

PFCC Decision Report

Please ensure all sections below are completed

Report reference number: 168-22

Classification (e.g. Not protectively marked/restricted): Not Protectively Marked

Title of report: Updated Indemnity Wording for Legally Qualified Chairs (LQCs) and Independent Panel Members (IPMs)

Area of county / stakeholders affected: Countywide

Report by: Darren Horsman

Chief Officer: Darren Horsman

Date of report: 9/12/2022

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1. Executive Summary

There has been a long running concern raised by the National Association of Legally Qualified Chairs that they are open to claims because of their role and that they should be indemnified against these potential claims.

In decision report 084-21 the Commissioner agreed to wording setting out the indemnity provided to LQCs. Following a national case where an LQC was called as a witness in an employment tribunal this decision report proposed a revised form of words to incorporate these additional potential risks.

2. Recommendations

To approve the wording below provided by the APCC for the assurance of LQCs.

In respect of the case of which is to be held on I (in my role as Police and Crime Commissioner or equivalent) agree to indemnify you as the Legally Qualified Chair (“LQC”)/Independent Panel Member (“IPM”) in respect of any liabilities arising (including reasonable costs as agreed with you in connection with responding to or engaging with any legal proceedings or matters arising from the discharge of your functions as an LQC/IPM) for anything done or omitted to be done by you in the discharge of those 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.

In addition and/or for the avoidance of doubt, it is confirmed that this indemnity includes, but is not limited to, any reasonable costs you may incur:

- *In seeking legal advice in relation to the receipt of a witness summons/order or an application therefor;*
- *In relation to the preparation of any representations and/or witness statements in relation to an application for a witness summons/order and/or in relation to an application to set aside the issuing of a witness summons/order;*
- *In relation to securing legal representation at any hearing of an application for a witness summons/order and/or the hearing of any application to set aside the issuing of a witness summons/order;*
- *In relation to the costs (including costs of legal representation) of participating in any appeal and/or application for judicial review (and any appeal therefrom) arising as a consequence of your being in receipt of an application for a witness summons/order or an application therefor; and*
- *In relation to attending a hearing or hearings, including the time spent thereat.*

However, save where the issue/matter needs to be addressed by you immediately, no costs to which this indemnity applies should be incurred by you before you have notified the Chief Executive of my Office of the nature and extent of the issue/matter giving rise to a claim under it.

3. Background to the Proposal

The proposed revised wording set out in section 2 will replace the existing indemnity wording below and broaden the Commissioner provision to include a number of specific costs which may be associated with attendance as a witness at court and possible legal representation. It also puts an expectation on the LQC that they will get approval for any expenditure from the Commissioner’s Chief Executive before they incur it.

Existing indemnity wording

“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.”

We have sought advice from our insurers who have confirmed that the appointed LQC would be covered under the Professional and Officials’ Indemnity section. They do point to a selection of costs which they may occur which would sit outside of this cover such as travel to be a witness etc.

It should also be noted that the excess on this policy is £350,000 so is unlikely to be used except in the most extreme cases.

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. This longer-term solution has now been ongoing for five years and appears unlikely to be resolved nationally any time soon.

4. Proposal and Associated Benefits

By making this decision the LQCs and IMs will have indemnity wording which offers both them and the PFCC reassurance that they will be covered. The decision will also keep Essex in line with the indemnity offered to LQCs and IMs throughout the Eastern Region and given that we maintain a shared list of LQCs this will help to minimise any confusion within the pool of LQCs and IM.

5. Options Analysis

The PFCC could decide not to continue to adopt the agreed indemnity wording, however this would result in Essex being out of step with partners across the Eastern Region.

6. Consultation and Engagement

There has been no direct consultation on this decision, however, the APCC in preparing this draft has consulted with the National Association of Legally Qualified Chairs and the Home Office.

7. Strategic Links

This will help support the Commissioner’s work to oversee and scrutinise the police complaints system.

8. Police operational implications

There will be no direct operational implications from this decision.

9. Financial implications

There are not direct financial implications arising from this decision however, it does make the Commissioner liable for claims up to the insurance excess of £350,000. Given the previously claims in this area it is anticipated that any actual costs will be negligible.

10. Legal implications

This helps to ensure our police complaints system runs smoothly and is legally robust should any challenges arise.

11. Staffing implications

This decision has no direct staffing implications.

12. Equality, Diversity and Inclusion implications

This decision has no direct equality and diversity implications and does not negatively impact any group with a protected characteristic.

13. Risks and Mitigations

There is a risk that the Commissioner will face a sudden increase in claims, however, given the number of claims up until now and the number of claims nationally this risk is considered extremely small. This issue was discussed at the Commissioner's SMT on 6th of December and the Commissioner confirmed the level of risk was acceptable.

14. Governance Boards

This decision was discussed by the Commissioner's SMT on the 6th of December.

15. Links to Future Plans

This is not connected to any future plans.

16. Background Papers and Appendices

There are no associated papers.

Report Approval

The report will be signed off by the PFCC's Chief Executive and Chief Finance Officer prior to review and sign off by the PFCC / DPFCC.

Chief Executive / M.O. Sign: 

Print: Darren Horsman - Deputy Monitoring Officer

Date: 22.12.2022

Chief Finance Officer Sign: 

Print: JANET PERRY

Date: 22.12.22

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 NO 2. Of Appendix? YES NO

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

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Date redaction carried out:

Chief Finance Officer / 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 / Chief Finance Officer

Decision and Final Sign Off

I agree the recommendations to this report:

Sign: 

Print: ROGER HIRST

PFCC/~~Deputy PFCC~~

Date signed: 23 December 2022

I do not agree the recommendations to this report because:

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Sign:

Print:

PFCC/Deputy PFCC

Date signed: