



## SCOTTISH POLICE FEDERATION

Established by Act of Parliament

# Legal Advice & Assistance Guidance

March 2016

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## Principles

The provision of legal advice and assistance to members, their dependants and ex-members is one of the most important functions of the Scottish Police Federation (SPF).

Such advice and assistance is paid for by members' subscriptions. It is impossible, in either SPF Rules or this document, to describe every set of circumstances where legal advice and assistance may be granted.

Legal advice and assistance provided from SPF Funds is determined in terms of Rule 15 of the Police Federation (Scotland) Rules 2013.

The SPF, through the Joint Central Committee (JCC) may provide legal advice & assistance in connection with cases of road accidents, discrimination, defamation, employment tribunals, injuries on duty, criminal and civil prosecution defence and conduct matters. Further information on the matters covered by this guidance is contained herein.

Legislation debars the JCC from using its funds in connection with individual cases of promotion or appraisal or for purely operational matters.

Officers charged with a crime or offence allegedly committed while on duty may receive funding for legal advice & assistance from the Scottish Police Authority. Further information on this can be obtained from the appropriate Area Committee Secretary.

## Who Is Covered

This legal advice and assistance applies to contributing members to the Voluntary Fund (which in certain circumstances may include immediate family, civil partners, widows, widowers and dependents) and ex-members (only in certain circumstances and at the sole discretion of the JCC). Coverage for certain specific occurrences is subject to particular exclusions, both in relation to events and the categories of persons eligible to benefit from such coverage. Such exclusions are detailed and highlighted within this document.

**Special Constables** are covered for matters arising whilst carrying out the duties of a police officer only. In other exceptional circumstances, the JCC may, at its absolute discretion, extend cover to include other matters.

## Who Decides What is / in not Covered

The JCC and its officers in their absolute discretion. The absolute authority in the determination and application of the Voluntary Fund rests with the JCC in terms of Rules 14.2, 15.1 and 15.2 of the Police Federation (Scotland) Rules 2013.

## Discretion

**The JCC has absolute discretion on the extent of any legal advice and assistance provided.**

In exercising discretion the JCC will take the following factors into account:-

- potential benefit to the member/ex-member.
- potential benefit to the membership as a whole.
- whether any available alternatives have been exhausted.
- likely costs of providing the legal advice and/or assistance.
- prospects of success as per legal advice sought by the JCC.
- the moral and ethical aims and objectives of the organisation and the interests of the SPF as a whole.
- any other relevant matters as determined by the JCC.

The JCC seeks to provide a valuable and responsible legal advice and assistance service to its members, members' dependants and ex- members, where considered appropriate. JCC resources are finite and while every effort will be made to help those in need the JCC have a responsibility to the whole membership to manage the Voluntary Fund on behalf of everyone, both individually and collectively.

In some cases potential legal costs far outweigh any potential benefit either for the SPF or the individual and such cases cannot be supported for the above reasons.

Legal cases are rarely resolved quickly and many run on for a number of years. It is vitally important that individuals receiving legal advice and/or assistance keep in regular contact with their designated SPF representative

# Provision of Legal Advice & Assistance

## Applying for Legal Advice & Assistance

- contact the appropriate Area Committee Secretary
- contact **the SPF Legal Helpline on Tel 0344 893 0786**
- **access the SPF Website at [www.spf.org.uk](http://www.spf.org.uk)**

## SPF Solicitors

Solicitors appointed to provide any legal advice and assistance detailed within this guidance to any individual shall be determined by the JCC.

Funding for any legal advice & assistance shall only be provided where authority for such funding has been granted by the appropriate JCC official.

## Recoverable Costs

In the vast majority of legal cases there will be no charge to the individual concerned. In all instances where cases are unsuccessful there will be no charge to the individual. Where a final award is over £10,000 a sum of 10% of the award or the cost of the related legal expenses, whichever is the lesser, shall be recoverable by the JCC.

## Telephone Legal Advice Service

Basic, general advice over the phone is available on any personal legal issue. To access this service contact the Legal Helpline on 0344 893 0786.

This service is available 8.30am – 4.30pm Monday to Thursday, and 8.30 am – 4.00 pm Friday, excluding public holidays. Should any calls be received out with these times, a message will be taken and a return call arranged within the operating hours.

## Emergency Out Of Hours

In the event of urgent legal assistance dial the SPF Helpline **Tel 0344 893 0786** and you will be directed to the out of hours emergency service.

