.
<b>6.</b>	<b><u>PERSONNEL CONSIDERATIONS</u></b> The Protocol covers the Police Officers, Special Constables and Staff of Gwent Police.

7.	<p><b><u>LEGAL IMPLICATIONS</u></b></p> <p>The Protocol has been created in line with relevant legislation and guidance including Home Office Circular 43/2001.</p>
8.	<p><b><u>EQUALITIES AND HUMAN RIGHTS CONSIDERATIONS</u></b></p> <p>This project/proposal has been considered against the general duty to promote equality, as stipulated under the Strategic Equality Plan and has been assessed not to discriminate against any particular group.</p> <p>Consideration has been given to requirements of the Articles contained in the European Convention on Human Rights and the Human Rights Act 1998 in preparing this report.</p>
9.	<p><b><u>RISK</u></b></p> <p>Any potential risks are mitigated by the adoption of this policy.</p>
10.	<p><b><u>PUBLIC INTEREST</u></b></p> <p>Although these are documents for internal use, they may be published.</p>
11.	<p><b><u>CONTACT OFFICER</u></b></p> <p>Siân Curley, Head of Corporate Governance.</p>
12.	<p><b><u>ANNEXES</u></b></p> <p>Legal Expenses Reimbursement Protocol.</p>

# Office of the Police and Crime Commissioner Protocol

## Legal Expenses Reimbursement

### General Principles

1. The Office of the Police and Crime Commissioner values the commitment and professionalism of all Gwent Police's workforce. It also accepts that some of its workforce may occasionally find themselves in circumstances where they are the subject of a legal claim against their actions or inaction, despite having acted within the law and adhered to local policy and procedures.
2. This protocol refers to Home Office Circular 43/2001, dated 21/9/2001 and describes the role of Police Authorities in respect of providing limited financial assistance to employees or ex-employees involved in certain legal proceedings such as private prosecutions, judicial review proceedings and any other type of legal proceedings, including Coroner's Inquests.
3. The principles detailed in the Circular relate to financial assistance to police officers and special constables but for the purposes of this protocol, the arrangements will apply equally to police staff who also find themselves subject to claims in similar circumstances.
4. The Circular outlines 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 judgment of *R v South Yorkshire Police Authority* (1999).
5. The Circular makes it clear (para 4) that the discretionary power in Section 88 of the Police Act 1996 is only available when civil claims are brought against an officer. In other cases, if the PCC wished to provide financial assistance, they would be relying on the power in Section 6 of the Police Act 1996 and 111 of the Local Government Act 1972.

6. The decision to make a contribution, following an application to reimburse the costs of an officer, will always be at the sole discretion of the PCC (HOC 43/2001 para 3). The PCC, when considering applications relating to Public Enquiries and Tribunals, must be satisfied that (in light of the chief officer's recommendations) the officer acted in good faith and exercised reasonable judgement. This ensures that the PCC complies with its obligations under HOC 43/2001, Section 6 of the Police Act 1996 and section 111 of the Local Government Act 1972. In accordance with their fiduciary duties, the PCC must also consider the reasonableness of the fees applied for.
7. As part of their consideration of an application, the PCC will take into account the conduct of the member of staff, in particular whether they have cooperated fully with any investigation. Failure to do so may result in applications being refused.

### **Notification of Applications**

8. When a Coroner is notified and confirms that member(s) of staff are "interested parties", that should be the trigger for the notification of the application. It ought also, save in wholly exceptional circumstances, be not less than 28 days before the hearing. In any event, subsequent notification to the OPCC must be timely, in advance of the Inquest and not retrospective. In the main, these cases will be those involving deaths in custody, fatal road traffic collisions and serious incidents such as fatal shootings. Any other applications not involving Coroners court should also aim to be submitted within 28 days of the first hearing.

### **Fees**

9. The PCC will consider each claim on its merits and the same applies to the level of fees to be reimbursed. The PCC may impose a cap on fees to be paid. The estimated costs will need to be supported by a detailed breakdown of charges.
10. It is imperative that all applications submitted adhere to the above conditions as, in the case of extreme claims or where notification has not been complied with, the Force and PCC may decide not to support the application for a contribution toward the costs and the member of staff's entire redress may have to lie with the relevant staff association or union.

