

PFCC Decision Report

Please ensure all sections below are completed

Report reference number: 084-21
Classification (e.g. Not protectively marked/restricted): Not Protectively Marked
Title of report: Update on Indemnity Wording for Legally Qualified Chairs (LQCs) and Independent Panel Members (IPMs) for Misconduct Hearings
Area of county / stakeholders affected: Countywide
Report by: Janet Perry Carla Bailey
Date of report: 25 May 2021
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1. Purpose of the report

- 1.1 A concern had previously arisen regarding the indemnity wording agreed with Legally Qualified Chairs (LQCs) in 2018. This arose from the potential of a claim for damages against LQC and Independent Panel Members (IPMs) regarding an Equality Act claim before the Employment Tribunal.
- 1.2 As a result, most LQCs were refusing to sit on misconduct panels until the wording of their indemnity is changed.
- 1.3 The wording suggested by the Association of Police and Crime Commissioners (APCC) in relation to indemnity for LQCs and IPMs who sit on misconduct hearings for Essex Police was agreed by the 7F Chief Executives as an interim solution for the 6 months from November 2020 subject to review in May 2021.
- 1.4 The Essex PFCC agreed through a previously submitted decision report that we would adopt this assurance for the LQCs and would review it again in May. This report is requesting an extension to the use of this assurance until a national solution is developed.

2. Recommendations

- 2.1. To approve the wording provided by the APCC for the assurance of LQCs until a national solution has been agreed.

3. Benefits of the proposal

- 3.1 That the LQCs and IPMs will have indemnity wording which offers both them and the PFCC reassurance that they are covered for damages unless it is shown in a court or similar that they have acted in bad faith.
- 3.2 It provides the PFCC with a backstop to ensure that LQCs act professionally in their role as panel chair.
- 3.3 Without this assurance the PFCC would not be able to appoint LQCs and IPMs to carry out their roles.

4. Background and proposal

- 4.1 Following a potential claim for damages against misconduct panel members arising from an Equality Act claim before the Employment Tribunal, an issue was highlighted with the indemnity wording previously agreed with LQCs in 2018.
- 4.2 The APCC worked with APACE, the Home Office and the National Association of LQCs and developed a pragmatic solution and a form of wording which covered the LQCs. It offered LQCs assurance that they were covered for damages unless it was shown in a court or similar that they had acted in bad faith (this is similar to the wording of the magistrates' indemnity set out in the Courts Act 2003). It provided PCCs/PFCCs with a backstop to ensure that LQCs acted professionally in their role as panel chair.
- 4.3 The agreed wording was:

“In respect of the case of which is to be held on I (in my role as Police, Fire and Crime Commissioner) agree to indemnify you as the Legally Qualified Chair in respect of any liabilities arising (including reasonable costs in connection with responding to legal proceedings) for anything done or omitted to be done by you in the discharge of your functions unless, having received representations or submissions by or on your behalf, you are proved in a court of law or other tribunal with appropriate jurisdiction to have acted in bad faith. Furthermore, in the event of your being held to have any liability for anything done or omitted to be done by another member of the Panel of which you are part, I agree to indemnify you in full in respect of any such liability.”

- 4.4 The 7F Chief Executives Group sought advice from their insurance group, SEERPIC, which confirmed that the appointed LQC would be covered under the Professional and Officials' Indemnity section – It is their view that *such “independent persons” are actually performing a task on behalf of the authority in question because they are chairing official panels that the authority is required to set-up and operate. They consider this to be an Officials' Indemnity issue, and cover would be subject otherwise to the terms and conditions of the Policy. It was also noted that the LQC would also be picked up under the Public Liability (if not Employers Liability) section of the policy whilst carrying out these duties.*

