

**DERBYSHIRE CONSTABULARY AND DERBYSHIRE POLICE
AUTHORITY PROTOCOL - FINANCIAL ASSISTANCE CLAIMS UNDER
HOME OFFICE CIRCULAR 43/2001**

GENERAL PRINCIPLES

1. Home Office Circular 43/2001, dated 21/9/01 describes the role of Police Authorities in respect of financial assistance to police officers involved in certain legal proceedings, including Coroner's Inquests. 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).

2. 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 such cases, if the Authority 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.

3. The decision to make a contribution, following an application to reimburse the costs of police officers, will always be at the sole discretion of the Police Authority (HOC 43/2001 para 3) and the Legal Services Department are the first point of contact for all such applications. The Police Authority 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 Police Authority 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 Police Authority must also consider the reasonableness of the fees applied for and this Protocol establishes the level of proportionate and acceptable fees.

4. As part of their consideration of an application, the Police Authority will take into account the conduct of the officer(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.

NOTIFICATION OF APPLICATIONS

5. When a Coroner is notified and confirms that officers 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 Force Solicitor 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.

FEES

6. Reproduced below are the current costs within which any application should be framed;

- a. Subject to the points listed below a blended hourly rate will be paid at £100 for all fee earners
- b. Travel to be allowed at £50 per hour
- c. Attending court with Counsel, or at conference with Counsel, to be charged at 2/3rds of the blended hourly rate
- d. No mark-up on fees
- e. No fees for administrative work
- f. Photocopying: the first 500 sheets supplied free of charge and thereafter at 10 pence per sheet plus VAT
- g. Solicitors required to be in the locality otherwise no charge allowed for hotel or travel expenses outside a ten mile radius of the county boundary of Derbyshire.
- h. No fees to be charged for waiting at court.
- i. Prior approval from the Force Solicitor is required as follows
 - (1) All disbursements, including Counsels fees over £1000.00
 - (2) Use of two or more Counsel
- j. Billing. Bills to be submitted per quarter or at £5,000 profit costs (whichever is the sooner) and in the following format
 - (1) Interim bill number / Final bill
 - (2) Dates (from x and to y)
 - (3) Names of fee earners
 - (4) Correspondence (i.e. number of letters and telephone calls)

- (5) Time engaged (client / opponent / witness / court / experts / documents)
 - (6) Travelling (if applicable)
 - (7) Disbursements (with supporting vouchers)
- k. Other requirements at outset and during proceedings
- (1) Type of legal proceedings in which you are applying for funding
 - (2) Reasons why there is conflict and separate legal representation is necessary
 - (3) Estimate as to legal costs (including solicitors, Counsel and experts)
 - (4) Case plan at outset
 - (5) Interim case plan (if substantial change in position)
 - (6) Revised estimate as to costs (if necessary) and reasons
 - (7) Immediate notification of hearing date and time estimate plus estimated fees (both Counsel and solicitor)
7. 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 Constabulary and Police Authority may decide not to support the application for a contribution toward the costs and the police officer's redress may have to lie with the relevant staff association or union.

PROCEDURE

8. 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;

Force Solicitor,
Derbyshire Constabulary,
Headquarters,
Derbyshire,
DE5 3RS

9. All notifications should include:-

- a. Details of the incident.
- b. Date(s) or approximate date(s) of the Inquest.
- c. An indication from the officer 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 officer or those representing the officer foresee a potential conflict of interest between the officer and the Force and if so, the basis for that potential conflict.
- e. An estimate of the total costs.

10. These conditions for financial assistance have been agreed between the Police Authority and Chief Constable and the applications and timing of requests will be the subject of detailed scrutiny by the Finance, Administration and Resources Committee and Police Authority officers before approval is given.

11. Upon receipt of notification the Chief Executive will prepare a report for the Finance, Administration and Resources Committee including:

- a. Details of the incident.
- b. Date(s) or approximate date(s) of the Inquest.
- c. An indication from the Deputy Chief Constable as to whether it is his view that the officer was acting in the lawful execution of his / her duty.
- d. An indication from the Deputy Chief Constable as to whether there is a potential conflict of interest between the officer and the Force.
- e. An estimate of the total costs.

12. The Finance, Administration and Resources Committee will consider the request and take a decision in principle whether to grant / or refuse payment. Where it is not feasible to place the request before a meeting of the Finance, Property and Estates Committee prior to the date of the Inquest, the Chair and Deputy Chair of the Committee may following consultation with the Chief Executive, Deputy Chief Constable, Force Solicitor and Head of PSD consider the request and take a decision in principle.

OUTCOME OF APPLICATIONS

13. If there is an 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 and in accord with the fee framework it will be authorised by the Force Solicitor on behalf of the Police Authority.

14. If there is 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 Force Solicitor (who in turn will 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.

15. The Finance, Administration and Resources Committee will then consider the further request and indicate whether the increased application will be supported or not.

16. In the more complex and long running matters regular updates must be provided to the Force Solicitor (who in turn will notify the Chief Executive) as to the state of work in progress.

17. 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.