## Procedure

11. All notifications of applications for funding made in accordance with this Protocol should be sent in the first instance and at the earliest possible opportunity to:

The Chief Executive

Office of the Police and Crime Commissioner

Police Headquarters

Croesceiliog

CWMBRAN

NP44 2XJ

12. All notifications should include:-
- a) Details of the incident.
  - b) Date(s) or approximate date(s) of the Inquest.
  - c) An indication from the member of staff as to whether it is his or her view that they were acting in the lawful execution of his / her duty.
  - d) An indication as to whether the member of staff or those representing the member of staff foresee a potential conflict of interest between the member of staff and the Force and if so, the basis for that potential conflict.
  - e) An estimate of the total costs.
13. Upon receipt of the above information the Chief Executive will request confirmation from the Chief Constable as to:
- a) whether he sees a potential conflict of interest
  - b) whether the officer/staff member was undertaking their duties in the lawful execution of his/her duty
  - c) whether the officer/staff member acted in good faith
  - d) whether (based on advice from Joint Legal Services the fees requested are reasonable).

14. Upon receipt of notification, the Chief Executive will prepare a report for the PCC including:
  - a) Details of the incident.
  - b) Date(s) or approximate date(s) of the Inquest.
  - c) An indication from the Chief Constable as to whether in their view that the member of staff was acting in the lawful execution of his/her duty and acted in good faith.
  - d) An indication from the Chief Constable as to whether there is a potential conflict of interest between the member of staff and the Force.
  - e) An estimate of the total costs.
  
15. The PCC will consider the request and take a decision in principle whether to grant payment.

### **Outcome of Applications**

16. Assuming initial approval for the application, at the end of the Inquest the applicant or their representative should provide a final costing. If the costs incurred in the final costing are reasonable and within the agreed estimate payment it will be authorised by the Chief Executive on behalf of the PCC.
  
17. After initial approval and in the subsequent event that, 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 over-run and a fresh estimate to the conclusion of the case.
  
18. The PCC will then consider the further request and indicate whether the increased application will be supported or not.
  
19. In the more complex and long running matters regular updates must be provided to the Chief Executive as to the state of work in progress.

20. If it is indicated at the initial notification of application for financial assistance that the application will not be supported or if a subsequent increased application is not supported or granted at the initial or subsequent stage, the reasons for the lack of support will be communicated in writing by the Chief Executive to the applicant or their representatives.
  
21. This protocol exists in order to provide financial assistance to members of staff who are subject to legal claims whilst serving Gwent Police and to place a reasonable limit on the cost of that assistance as charged by their legal representative.

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Consultation:	Tick to confirm (if applicable)
<b>Financial</b> The Chief Finance Officer has been consulted on this proposal.	✓
<b>OPCC</b> The Senior Business Manager has reviewed the request and is satisfied that it is correct and consistent with the PCC's plans and priorities.	✓
<b>Legal</b> The legal team have been consulted on this proposal.	✓
<b>Equalities</b> The Equalities Officer has been consulted on this proposal.	N/A

**Chief Executive/ Deputy Chief Executive:**

I have been consulted about the proposal and can confirm that financial, legal, equalities etc... advice has been taken into account in the preparation of this report.

I am satisfied that this is an appropriate report to be submitted to the Police and Crime Commissioner for Gwent.

**Signature:**

S A Bossa

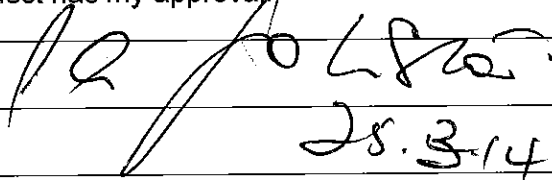
**Date: 25.03.14**

**Police and Crime Commissioner for Gwent**

I confirm that I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct.

The above request has my approval

**Signature:**



**Date:**

28.3.14

