



## Legal Committee

21 November 2023

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Minutes of the Legal Committee held on 1 August 2023 via MS Teams

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Board Members present:	Jane Ryder (Committee Chair) Grant Macrae Catriona Stewart Caroline Stuart
Board Member apologies:	Michelle Miller
In attendance:	<b><u>Police Scotland</u></b> James Douglas, Legal Services Manager Shirley Carr, T/Chief Inspector  <b><u>SPA</u></b> Lynn Brown, Chief Executive Jackie Kydd, Workforce Governance Lead Robin Johnston, Head of Legal Susan Montgomery, Lead Solicitor Eric Leggat, Solicitor Colette Craig, Governance Support Officer John MacLean, Workforce Governance Lead

## 1. Introduction and Welcome:

### 1.1 Chair's Opening Remarks

The Chair welcomed attendees to the meeting and noted that in her Chair's report to the Board on 23<sup>rd</sup> March 2023, she advised that the committee would receive a report on appropriate benchmarking by September 2023. The Chair advised that following detailed discussions between SPA and Police Scotland Legal, it has been agreed that the SPA will consider this issue as part of a strategic piece of work, linking in with Police Scotland as part of that.

### 1.2 Apologies

Michelle Miller, SPA Board Member and Assistant Chief Constable Alan Speirs, PS.

### 1.3 Declarations of Interest and Connections

None.

### 1.4 Decisions taken since last meeting

The Chair advised that the committee had taken one decision in relation to an ongoing confidential legal matter.

### 1.5 Decision on taking business in private (Item 6-12)

Members agreed to take items 6-12 in private.

## 2. Minute and Actions from previous meeting:

### 2.1 Minute from meeting held on 13 March 2023 for approval

Members **AGREED** the Minute from the Legal Committee on 13 March 2023 was an accurate record of the meeting.

### 2.2 Rolling Action Log and Matters Arising

There were no matters arising and Members **AGREED** to note the action log and agreed the action proposed for closure.

### 3. Statistical Report on Ill Health Retirement and Injury on Duty Awards

Jackie Kydd (JKydd) provided a brief overview of the report which noted the applications received, the recommendations from Police Scotland, and the decisions taken in cases in the period 04 March 2023 to 14 July 2023. During discussions the following matters were raised;

Members sought clarity that there was no longer a backlog or any aged claims awaiting a decision. JKydd advised that in relation to Ill Health Retirements, Police Scotland have returned to normal timescales and although there is no backlog, these matters can take time to work through the system. Injury on Duty timescales have taken a little longer to return to normal timescales, however, it is hoped this will be addressed in the next few months. JKydd added that a report will go to the People Committee in September 2023 which will highlight work that has been done to reduce timescales, following good engagement with the Police Federation.

Members **NOTED** the report.

### 4. Legal Services Claims Handling - Quarterly Statistical Information Report - Trends & Analysis in Litigation

James Douglas (JDouglas) provided an overview of the report which noted the number of claims settled by Police Scotland during the period April - June 2023 (Q1) under the general headings of Employers' liability, Public liability and motor vehicle claims.

Members sought clarity on when they would have sight on the breakdown of liability claims. JDouglas advised that the claims register at present did not allow further differentiation, however this was being worked on, and PS Legal would be able to provide further differentiation between types of claim, by the end of the financial year and possibly in the next 3 to 4 months.

JDouglas updated members on the five year aged analysis and advised that the figures presented were mostly static, although highlighting reductions in 2021, most likely as a result of people working from home during covid. The Chair noted that this related to settled cases, and if there is an increase in claims now, there will be a time lag before they are settled. Some horizon scanning may be required to see what is going to be coming up in future.

Members **NOTED** the report.

## 5. Legal Committee Work Plan

The Chair advised that next committee meeting will be November 2023. In addition and in common with good practise the committee will look to have a Development Day in January 2024 which will be incorporated into the statement of assurance.

*The following items were taken in private*

## 6. Minute and Actions from previous private meeting:

### 6.1 Minute from private meeting held on 13 March 2023 for approval

Members **AGREED** the Minute from the Legal Committee on 13 March 2023 was an accurate record of the meeting.