## Coverage

### 1. Criminal Legal Defence

Legal Expenses incurred in:

The provision of legal advice prior to, and representation during, an interview under caution where it is alleged the individual may have committed a criminal offence.

The defence of legal proceedings brought against an individual in a court of criminal jurisdiction as a result of any act or omission or alleged act or omission.

#### *Exclusions*

- (1) The individual driving a motor vehicle that he/she does not have valid insurance for*
- (2) Immediate family, civil partners, widows, widowers and dependents of members.*

### 2. Civil Legal Defence

Legal Expenses incurred in the defence of legal proceedings brought against an individual in a Civil Action as a result of any act or omission or alleged act or omission.

#### *Exclusions*

- (1) Proceedings in relation to parking or obstruction offences in regard to motor vehicles*

### 3. Misconduct & Performance Proceedings

The provision of legal advice and assistance in relation to any misconduct or performance proceedings in terms of the Police Conduct & Performance Regulations brought against an individual.

#### *Exclusions*

- (1) Immediate family, civil partners, widows, widowers and dependents of members*

#### 4. Fatal Accident or Public Inquiry

Representation at a Fatal Accident Inquiry or Public Inquiry into an incident which arises from the individual undertaking their duties as a Police Officer and relates to:

- (a) death of the individual or
- (b) death of a person held in custody by, or in care of, the individual.

#### 5. Employment Disputes (Police Officers)

The JCC may provide legal advice or assistance in connection with employment disputes relating to police officers, which may include representation at an Employment Tribunal. However, issues relating to individual cases of promotion or appraisal or purely operational matters will not be funded.

Before making an application for such advice or assistance, the officer should discuss with their Area Committee Secretary whether all relevant Force procedures such as Grievance Procedures have been exhausted and whether assistance could be obtained from the Scottish Police Authority.

Where representation at tribunals has been approved by the JCC such representation may be provided by either a SPF representative or a solicitor. Such representation will be dependent on the circumstances of the case and any decision in regards thereto will be at the absolute discretion of the JCC.

#### 6. Employment Disputes (Excluding Police Officers)

Legal advice or assistance may be provided in connection with a dispute relating to the individual's contract of employment which may include representation at an Employment Tribunal.

##### *Exclusions*

- (1) Employer's disciplinary hearings or internal grievance procedures*
- (2) Any application relating solely to personal injury*
- (3) A compromise agreement while the individual is still employed*
- (4) A dispute relating to the individual's employment by or work for the Scottish Police Federation or the Police Service of Scotland.*
- (5) An application where the date of occurrence giving rise to the application is within the first three months of the individual's entitlement to be covered.*

## 7. Personal Injury

Legal Expenses incurred in the pursuit of Legal Proceedings to recover damages or compensation following any event causing death of or bodily injury to an individual.

### *Exclusions*

- (1) *illness or bodily injury that happens gradually*
- (2) *Psychological injury or mental illness unless the condition follows a specific or sudden accident that has caused physical or bodily injury*

## 8. Criminal Injuries Compensation Authority

The JCC may provide advice or assistance in relation to applications made by an individual to the Criminal Injuries Compensation Authority (CICA). Any legal advice or assistance considered appropriate in regard to any application or appeal will be at the JCC's absolute discretion.

### *Exclusion*

- (1) *Immediate family, civil partners, widows, widowers and dependents of members*

## 9. Motor Uninsured Loss Recovery

The JCC may provide legal advice or assistance in connection with the recovery of an individual's uninsured losses and costs after a motor accident which:

- (a) causes damage to the **insured vehicle** or to personal property in it; or
- (b) injures or kills an **insured person** while he or she is in or on the **insured vehicle**.

### *Exclusions*

- (1) *An application where the insured person has failed to notify the SPF of the insured incident within a reasonable time of it happening and where this failure adversely affects the prospect of successfully recovering damages (or getting any other legal remedy that the JCC have agreed to) or of making a successful defence.*
- (2) *Any costs and expenses that are incurred prior to the agreement by the JCC that funding will be provided.*
- (3) *Any application relating to a contract (other than a motor insurance contract) involving the insured vehicle.*
- (4) *A claim for an excess where the applicant is wholly or partly at fault*
- (5) *A claim for less than £250*
- (6) *The insured vehicle being used by anyone who does not have valid motor insurance.*

## 10. Property Protection

The JCC may provide legal advice or assistance in connection with a civil dispute relating to material property (including the individual's principal home) that he/she own, or are responsible for, following:

- (a) an event which causes physical damage to such property but the amount in dispute must be more than £500.
- (b) a legal nuisance (meaning any unlawful interference with the individual's use or enjoyment of their land, or some right over, or in connection with it).
- (c) a trespass.

