



## LETTER SENT BY E-MAIL ONLY

2 November 2022

2022-062

### **Freedom of Information (Scotland) Act 2002**

#### **Request**

Please find below our response to your correspondence dated 30 August, in which you made the following request under the Freedom of Information (Scotland) Act 2002:

Please provide me with copies of all of the reports mentioned here.

<https://www.spa.police.uk/meetings/legal-committee/6-september-2022/>

#### **Response**

On 28 September a partial response was provided to your request for information. This was due to ongoing third party consultation in regard to five of the reports presented at the Legal Committee on 6 September.

We are now in a position to provide a decision on each of the remaining reports as detailed below. Whilst we aim to provide information wherever possible, in some instances, information is exempt in terms of the Freedom of Information (Scotland) Act 2002 and explanation has been provided where this applies.

Report	Decision
<p>Legal Services Claims Handling - Quarterly Statistical Information Report - Trends &amp; Analysis in litigation (Item 4)</p>	<p>This report is provided as <b>Appendix 1</b>.</p> <p>Some of the information contained within this report is considered to be exempt under Section 38(1)(b) Personal data of a third party. Disclosure would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.</p> <p>Data within the tables on pages 3-5 is redacted where broken down by range and where the figures are so small that it is more than a possibility that we would breach our statutory duty to safeguard personal data. This exemption is absolute and therefore does not require the application of the public interest test.</p> <p>Other information in the report is considered to be exempt under section 33(1)(b) Substantial prejudice to commercial interests because its disclosure would be likely to prejudice substantially the commercial interests of Police Scotland in relation to its handling of litigation. This exemption is subject to the public interest test and this is detailed below.</p>
<p>Operation Iona Update (Item 6)</p>	<p>This report is provided as <b>Appendix 2</b>.</p> <p>Some of the information contained within this report is considered to be exempt under Section 36(2) Confidentiality - actionable breach of confidence. As this information was obtained in confidence from a third party and relates to ongoing litigation, disclosure would constitute an actionable breach of confidence as far as involved parties are concerned.</p> <p>This exemption is absolute and therefore does not require the application of the public interest test.</p>

<p>Operation Tarn Public Inquiry (Item 7)</p>	<p>This report is provided as <b>Appendix 3</b>.</p> <p>Some of the information contained within this report is considered to be exempt under the following exemptions:</p> <p>Section 30(c) Effective conduct of public affairs. Disclosure of some of the information in this report is likely to cause substantial prejudice to the effective conduct of public affairs. This exemption is subject to the public interest test and this is detailed below.</p> <p>Section 36(2) Confidentiality - actionable breach of confidence. As this information was obtained in confidence from a third party and relates to ongoing legal proceedings, disclosure would constitute an actionable breach of confidence as far as involved parties are concerned. This exemption is absolute and therefore does not require the application of the public interest test.</p>
<p>Litigation Tables (Item 8)</p>	<p>Information is provided as <b>Appendix 4</b>.</p> <p>The report itself is provided along with Appendix B (proposed revised style litigation tables). However, the information within Appendix A (Litigation tables) is considered to be exempt under the following exemptions:</p> <p>Section 36(1) Confidentiality in legal proceedings. The litigation tables contain reference to legal advice regarding ongoing litigation, and disclosure would breach legal professional privilege. This exemption is subject to the public interest test and this is detailed below.</p> <p>Section 38(1)(b) Personal data of a third party. Disclosure would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018. The litigation tables detail names and</p>

	<p>personal circumstances in relation to the litigation. This exemption is absolute and therefore does not require the application of the public interest test.</p>
<p>Non-Disclosure Agreements – Statistical Update (Item 10)</p>	<p>Information is provided as <b>Appendix 5</b>.</p> <p>The report itself is provided along with Appendix 1 (Record of Confidentiality Provision in Settlement Agreement). However, a small section of the report at 2.1 is redacted and the information within Appendix 2 (Details of NDAs entered into Jan 2022 – June 2022) is also considered to be exempt under Section 36(2) Confidentiality - actionable breach of confidence. As this information was obtained in confidence from a third party and relates to details of non-disclosure agreements put in place, disclosure would constitute an actionable breach of confidence as far as involved parties are concerned.</p> <p>This exemption is absolute and therefore does not require the application of the public interest test.</p>

As set out in the table, an exemption under 33(1)(b) Substantial prejudice to commercial interests applies to some of the information within:

- Legal Services Claims Handling - Quarterly Statistical Information Report - Trends & Analysis in litigation (Item 4)

This information relates to settlement amounts for a relatively small number of cases. Disclosure would be likely to prejudice substantially the commercial interests of Police Scotland in relation to its handling of litigation.