### 6.2 Rolling Action Log and Matters Arising

There were no matters arising and Members **AGREED** to note the action log and agreed the action proposed for closure.

## 7. Public Inquiries and Fatal Accident Inquiries – Overview Report

T/Chief Inspector Shirley Carr (TCInspSCarr) provide and overview of a report which provided members with an update in relation to Police Scotland's response to the Public Inquiry (PI) into the death of Sheku Bayoh and the Fatal Accident Inquiry into the deaths of John Yuill and Lamara Bell. During discussions the following matters were raised;

The Chair sought clarity on whether there were any surprises that came from written submissions and were those submissions available in the public domain. TCInspSCarr advised that the oral submissions are available within the public domain, it is understood that is the same for written submissions. TCInspSCarr advised that there were no concerns around the Fatal Accident Inquiry and that the next preliminary hearing is scheduled for Friday 4<sup>th</sup> August 2023, with a further confirmed final preliminary hearing scheduled for 28<sup>th</sup> August 2023. Thereafter the oral evidence will commence week commencing 18<sup>th</sup> September 2023. Police Scotland have a total of 18 officers and staff (some retired) to attend and give evidence.

The Chair sought clarity on the costs following lessons learned from Sheku Bayoh Public Inquiry. TCInspSCarr advised that the costs will be significantly less, being reviewed with Legal and currently on track against budget. The current budget allocation is £765,000, the current spend to date is £313,638 and a year to date spend of £242,538 all on legal costs. GMacrae sought clarity on whether the cost to completion would be within the budget and TCInspSCarr advised that they are hopeful, however, it was difficult to forecast without knowing how long the hearing will last. TCInspSCarr assured members that this is in constant review with the finance team.

Members **NOTED** the report.

## **8. Operation Sonnis Update**

TCInspSCarr provided members with update in relation to Police Scotland's response to the UK Inquiry and separately the Scottish Inquiry into COVID-19. During the discussion the following matters were raised;

The Chair sought clarity on whether a position statement had been provided for the UK Inquiry. TCInspSCarr advised that the position statement had been well received with the NPCC being complimentary of Police Scotland's response to COVID. JDouglas added that the NPCC's senior and junior counsels were both very satisfied with what was provided by ACC Speirs.

Members noted concerns on the timeline for completion of 2026 for the Scottish Inquiry, noting potential issues with costs, corporate memory and corporate accountability.

Members **NOTED** the report.

## **9. Litigation Overview**

Members were provided a report which detailed significant ongoing litigation involving the SPA and/or Police Scotland. During discussions the following matters were raised;

Susan Montgomery (SMontgomery) provided an overview of the SPA cases:

Gordon Yuill and Others v Chief Constable and SPA (Case 1) – There has been no change for sometime due to the outstanding Fatal Accident Inquiry.

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Karen Harper v SPA & Scottish Ministers (Case 2) – This is a judicial review of the decision taken by the Police Medical Appeal Board, not the SPA, that Karen Harper is not eligible for an injury on duty award. It is likely that the decision will be reduced and the case passed to a fresh panel to make a decision, therefore this judicial review will not be defended.

JDouglas advised that the 26 Police Scotland cases represented 4.2% of live claims that Legal Services are working on. JDouglas provided members with additional information on the following;

Case 12 - David Campbell v Chief Constable – The committee have previously approved settlement of the claim up to £235,000 plus reasonable legal expenses. This claim has since settled at £199,464 which includes legal costs.

Case 8 - SPF v. SPA (Allard Overtime Claims) – Significant progress has been made, however, SPF have requested some clarity from finance colleagues around some calculations. When that clarity is provided it is hoped that this case will settle in the near future.

Case 17 - Carruthers and Others v Chief Constable – Agreements have now been reached on all cases with payments progressing. This case will be removed from the table going forward.

Case 26 - The family of the late Margaret McCarron v Chief Constable – This will potentially be a large claim and will potentially involve a number of claimants that will return to the committee for decision. This matter was passed to PIRC and then to COPFS and the police officer involved has been charged on petition.