In any event the individual must have established to the satisfaction of the JCC the legal ownership or right to the land that is the subject of the dispute.

### *Exclusions*

*(1) an application relating to the following:*

- (i) A contract the individual has entered into*
- (ii) Any building or land with the exception of the individual's principle home*
- (iii) Someone legally taking the property from the individual or restrictions or controls placed on the individual's property by any government or public or local authority*
- (iv) Work done by, or on behalf of, any government or local authority unless the application is for accidental physical damage*
- (v) Mining subsidence*
- (vi) Adverse possession (meaning the occupation of any land or building either by someone trying to take possession from the individual or of which the individual is trying to take possession)*
- (vii) The enforcement of a covenant by or against the individual*

*(2) Defending a claim relating to an event that causes physical damage to a property, however, defending a counterclaim will not be excluded*

*(3) An application where the date of occurrence is within the first three months of the individual's entitlement to be covered.*

## 11. Contract Disputes

The JCC may provide legal advice or assistance in connection with a dispute arising from an agreement or an alleged agreement which the individual has entered into in a personal capacity for:

- (a) buying or hiring of goods or services
- (b) selling goods
- (c) buying, selling or renting an individual's principal home.

Provided the agreement or alleged agreement was entered into within the period of time where the individual was entitled to be covered and the amount in dispute is more than £250.

#### *Exclusions*

- (1) *Construction work on any land, or designing, converting or extending any building (other than an individual's principal home)*
- (2) *The settlement payable under an insurance policy where the dispute is in regard to the amount of the claim*
- (3) *A dispute arising from any loan, mortgage, pension, investment or borrowing*
- (4) *A dispute over the sale, purchase terms of lease, licence, or tenancy of land or buildings. However, a dispute with a professional adviser in connection with these matters may be covered.*
- (5) *An application where the date of occurrence giving rise to the dispute is within the first three months of the individual's entitlement to be covered., unless the application arises from a contract entered into after the commencement of the individual's entitlement to be covered.*
- (6) *A dispute relating to the letting, subletting or licence to occupy the individual's principal home.*
- (7) *A dispute which falls within the jurisdiction of rent, rates or land tribunals or any subsequent appeal.*
- (8) *A tenancy dispute relating to a flat or dwelling in a block of flats which contains more than four dwellings.*

## 12. Inheritance Disputes

Advice and assistance relating to (a) the costs and expenses arising from a dispute over something left to the individual in a will or an estate and (b) costs and expenses in making an application to a Probate Registry to obtain a Grant of Representation following the death of a member or a member of their family who always lives with the individual.

#### *Exclusions*

- (1) *An application relating to any will or estate attracting assessment to Inheritance tax or its equivalent and any legal costs relating to Confirmation or grant of probate.*

### 13. Tax Protection

Advice and assistance in relation to a comprehensive examination by HM Revenue & Customs that considers all areas of the individual's self-assessment tax return, but not enquiries limited to one or more specific area.

#### *Exclusions*

- (1) Any application if the individual is self-employed, or a sole trader, or in a business partnership.*
- (2) An investigation or enquiries by HM Revenue & Customs Specialist Investigations or HM Revenue & Customs Prosecution Office.*

### 14. Identity Theft

In the event of an actual occurrence of Identify Theft, the fact of which must be proven to the satisfaction of the JCC, advice and assistance may be provided:

- (a) to defend a claim from a financial institution, merchants or their collection agencies;
- (b) to assist with the removal of any criminal or civil judgments wrongly entered against the individual;
- (c) to challenge the accuracy or completeness of any information in a Credit Reference Agency report; and
- (d) to create documents needed to prove the individual's innocence in terms of any financial irregularities committed unlawfully;

Payment may also be provided in regard to:

- (e) reasonable postal and phone costs the individual has to pay in dealing with financial institutions, the Police and Credit Reference Agencies to report or discuss an actual Identity Theft.
- (f) reasonable fees charged for reapplying for a loan which has been rejected due to the original application being rejected solely because the lender received incorrect credit information.
- (g) the individual's loss of earnings as a result of time away from work to go and see the Police, financial institutions or Credit Reference Agencies to report or discuss an actual Identity Theft.

