

**THIS REPORT AND RELEVANT
BACKGROUND PAPERS ARE
OPEN TO INSPECTION BY
MEMBERS OF THE PUBLIC**

**AGENDA ITEM NO: 7
RESOURCES COMMITTEE**

4 MARCH 2011

SUBJECT: PROTOCOL FOR APPLICATIONS FOR FINANCIAL ASSISTANCE

Report of the Chief Executive

PURPOSE OF THE REPORT

1. To see approval of the revised protocol.

RECOMMENDATION

2. That members approve the revised protocol at Appendix A.

KEY INFORMATION

3. At the request of members, the protocol for dealing with requests for financial assistance has been revised. The new version is included at **Appendix A**. New text is emboldened and words that have been removed are also visible.
4. The previous version of the protocol, approved by the Human Resources Committee in September 2009, had already been amended to include the presumption that the Force Solicitor would represent police officers unless and until a professional conflict arose. However, members had voiced concerns about the lack of narrative around fees that could be charged by external solicitors. They were also keen to ensure that requests for financial assistance were made in advance of their being incurred and called for more rigorous scrutiny that officers were acting in good faith.
5. The changes requested by members have been made in the version of the protocol in the appendix. Reference has been made to other police authority protocols in order to make the amendments, particularly the one used by South Yorkshire Police Authority. Some tidying up of the wording in the last paragraph has also taken place to clarify the approval process between Resources Committee meetings. Members are asked to consider whether they would wish officers to specify an amount above which approval could only be given by the Committee rather than the Chair or Vice Chair of the Committee.
6. The proposed revisions have been agreed with the Office of the Force Solicitor, Professional Standards department and the Federation.

STRATEGIC RISK IMPLICATIONS

7. The Chief Executive is presently discussing with the Home Office the plans for this responsibility to remain with Police and Crime Commissioners, since it seems more logical to become the responsibility of the chief constable.

RESOURCE IMPLICATIONS

8. Operation of the revised protocol will help to minimise the additional financial burden on the Police Authority that cannot ever be accurately forecast. Where separate representation is needed the scale of fees will help control the amounts charged. Fees charged to the Authority over the last 3 years have totalled £139.7k, excluding VAT.

EQUALITY AND DIVERSITY CONSIDERATIONS

9. No adverse or differential impact has been identified when assessing the revised protocol.

HUMAN RIGHTS CONSIDERATIONS

10. The underlying principle to this protocol is that no officer will suffer financially if they are involved in legal proceedings where they have acted in good faith.

CONTRIBUTION TO THE POLICING PLAN

11. Previous and the most recent revisions to the protocol are aimed at reducing unplanned demands on the Police Authority budget.

IMPLICATIONS FOR REGIONAL/COLLABORATIVE WORKING

12. South Yorkshire Police Authority has assisted officers to make the required revisions to this protocol.

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SUPPORTING DOCUMENTATION

Appendix A – Protocol for dealing with requests for financial assistance

BACKGROUND PAPERS

None

West Yorkshire Police Authority – Protocol for Dealing with Requests for Financial Assistance

General considerations

There are several key matters that should be borne in mind when considering any process for the determination of applications for financial assistance.

1. The Strong Presumption

In their support the officers and/or their representatives cite Home Office Circular 43/2001 which in essence reminds authorities of their obligations and liabilities under the Police Act 1996 and imposes 'a strong presumption' that police authorities will provide financial support for police officers involved in legal proceedings where those officers have acted in good faith and have exercised their judgement reasonably.

2. Estimate of Fees/Necessity

When instructing solicitors on the officers' behalf, the Police Federation (and other representative bodies) will require a view as to the likelihood of there being any need for legal representation at the Inquest or other relevant proceedings and, in the event that such a likelihood should arise, a fees estimate to cover the provision of appropriate representation.

3. Joint Representation by the Force

Another recurring feature of these proceedings is the involvement of the relevant police force which will also have received notice and made a professional assessment of the need to be represented and the practicalities and risk involved in the legal process.

The current process

Unless and until a professional conflict arises, there seems to be no compelling reason why the legal representatives acting on behalf of the Chief Constable (at the expense, it should be remembered, of the Police Authority) could not also represent the interests of any police officer, particularly where those officers have (as required by the Home Office Circular) acted in good faith and exercised their judgement reasonably. This should be the default position and is the view of the Force Solicitor whose office has both the capability and capacity to provide legal representation in this way.

In the event that a conflict arises, either in advance of or during the proceedings, arrangements can quickly be made for an officer to be separately represented but the occasions on which this is likely to arise will be

rare. It is proposed that the Force Solicitor – in close consultation with the Professional Standards Department (PSD) – take a view on the need for legal representation at the relevant proceedings **and whether there is any conflict**. Should it be agreed that the officers require separate legal representation then the Authority will be provided with the earliest possible notification of this requirement **by the Force Solicitor**. It ought also, **save in wholly exceptional circumstances, to be given not less than 28 days before the first hearing or conference**.

On receiving such notification, the Authority should request details of the reason for the representation, **an indication from the Chief Constable as to whether it is his/her view that the officer was acting in the lawful execution of his/her duty**, together with an estimate of the professional fees likely to be incurred, such estimate to be provided in advance of the proceedings **their being incurred and not retrospectively**.

On those occasions where all the above conditions are met, the effect of the Home Office Circular would be for the Authority to ask the Force Solicitor and PSD whether there is any reason why it should not approve the assistance being sought. In the absence of any such proper reasons, the Authority will then provide such assistance as is felt to be necessary and appropriate.

The above process would achieve the various objectives of clarity, expedition, certainty, equity and value for money. It has been endorsed in principle by the Force Solicitor and the Head of PSD and it is proposed that the Authority adopts this approach to these requests.

Reproduced below are the current costs within which any application for separate representation should be framed;

- 1. Subject to the points listed below a blended hourly rate will be paid at £100 for all fee earners**
- 2. Travel to be allowed at £50 per hour**
- 3. Attending with Counsel (either in conference or at the hearing) to be charged at 2/3rds of the blended hourly rate**
- 4. No mark-up on fees**
- 5. No fees for administrative work**
- 6. Photocopying: the first 500 sheets supplied free of charge and thereafter at 10 pence per sheet plus VAT**
- 7. Solicitors required to be practising within the locality of the officer/employee's normal place of work otherwise Agents to be used. No charge allowed for hotel or travel expenses**
- 8. No fees to be charged for waiting**
- 9. Prior approval from the Head of Professional Standards is required as follows**
 - All disbursements, including Counsels fees over £1000.00**

- **Use of two or more Counsel**
- 10. **Bills to be submitted per quarter or at £5,000 profit costs (whichever is the sooner)**

In addition, rather than waiting for the next scheduled date for the relevant Committee to meet and consider such requests, ~~it would seem that~~ authority for approving any applications under the above process could be delegated ~~either~~ to the Chair or ~~Link Member~~ **Vice Chair** of the **Authority relevant Committee**, in consultation with the Chief Executive and **Solicitor** ~~Treasurer~~.

Version: 21 January 2011