A further exemption under section 30(c) Effective conduct of public affairs applies to some of the information within:

- Operation Tarn Public Inquiry (Item 7)

The information relates to ongoing legal proceedings. The information has been provided to allow the Authority to carry out its statutory function of overseeing Police Scotland's involvement in the proceedings. Given the particular circumstances of this matter disclosure of some of the information in this report is likely to cause substantial prejudice to the effective conduct of public affairs.

Finally, an exemption under section 36(1) Confidentiality in legal proceedings applies to some of the information within:

- Litigation Tables (Item 8);

The exemption applies because the information refers to legal advice and/or ongoing legal proceedings, and disclosure would breach legal professional privilege. Legal advice privilege covers communications in which legal advice is sought or given and where a legal adviser is acting in their professional capacity.

The above exemptions are non-absolute and require application of the public interest test. Therefore, taking account of the items to which exemptions apply to all or part of the information, consideration has been given as to whether the public interest favours disclosing the information or maintaining the exemption.

### **Public Interest Test:**

The public interest factors in favour of disclosure is that:

- It could contribute to transparency in respect of matters considered by the Legal Committee;

- It could allow greater scrutiny of the way public funds are spent and increase transparency in terms of this spending.

The public interest factors in favour of maintaining the exemption being:

- The public interest would not be served by prejudicing the commercial interests of Police Scotland in relation to litigation with best value considerations in mind.
- The flow of information to the Authority may be harmed if information provided by third parties in relation to ongoing legal proceedings was disclosed. In turn, this would hinder the ability of the Authority to carry out its oversight function.
- Disclosing legally privileged information threatens the principle behind legal professional privilege. It is vital to maintain and safeguard legal professional privilege, ensuring the confidentiality of communications between legal advisers and their clients, in order to ensure access to full and frank legal advice;
- The legal advice was obtained recently and the matters remain live, with a real prospect that disclosure of this information could be prejudicial to ongoing negotiations and litigation.
- It is important to ensure that legal matters are allowed to be conducted confidentially with best value considerations in mind.

On balance, our conclusion is that maintaining the exemptions outweighs the public interest in disclosure.

## **Right to Review**

If you are dissatisfied with the way in which your request has been dealt with you are entitled, in the first instance, to request a review of our actions and decisions

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to [foi@spa.police.uk](mailto:foi@spa.police.uk) or by post to Corporate Management Team, Scottish Police Authority, 1 Pacific Quay, Glasgow, G51 1DZ.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision.

You can apply [online](#), by email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Scottish Police Authority Freedom of Information [Disclosure Log](#) in seven days' time.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

<b>Meeting</b>	<b>SPA Legal Committee</b>
<b>Date</b>	<b>6 September 2022</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>Legal Services Claims Handling – Quarterly Statistical Information Report</b>
<b>Presented By</b>	<b>James Douglas, Legal Services Manager</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

The Committee asked that a report be provided on a bi-annual basis on quarterly settlement figures arising from claims raised against Police Scotland.

Members are invited to discuss the contents of the report.



This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

## **1. BACKGROUND**

- 1.1 The SPA Legal Committee directed that a standard report be presented to the Committee every six months outlining the number of legal cases settled by Police Scotland within the previous two financial quarters.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

- 2.1 This report represents the first one of its kind to be laid before the Committee. Those on the Committee have advised that they would ultimately wish to see any trends on the types of cases being raised against Police Scotland to determine if further training or investigation is needed to reduce the number of said claims.

The tables below outline the number of claims settled by Police Scotland during the period 1 January 2022 – 31 March 2022 (Q4) and 1 April – 30 June 2022 (Q1) under the general headings of Employers' liability, Public liability and motor vehicle claims.

In Quarter 4 of the financial year 21-22, of the 104 claims settled by Police Scotland; 77 claims were motor related, 10 were employer liability matters and 17 related to public liability.