### *Exclusions*

- (1) Any Identity Theft connected with an individual's business, profession, or occupation.*
- (2) Any legal action where the individual does not have a reasonable prospect of success, as determined by the JCC.*
- (3) Any costs, expenses or losses incurred due to any fraudulent, dishonest or criminal act by an individual, or any other person acting in collusion with an individual.*
- (4) Any indirect losses other than as identified above.*

## 15. Defamation

Police officers are rightly aggrieved when a false or malicious complaint is made against them or an unfair press article is published about them.

The JCC would clearly wish to be in a position to support officers in these situations and seek redress on their behalf.

However, there are many legal and other problems encountered in supporting such actions, the main ones are outlined below:

- (1) Necessity to prove that a complaint was not only false and defamatory, but also deliberately malicious.
- (2) Qualified privilege, i.e. the citizen's right to make a complaint against a public servant.
- (3) There needs to be some tangible, quantifiable impact or financial loss.
- (4) Very lengthy legal processes, very high legal costs and very minimal damages.
- (5) Complainers are often 'men of straw.'

The JCC may provide legal advice or assistance in connection with certain actions of defamation in support of an individual, taking account of the factors outlined below.

However, the determination of whether such support shall be provided and if so, the extent of such support to be provided will be at the absolute discretion of the JCC.

### *Exclusions*

- (1) Immediate family, civil partners, widows, widowers and dependents of members*

## General Exclusions

Notwithstanding the specific exclusions relating to particular occurrences detailed elsewhere herein, the following general exclusions shall apply.

The JCC will not provide funding in the following situations (except where the JCC at their absolute discretion determine otherwise):

### **1. Alternative funding**

Any application where there is an entitlement to funding from the Police Service of Scotland, the Scottish Legal Aid Board, the Scottish Police Authority (including any insurance policy held by the Scottish Police Authority for the benefit of police officers), an employer or any other source, or where the individual would be entitled to alternative funding if these arrangements were not in place.

### **2. Pre-existing circumstances**

Any incident that could give rise to an application where the individual was aware of the circumstances of the incident prior to the commencement of the individual's entitlement to be covered.

### **3. Late reported applications**

An application where the individual has failed to notify the SPF of the occurrence giving rise to the application within a reasonable time of it happening and where this failure adversely affects the reasonable prospects of success or the JCC consider that their position has been prejudiced.

### **4. Costs not agreed by the JCC**

Costs and expenses incurred before the JCC has provided written confirmation that funding will be provided, unless the JCC has expressly stated (in writing) that the particular costs and expenses will be funded.

### **5. Court awards and fines**

Fines, penalties, compensation or damages that a court or other authority orders the individual to pay.

## **6. Legal action that the JCC has not agreed**

Any legal action taken by an individual that the JCC or its officers have not agreed to, or where the individual does anything that hinders the JCC or its officers in regard to any legal advice & assistance to be provided.

## **7. Group litigation order**

Any application where the individual may be one of a number of people involved in a legal action resulting from one or more events arising at the same time or from the same cause which could result in the court making a Group Litigation Order.

## **8. A dispute with JCC**

Any dispute with the JCC, its officers, SPF representative or SPF employee.

## **9. Nuclear, war and terrorism risks**

An occurrence caused by, contributed to, by, or arising from:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from burning nuclear fuel.
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear part of it.
- (c) war, invasion, foreign enemy hostilities (whether war is declared or not), civil war, rebellion, revolution, military force or coup.
- (d) pressure waves caused by aircraft or any other airborne devices travelling at sonic or supersonic speeds.

## **10. Disputes between members**

A dispute between any one or more individuals and/or a member of their family who always lives with them.

## **11. Deliberate acts**

Any occurrence deliberately or intentionally caused by the individual.

## **12. Matrimonial disputes**

A matrimonial or co-habitation dispute.

**13. Shareholdings**

Any dispute relating to shareholdings, securities or guarantees.

**14. Intellectual property rights**

Any occurrence relating to patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property, secrecy and confidentiality agreements.

**15. Rallying**

The use of the insured vehicle for racing, rallies or competitions.

**16. Litigation in person**

Any legal claim/action where the individual is not represented by a law firm, solicitor or QC.

## Appeals

Any appeal in connection with an application should be made to the General Secretary, in writing, at:

Scottish Police Federation  
5 Woodside Place  
GLASGOW  
G3 7QF



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