The Chair noted concerns around implications associated with case 18 Jason McKay v Chief Constable and asked for PS Legal thoughts and commented that it involves matters also apply to SPA Forensics. JDouglas agreed with the Chair's comments and advised that it is a matter featured in DCC Taylor's Board and something that Police Scotland are very much aware of.

The Chair referred to case 9 Sarrah Smith –v- Chief Constable and asked for further clarity on how that would be settled in terms of payment. RJohnston advised that the case law in this area is not clear on whether you can deduct the ill health retirement payment from loss of earnings. The reality is that this may not be deducted.

Members **NOTED** the report.

*Police Scotland left the meeting at this point.*



## 10. Legal Assistance Appeals

John MacLean (JMacLean) provided members with an overview of further documentation and advice to support a Committee decision in relation to two outstanding historical legal assistance appeals. JMacLean noted that whilst there is a lot of additional documentation, the key element that supports the advice is the statements provided by Constable Hilson and another officer during misconduct procedures. JMacLean took members through each case to allow members to consider each individually.

Members welcomed the additional information being brought forward for both cases following the absence of information with previous Legal Assistance Appeals.

Members considered and discussed the material presented for each case and **AGREED** the following:

### **Constable Duncan**

Members determined, on the balance of probabilities, that the officer **DID NOT** act in good faith in the intended execution of duty and **AGREED** that the appeal should **NOT BE UPHELD**. Among the information which the Committee took into account were witness statements from officers involved in the relevant incidents which contained uncontested details of Mr Duncan's actions.

### **Constable Hilson**

Members determined, on the balance of probabilities, that the officer **DID** act in good faith in the intended execution of her duty and **AGREED** that the appeal should be **UPHELD**. Among the information which the Committee took into account were witness statements from the officers involved in the relevant incidents, including evidence of the officer's lack of experience compared to that of her colleague Mr Duncan, and the consequent power imbalance between them.

*The following item was considered before Item 11.*

## 12. Potential Forfeiture of Police Pension

Eric Leggat (ELeggat) provided an overview of the report which requested members to consider the formal application on behalf of the SPA be made to the Scottish Minister seeking a Certificate of

Forfeiture in relation to the police pension of Ex-Constable Gavin Donaldson.

Members discussed and agreed that Ex-Constable Gavin Donaldson had acted unprofessionally and abused his position by entering into an inappropriate relationship with a vulnerable person and attempted to pervert the course of justice.

Members **AGREED** a formal application should be submitted to the Scottish Ministers for a Certificate of Forfeiture in respect of the police pension of Ex-Constable Gavin Donaldson.

## **11. Pension Forfeiture Update**

Eric Leggat (ELeggat) provided an overview of the report which provided an update to members on the current position regarding a pension forfeiture case which is currently ongoing in relation to Sergeant Norman Harvey. Members were advised that a fuller report would return to the committee in due course.

In addition, members were provided with an update on the current position in relation to the proposal that future pension forfeiture decisions be publicised. Lynn Brown (LBrown) advised that she had discussed the matter with both ELeggat and Lindsey Davie from SPA Information Management. They discussed the continuous challenges about holding the Chief Constable to account and this is a clear example of how this should be done, particularly with officers under the control of chief constable and holding them to account. LBrown advised that the issue would be around personally identifying someone by name, therefore, proposed that the Legal Committee note the number of pension forfeitures explored and granted within its Annual Report to the SPA Board. LBrown advised that although this would go against guidance from the ICO, it is worthy of any challenge.

Members **AGREED** that going forward, the number of pension forfeitures explored and granted by the Legal Committee is noted within the Committee Annual Report to the SPA Board.

## **13. AOB**

The Chair advised the committee are currently hearing two Appeals Against Dismissal and advised that she would be keen to ensure that following each appeal, there is an opportunity to reflect on case and take forward some lessons learned. Members agreed that a lessons learned and reflections exercise would be of benefit.



APPROVED