In Quarter 1 of the financial year 22-23, of the 78 claims settled by Police Scotland; 55 claims were motor related, 3 were employer liability matters and 20 related to public liability.

The following tables are intended to represent the different type of claim settled by Police Scotland, the total settlement figures under said headings and an average settlement figure. The Committee asked at its meeting in March 2021 that a table be added to the report to show the settlement figures as a percentage of the settlement figures within the current financial year. That figure is now provided within the Tables.

**OFFICIAL SENSITIVE: POLICE AND PARTNERS**

This paper is presented in line with SPA Corporate Governance Framework Standing Orders Section 20(f)

**EMPLOYERS LIABILITY CLAIMS 1<sup>st</sup> January – 31<sup>st</sup> March 2022**

Range	No of Case References	Total Settlements £	Average £	% of FY £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data			
<b>Total</b>	<b>10</b>	<b>2,162,725</b>	<b>216,272</b>	

**EMPLOYERS LIABILITY CLAIMS FINANCIAL YEAR 2021-22**

Range	No of Case References	Total Settlements £	Average £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data		
<b>Total</b>	<b>37</b>	<b>2,382,635</b>	<b>64,396</b>

**EMPLOYERS LIABILITY CLAIMS 1<sup>st</sup> April – 30<sup>th</sup> June 2022**

Range	No of Case References	Total Settlements £	Average £	% of FY £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data			
<b>Total</b>				

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This paper is presented in line with SPA Corporate Governance Framework Standing Orders Section 20(f)

**PUBLIC LIABILITY CLAIMS 1<sup>st</sup> January -31<sup>st</sup> March 2022**

Range	No of Case References	Total Settlements £	Average £	% of FY £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data			
<b>Total</b>	<b>17</b>	<b>152,711</b>	<b>8,983</b>	9.07%

**PUBLIC LIABILITY CLAIMS FINANCIAL YEAR 2021-22**

Range	No of Case References	Total Settlements £	Average £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data		
<b>Total</b>	<b>64</b>	<b>1,683,240</b>	<b>26,301</b>

**PUBLIC LIABILITY CLAIMS 1<sup>st</sup> April -30<sup>th</sup> June 2022**

Range	No of Case References	Total Settlements £	Average £	% of FY £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data			
<b>Total</b>	<b>20</b>	<b>36,160</b>	<b>1,808</b>	100.00%

**OFFICIAL SENSITIVE: POLICE AND PARTNERS**

This paper is presented in line with SPA Corporate Governance Framework Standing Orders Section 20(f)

**MOTOR CLAIMS 1<sup>st</sup> January -31<sup>st</sup> March 2022**

Range	No of Case References	Total Settlements £	Average £	% of FY £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data			
<b>Total</b>	<b>77</b>	<b>190,378</b>	<b>2,472</b>	23.75%

**MOTOR LIABILITY CLAIMS FINANCIAL YEAR 2021-22**

Range	No of Case References	Total Settlements £	Average £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data		
<b>Total</b>	<b>282</b>	<b>801,488</b>	<b>2,842</b>

**MOTOR CLAIMS 1<sup>st</sup> April -30<sup>th</sup> June 2022**

Range	No of Case References	Total Settlements £	Average £	% of FY £
£0 - £30K £30K - £150K £150K - £250K £250K - £1M £1M +	Content redacted under FOISA - sections 33(1)(b) Substantial prejudice to commercial interests; and 38(1)(b) Third party personal data			
<b>Total</b>	<b>55</b>	<b>294,963</b>	<b>5,363</b>	100.00%

**3. FINANCIAL IMPLICATIONS**

3.1 There are no further financial implications in this report. Clearly the report provides information about the numbers and values of claims raised against Police Scotland, however the report gives no rise to further financial implications in and of itself.

SPA Legal Committee  
Legal Services Claims Handling – Quarterly Statistical Information Report  
6 September 2022

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

#### **4. PERSONNEL IMPLICATIONS**

4.1 There are no personnel implications associated with this paper.

#### **5. LEGAL IMPLICATIONS**

5.1 There are no further legal implications in this paper to those listed above.

#### **6. REPUTATIONAL IMPLICATIONS**

6.1 There are reputational implications associated with this paper.

The number of claims raised against Police Scotland is a matter of public interest. The report itself provides detailed information about the numbers and values of claims within the current financial year. Accordingly, reputational implications may flow therefrom.

