Policy for the Provision of Financial Assistance to Police Officers and Staff facing Legal Proceedings

General Principles

1. The Office of the Police and Crime Commissioner for Sussex values the commitment and professionalism of all Sussex 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 010/2017 (which replaced Home Office Circular 43/2001) which describes the role of Police and Crime Commissioners in respect of providing limited financial assistance to employees (or ex-employees) involved in 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. Circular 010/2017 outlines the Home Secretary's approval of guidance to Local Policing Bodies 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 previous Circular 43/2001 (para 4) stated 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 Police 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. Section 88(1) and section 88(4) of the Police Act 1996 now cover any unlawful conduct rather than just torts committed by officers, by virtue of the changes made to section 88 by section 102 of the Police Reform Act 2002. It is the view of the Home Office that local policing bodies have the same power as police authorities formally had under s111 of the LGA 1972 to meet the 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 is related to the officer performing his

job.

6. In accordance with the Police Reform and Social Responsibility Act (PRSA) 2011, any decision to make a contribution, following an application to reimburse the costs of an officer, will be at the sole discretion of the Police and Crime Commissioner (paragraph 4, schedule 1). Whether it is appropriate to make these payments will depend on the circumstances of the case and it will be for an individual Police & Crime Commissioner to make this decision, taking their own legal advice as necessary.

7. Under section 88(2) of the Police Act 1996 the costs of any proceedings against the Chief Constable because of their liability for the unlawful conduct of constables under their direction must be paid out of the police fund. Therefore, Police & Crime Commissioners do not have any discretion over the duty to pay (except the approval of any settlement which is made before it is paid out of the police fund).

8. Local policing bodies should reasonably consider applications for financial assistance from police staff as well as officers.

9. The Police and Crime Commissioner, when considering applications, must be satisfied that (in light of the chief officer's recommendations) the officer/member of staff acted in good faith and exercised reasonable judgement. In accordance with their fiduciary duties, the Police and Crime Commissioner must also consider the reasonableness of the fees applied for and this Protocol establishes the level of proportionate and acceptable fees.

10. As part of their consideration of an application, the Police and Crime Commissioner will take into account the conduct of the officer/member of staff, in particular whether they have cooperated fully with any investigation. Failure to do so may result in applications being refused.

<u>Notification of Applications</u>

11. When a Coroner is notified and confirms that officers/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 Commissioner 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

12. 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 Agents to be used. No charge allowed for hotel or travel expenses (save for within a 10-mile radius)
h) No fees to be charged for waiting at court
i) Prior approval from the Force Solicitor is required as follows:
o All disbursements, including Counsels fees over £1000.00
o 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:

- Interim bill number / Final bill
- Dates (from x and to y)
- Names of fee earners
- Correspondence (i.e. number of letters and telephone
- calls)
- Time engaged (client / opponent / witness / court /
- experts /documents)
- Travelling (if applicable)
- Disbursements (with supporting vouchers)

k) Other requirements at outset and during proceedings:

- Type of legal proceedings in which you are applying for
- funding
- Reasons why there is conflict and separate legal
- representation is necessary
- Estimate as to legal costs (including solicitors, Counsel
- and experts)
- Case plan at outset
- Interim case plan (if substantial change in position)
- Revised estimate as to costs (if necessary) and reasons
- Immediate notification of hearing date and time estimate
- plus
- estimated fees (both Counsel and solicitor)

13. 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 the Police and Crime Commissioner 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

14. 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 for Sussex
Sackville House, Brooks Close,
Lewes, East Sussex
BN7 2FZ

15. 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/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 officer/member of staff or those representing them foresee a potential conflict of interest between the officer/member of staff and the Force and if so, the basis for that potential conflict.
e) An estimate of the total costs.

16. The conditions for financial assistance that have been agreed between the Police and Crime Commissioner and Chief Constable and the applications and timing of requests will be the subject of detailed scrutiny by the Commissioner and the Chief Executive before approval is given. This will include clarification of whether the individual has approached the Police Federation of England and Wales, Police Superintendents' Association, the Chief Police Officers' Staff Association and/or other union for payment and any reason for declining payment.

17. Upon receipt of notification, the Chief Executive will prepare a report for the Commissioner 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.
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.

Outcome of Applications

18. 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 and in accord with the fee framework it may be authorised by the Chief Executive on behalf of the Police and Crime Commissioner (please refer to the Scheme of Delegation).

19. 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.

20. The Police and Commissioner will then consider the further request and indicate whether the increased application will be supported or not.

21. 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.

22. 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.

23. This protocol exists to provide financial assistance to officer and members of staff who are subject to legal claims whilst serving Sussex Police and to place a reasonable limit on the cost of that assistance as charged by their legal representative