

Report to PCC	
Date of Decision: 6 th March 2015 Date of Report: 21 st April 2015	Report reference number: PCC/0054/15
Title of report: Decision Sheet – Roger Baker Retention Payments	
Report by: Susannah Hancock: OPCC Chief Executive	

1. Purpose of report

To confirm the decision made by the PCC in relation to proceeding with the case of Roger Baker, and present the rationale behind the decision.

2. Recommendations

That the PCC confirms the decision in relation to proceeding with the case of Roger Baker.

3. Benefits of Proposal

See below.

4. Background and proposal

On 22 July 2014, the Police and Crime Commissioner for Essex (PCC) issued legal proceedings against Mr Roger Baker, the former Chief Constable of Essex Police in the years July 2005 to July 2009. The purpose of the proceedings is to recover two sums of £30,000 and one sum of £25,000 made in the years October 2007 to April 2009 to Roger Baker purportedly as a retention payment. That is, a payment to endeavour to prevent Mr Baker leaving the employ of the then Essex Police Authority by a legal agreement that he would not do so if the Authority paid him £25,000/£30,000 for each of the years in question. It is the view of the PCC that the

[NOT PROTECTIVELY MARKED]

Police Authority had no legal power to make such payments and that therefore the payments were made in mistake of law and should be repaid along with accrued interest.

The PCC has considered the following factors to inform his decision making:

1. Factors in favour of withdrawing the proceedings on the basis of Mr Baker's proposal.
 - The applicable law, involving as it does consideration of Section 111 of the Local Government Act 1972, and the doctrines of mistake of law and change of position, is unclear in relation the issue that has arisen between the parties and accordingly no definitive view can be taken as to the lawfulness or otherwise of the payments to Mr Baker.
 - The legal costs of the case, should the PCC have to pay them, could exceed the value of the claim.
 - Council taxpayers' money should not be put at risk in circumstances where the outcome is uncertain. The fiduciary duty of care the PCC owes as a public office holder, in the sense of being required to be a responsible steward of scarce public funds, is a high one.

2. Factors in favour of proceeding with the action to recover the retention payments from Mr Baker.
 - In the view of the PCC, in the public sector, as a general principle, payments made improperly or unlawfully should be recovered regardless of cost of so doing, within reason, the tipping point being the point at which the PCC, exercising his judgement as a responsible holder of public office, determines that the costs risks attached to pursuing the arguably improperly made payments outweighs the public interest in seeking its recovery by litigation.
 - The PCC considers he owes a strict fiduciary duty to the council tax payers to recover money improperly or unlawfully paid out whether or not by himself or his predecessor, the Police Authority.
 - As a matter of principle, public office holders should not be unjustly enriched and where they are, it is important that monies involved are recovered.

[NOT PROTECTIVELY MARKED]

- Although Mr Baker did not participate at the meeting of the Police Authority which decided to make the payments, he was aware of the process leading up to the making of the payments and the fact that there was legal controversy around the ability to make those payments.
- In the event, although Mr Baker received a retention payment for the final year of his service with Essex Police Authority, he in fact left the employ of the Police Authority before completion of the year and shortly afterwards took up position as one of HMIC. He therefore breached the agreement although Essex Police Authority accepted the position at that time.
- The legal advice available to the PCC suggests that the law is more likely than not, to be resolved in a way that allows recovery.

Decision

The PCC has given very careful consideration to all the factors set out above. He has taken advice from the Chief Executive and the Treasurer for the Office of the PCC as well as legal advice from his solicitor and two leading counsel.

The PCC has decided that the balance of public interest lies in proceeding with the action to recover the retention payments. The reasons for this lie in the PCC's view that he has a strict fiduciary duty to council tax payers to recover monies improperly paid and to ensure that no paid officer of Essex Police is or has been unjustly enriched through a decision of either himself or his predecessor, Essex Police Authority. The PCC has taken into account evidence that although Mr Baker was not part of the decision of Essex Police Authority on the day it was taken, nevertheless he was fully aware that the decision was being taken and that there were concerns about its legality in circumstances where the expectation of the public might be that such a senior public office holder should have shied away from accepting the payments. The PCC recognises that there is a risk to public funds with which he is entrusted but believes the above factors outweigh the public interest in not taking such risk."

5. Police and Crime Plan

This supports delivery against the Police and Crime Plan, helps to ensure effective and efficient policing across Essex and supports the PCCs responsibilities in relation to the scrutiny and oversight of Essex Police.

6. Police Operational Implications

N/A

7. Financial Implications

See detail in section 4

8. Legal Implications

The PCC has sought expert legal advice from his solicitor and from Counsel to inform this decision.


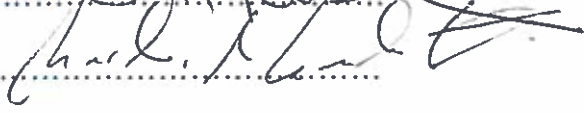
9. Staffing and other resource implications

There are no specific staffing implications.
Finance and resource implications are set out in section 4.

10. Equality and Diversity implications


None identified at this stage.

Report Approval

Chief Executive/M.O	
Chief Financial Officer	
PCC Legal Advisor	(As necessary)

Decision

I agree the recommendations to this report
.....


PCC

I do not agree the recommendations to this report because

.....
.....
.....
.....
.....

.....
PCC

Publication

Reasons for non-publication (*state 'None' if applicable*)

.....None.....
.....
.....
.....
.....
.....
.....
.....

.....
Signed/Print name

Report for publication	YES	<input checked="" type="checkbox"/>
	NO	<input type="checkbox"/>

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