- 4.5 Subsequently the 7F Chief Executives, having been provided with this assurance on LQCs indemnities, agreed that they could safely proceed on the basis of offering the indemnity to LQCs and IPMs as suggested by the APCC in their correspondence.
- 4.6 At the end of November 2020 the APCC advised PCCs/PFCCs to adopt this wording in relation to both LQCs and IPMs for the time being. They also advised that this should be an interim solution for 6 months subject to review in May 2021.
- 4.7 In accordance with our policy we submitted a decision sheet.
- 4.8 On 4 May 2021 we were advised that there has been no national solution nor a response from the APCC and it was therefore agreed to continue with the current arrangements beyond 31 May 2021 pending the emergence of a suitable national solution. The insurance group, SEERPIC, have confirmed there should be no issue with this.
- 4.9 The decision report submitted only covered approval until the end of May 2021 therefore this subsequent decision report is being submitted to extend the approval until a national solution is agreed.
- 4.10 In the longer term, the APCC is working with the Home Office to explore whether judicial immunity should be included for misconduct panels in legislation to put this matter beyond doubt and protect misconduct panel members from civil claims.

5. Alternative options considered and rejected

- 5.1 The PFCC could decide not to continue to adopt the agreed indemnity wording, however this would result in LQCs / IPMs not being willing to sit on misconduct panels.

6. Police and Crime Plan

- 6.1 This will support the effective independent scrutiny of the Essex Police Complaints system and ensure we continue to comply effectively with our statutory responsibilities and thereby continue to meet our objectives within the Police and Crime Plan.

7. Police operational implications

- 7.1. Without the ability to carry out misconduct hearings the individuals involved are potentially unable to be operational for longer than might be necessary.

8. Financial implications

- 8.1. Without the ability to carry out misconduct hearings there is the potential to be paying staff who are on restricted duties for longer than might be necessary.

9. Legal implications

9.1. Without the ability to carry out misconduct hearings we would be potentially in breach of our disciplinary policy. This could have an impact in terms of any legal action taken by the officers involved.

10. Staffing implications

10.1 Without the ability to carry out misconduct hearings the individuals involved are potentially unable to work or on restricted duties for longer than might be necessary.

11. Equality and Diversity implications

11.1. This matter was originally identified in relation to the Equality Act 2010 and whilst in itself there should be no particular equality and diversity implications, we should remain mindful of how the matter arose.

12. Risks

12.1 This is an interim solution and there is still no date for when a national solution will be determined.

13. Governance Boards

13.1. None.

14. Background papers

14.1 None.

Report Approval

The report will be signed off by the OPFCC Chief Executive and Treasurer prior to review and sign off by the PFCC / DPFCC.

Chief Executive / M.O.

Sign: 

Print: Darren Horsman - Deputy MO.....

Date: 18.6.2021.....

Chief Finance Officer / Treasurer

Sign: 

Print: Julia Berry.....

Date: 30/07/2021.....

Publication

Is the report for publication?

YES

NO

If 'NO', please give reasons for non-publication (Where relevant, cite the security classification of the document(s). State 'None' if applicable)

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

Redaction

If the report is for publication, is redaction required:

1. Of Decision Sheet?	YES	<input type="checkbox"/>	2. Of Appendix?	YES	<input type="checkbox"/>
	NO	<input checked="" type="checkbox"/>		NO	<input type="checkbox"/>

If 'YES', please provide details of required redaction:

.....
.....

Date redaction carried out:

Treasurer / Chief Executive Sign Off – for Redactions only

If redaction is required, the Treasurer or Chief Executive is to sign off that redaction has been completed.

Sign:

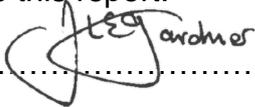
Print:

Chief Executive/Treasurer

Date signed:

Decision and Final Sign Off

I agree the recommendations to this report:

Sign: 

Print: Jane Gardner

PFCC/Deputy PFCC

Date signed: 9 August 2021

I do not agree the recommendations to this report because:

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Sign:

Print:

PFCC/Deputy PFCC

Date signed: