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FROM THE DEPUTY GENERAL SECRETARY'S OFFICE

SS/sg

12 November 2009

JBB CIRCULAR NO: 043/2009

To: The Chairman and Secretary
All Branch Boards

Dear Colleagues

FUNDING CRITERIA IN RELATION TO THE PROVISION OF LEGAL ASSISTANCE IN ACCORDANCE WITH THE POLICE FEDERATION FUND RULES

The Joint Central Committee (JCC) originally implemented a 'Funding Criteria' via JBB Circular 52/1997 on 3 September 1997. The ethos behind the original criteria still applies, namely to ensure decisions are legally defensible whilst;

- a) achieving a greater consistency in decision making; and
- b) taking a positive step towards eliminating the possibility of the funding of legal assistance being biased and subjective; and
- c) helping to rebut claims that the funding of legal assistance is discriminatory

This criterion has not been reviewed since 1997 and over the intervening period of time there have been numerous changes in legislation regarding the provision of legal aid as well as three different sets of Police (Conduct) Regulations, the Police (Efficiency) Regulations, the Police (Efficiency) (Amendment) Regulations, the Police (Performance) Regulations and the Police Reform Act that brought about the inception of the Independent Police Complaints Commission (IPCC).

The JCC has also implemented an 'Appeals Procedure' via JBB Circular 25/2009 to ensure that a member can appeal a refusal to fund and be confident that there is an open and transparent appeals procedure.

Taking all this into consideration the JCC agreed to review the funding criteria and has consulted widely over the last four months with Joint Branch Boards (JBBs) during this process.

At the November statutory meeting the JCC discussed the updated 'Funding Criteria' (attached) and agreed to implement it with effect from **1 January 2010**.

This circular therefore revokes JBB Circular 52/1997.

If you require further information regarding this circular then please contact either myself or the JCC Claims office on 01372 352091

Yours sincerely

A handwritten signature in black ink, appearing to read 'Smith', with a stylized flourish at the end.

STEPHEN A. SMITH
Deputy General Secretary

LEGAL ASSISTANCE – FUNDING CRITERIA

INTRODUCTION

Whilst all police officers from the rank of Constable to Chief Inspector are members of the Police Federation of England and Wales, only those that contribute to the voluntary fund (by way of monthly subscriptions) can access the wide range of legal assistance available.

The use of funds under the control of the Police Federation of England and Wales is governed by the Police Federation Fund Rules, under the provisions of the Police Federation Regulations 1969, Part III as amended. In relation to the provision of funding legal assistance from the funds of the Joint Central Committee, this is covered within Part II, para 5.1 A. 2, 3, 4 & 5 of the aforementioned Fund Rules.

Funds can be utilised to provide legal assistance with regard to criminal, misconduct, unsatisfactory performance, police appeal tribunals, inquests, defamation, personal injury and employment tribunal matters as well as other generic advice affecting a section of the membership or the membership as a whole.

In order to assist in the decision making as to whether legal assistance should be provided, or its extent, the following funding criteria has been designed.

The decision as to whether legal assistance is funded is at the discretion of the relevant central committee.

Whilst the funding of legal assistance will always be considered, each case will be judged on its own merits and will be monitored and reviewed throughout its life to ensure that the funding criteria continues to be applicable.

SECTION 1 – CRIMINAL CASES

The funding of all legal assistance (advice and/or representation) for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) Whether the case is in connection with criminal proceedings brought against the member for any offence committed in, or founded upon something done in the performance or purported performance of their duties as a member of a police force. This will also include cases where it can be demonstrated that criminal proceedings are only being initiated due to the fact that the member is a police officer.
- (b) It should be emphasised that it is not a matter of whether the member was merely on duty at the time of the alleged criminal offence but the fact that it arose out of their performance or purported performance of police duty.
- (c) Where a member is off duty at the time of the alleged criminal offence, he/she will have to demonstrate that they were performing the duties of a police officer at that time or that it arose purely out of the fact that the member is a police officer.
- (d) Whether the funding of legal advice at an early stage will assist in negating the prospects of a criminal prosecution.
- (e) The likelihood of a member facing criminal prosecution.
- (f) If convicted the likelihood of a member suffering a loss of liberty, livelihood or serious damage to reputation.
- (g) The significance of the case to the membership as a whole.
- (h) Any other relevant matters.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal assistance will be funded.

SECTION 2 – APPEALS AGAINST CRIMINAL CONVICTIONS

The funding of all legal assistance (advice and/or representation) for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) That the member has been convicted of a criminal offence in a court of law.
- (b) Whether there is an issue at stake which is of general importance to the membership as a whole or a section of the membership.
- (c) Written legal advice as to whether there are special circumstances justifying an appeal and gives a clear indication on the prospects of success of the appeal.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal assistance will be funded.

SECTION 3 – GROSS MISCONDUCT CASES & SPECIAL CASE HEARINGS

The funding of all legal assistance (advice and/or representation) for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) Whether the alleged gross misconduct was committed in or founded upon something done in the performance or purported performance of their duties as a member of a police force.
- (b) It should be emphasised that it is not a matter of whether the member was merely on duty at the time of the alleged gross misconduct but the fact that it arose out of their performance or purported performance of police duty.
- (c) Where a member is off duty at the time of the alleged gross misconduct he/she will have to demonstrate that they were performing the duties of a police officer at that time or that it arose purely out of the fact that the member is a police officer.
- (d) Whether the funding of legal advice at an early stage will assist in negating the prospects of a misconduct or special case hearing.
- (e) The likelihood of a member facing a misconduct or special case hearing.
- (f) If there is a finding of guilt the likelihood of a member suffering a loss of livelihood.
- (g) The member's realistic plea to a gross misconduct charge with a guilty plea not attracting funding for legal representation unless the member can demonstrate that there are extenuating circumstances, points of law or breaches in procedures. In the absence of these circumstances it would be expected that the 'police friend' would represent the member and assist with any mitigation.
- (h) The significance of the case to the membership as a whole.
- (i) Any other relevant matters.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal assistance will be funded.

SECTION 4 – MISCONDUCT CASES

The funding of legal advice for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) As misconduct matters are to be dealt with at the lowest line management level, legal representation is not catered for within the Police (Conduct) Regulations, therefore members are not eligible for any legal representation.
- (b) Legal advice will not be routinely offered to members for misconduct matters, however should the member or the 'police friend' believe that the member would benefit from legal advice then they will need to demonstrate why that legal advice should be funded.
- (c) The likelihood of a member facing a subsequent misconduct hearing.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal advice will be funded.

SECTION 5 – GROSS INCOMPETENCE CASES

The funding of all legal assistance (advice and/or representation) for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) The likelihood of the member facing a third stage meeting.
- (b) Whether the funding of legal advice at an early stage will assist in negating the prospects of a third stage meeting.
- (c) If there is a finding of gross incompetence the likelihood of a member facing a loss of livelihood or rank.
- (d) The member's response to the allegation of gross incompetence with an admission of the gross incompetence not attracting funding for legal representation unless the member can demonstrate that there are extenuating circumstances, force failures, insufficient training, points of law or breaches in procedures. In the absence of these circumstances it would be expected that the 'police friend' would represent the member and assist with any mitigation.
- (f) The significance of the case to the membership as a whole.
- (g) Any other relevant matters.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal assistance will be funded.

SECTION 6 – UNSATISFACTORY PERFORMANCE / ATTENDANCE

The funding of legal advice for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) Legal advice will not be routinely offered to members for unsatisfactory performance procedures, however should the member or the 'police friend' believe that the member would benefit from legal advice then they will need to demonstrate why that legal advice should be funded.
- (b) Members attending a first stage or second stage unsatisfactory performance meeting are not eligible for legal representation.
- (c) Members attending a third stage unsatisfactory performance meeting (having previously attended a second stage meeting) are not eligible for legal representation.

In this section any reference to Unsatisfactory Performance also includes Unsatisfactory Attendance as contained within the Police (Performance) Regulations 2008.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal advice will be funded.

SECTION 7 – POLICE APPEALS TRIBUNAL CASES

The funding of all legal assistance (advice and/or representation) for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) That the member has received either a finding or outcome at a misconduct hearing, special case hearing or a third stage meeting under the Police (Performance) Regulations 2008.
- (b) The appeal is not frivolous or vexatious and it identifies the grounds on which the appeal is to be based.
- (c) Written legal advice that gives a clear indication on the prospects of success of the appeal.

The exercise of discretion will often involve having to balance all or some of the above factors in making any determination as to the extent to which, if at all, legal assistance will be funded.

SECTION 8 – ALL CASES EXCEPT CRIMINAL, MISCONDUCT & PERFORMANCE

The funding of all legal assistance (advice and/or representation) for members is discretionary.

In exercising discretion the following factors should be considered:-

- (a) the likely success of the case;
- (b) the likely costs of providing the legal assistance;
- (c) the potential benefit to the member;
- (d) the benefit of the case to the membership as a whole;
- (e) the existence of alternative procedures;
- (f) any other relevant matters.

The exercise of discretion will often involve having to balance the above factors in making any determination as to the extent to which, if at all, they will fund legal assistance.

Each case will be judged on its own merits and will be monitored and reviewed to ensure that the funding criteria is applicable.

NOTES ON CRITERIA

THE LIKELY SUCCESS OF THE CASE

On receipt of a request for legal assistance, the Federation may seek legal advice from solicitors with a view to determining the extent to which, if at all, legal assistance would be appropriate. The assessment of merits made by the solicitors instructed will be taken into account.

Although no specific formula has been adopted, the following bands have been identified to assist in the determination as to whether legal assistance will be granted:

A	Very Good	(80%+)
B	Good	(61 – 80%)
C	Moderate	(51 – 60%)
D	Borderline	(40 – 50%)
E	Poor	(less than 40%)

Generally legal assistance will not be granted where the prospects of success are less than 51%, however there may be occasions when the issue is so important to the membership as a whole that legal assistance is granted in these cases.

COSTS

Consideration will be given to the potential exposure to Police Federation funds in providing the legal assistance requested. In circumstances where the costs of legal assistance will almost certainly fall on the Federation, the concern will be that the costs involved will not be disproportionate to the potential benefit to the member and/or the membership as a whole.

BENEFIT TO THE MEMBER

Consideration will be given not only to the potential financial benefit to the member in providing legal assistance, but also to the potential detriment that the member may suffer if legal representation is not provided, other benefits that the member may achieve on the resolution of the issue, the subject of the request for legal assistance and (in the case of discrimination matters) the potential risk of repetition of harassment of the member.

BENEFITS TO MEMBERSHIP AS A WHOLE

Although the potential financial benefit to the member may be at times nominal, in certain circumstances it is recognised the impact on the membership as a whole may be substantial or raise a significant policy issue.

Account may be taken of the extent to which the issue raised in the request for legal assistance is of particular concern within the Force of the member(s) concerned.

ALTERNATIVE PROCEDURES

The extent to which, if at all, the matter subject of the request for legal assistance may be better resolved by negotiation through the Police Negotiating Board or by the Joint Branch Board through the JNCC or other in Force Forums or the grievance procedures or otherwise, will also be taken into account.