#### **7. SOCIAL IMPLICATIONS**

7.1 There are no social implications associated with this paper.

#### **8. COMMUNITY IMPACT**

8.1 There are no community implications associated with this paper.

#### **9. EQUALITIES IMPLICATIONS**

9.1 There are no equality implications associated with this paper.

#### **10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications associated with this paper.

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#### **RECOMMENDATIONS**

Members are invited to discuss the contents of the report.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

Agenda Item: 6

<b>Meeting</b>	<b>Legal Committee</b>
<b>Date</b>	<b>6 September 2022</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>Operation Iona Update</b>
<b>Presented By</b>	<b>James Douglas, Legal Services Manager</b>
<b>Recommendation to Members</b>	<b>Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

The Committee have asked that Legal Services provide an update report on Operation Iona.

Members are invited to discuss the contents of this report.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

## **1. BACKGROUND**

1.1 The SPA Legal Committee has asked for an update report on Operation Iona. This paper will provide said update.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

2.1 As noted in the briefing paper of 14 March 2022, Mr Grier intimated Reclaiming Motions to Appeal the decision of Lord Tyre against both the Lord Advocate and the Chief Constable. The Reclaiming Motion will be heard at a three day hearing commencing on 12 October 2022. [REDACTED]

2.2 [REDACTED]

2.3 Craig Whyte has raised an action against the Lord Advocate and the Chief Constable in the sum of £500,000. Police Scotland have instructed Messrs Ledingham Chalmers. The Summons has been lodged but the case has now been sisted [REDACTED]

## **3. FINANCIAL IMPLICATIONS**

3.1 There are no further financial implications in this report.

## **4. PERSONNEL IMPLICATIONS**

4.1 There are no personnel implications associated with this paper.

## **5. LEGAL IMPLICATIONS**

5.1 There are no further legal implications in this paper to those listed above.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

**6. REPUTATIONAL IMPLICATIONS**

6.1 There are reputational implications associated with this paper. There will be media interest in the forthcoming David Grier Appeal. There has been recent renewed media interest in the Craig Whyte case, notwithstanding the lack of progress in terms of the court action.

**7. SOCIAL IMPLICATIONS**

7.1 There are no social implications associated with this paper.

**8. COMMUNITY IMPACT**

8.1 There are no community implications associated with this paper.

**9. EQUALITIES IMPLICATIONS**

9.1 There are no equality implications associated with this paper.

**10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications associated with this paper.

**RECOMMENDATIONS**

Members are invited to discuss the contents of this report.



**OFFICIAL SENSITIVE: POLICE AND PARTNERS**

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

SCOTTISH POLICE  
AUTHORITY

Agenda Item 7

<b>Meeting</b>	<b>Legal Committee</b>
<b>Date</b>	<b>6 September 2022</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>Operation Tarn Public Inquiry</b>
<b>Presented By</b>	<b>ACC Alan Speirs, Professionalism and Assurance</b>
<b>Recommendation to Members</b>	<b>Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

The purpose of this briefing paper is to provide the Chair and members of the Legal Committee of the Scottish Police Authority with an update in relation to Police Scotland’s response to the Public Inquiry into the death of Sheku Bayoh.

This paper is presented in line with the Scottish Police Authority Standing Orders Section 20(f).

Members are invited to discuss the content of this report.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

## **1. BACKGROUND**

The first oral hearing of the Public Inquiry commenced on 10<sup>th</sup> May 2022 in Capital House Edinburgh and concluded on 30<sup>th</sup> June 2022.

The Inquiry, chaired by Lord Bracadale with Mr Michael Fuller and Mr Raju Bhatt supporting him as assessors, heard evidence from thirty eight witnesses during the first hearing which focused on the actions of attending officers, events at Victoria Hospital Kirkcaldy and then on return to Kirkcaldy Police Station on 3<sup>rd</sup> May 2015.

Hearing 1(A) is scheduled to commence on 21<sup>st</sup> November 2022 until 16 December 2022 and will hear expert evidence in relation to Advanced Laser Imaging, Officer Safety Training, Use of Force and analysis of the tread mark on former PC Nicole Short's body armour cover.

Lord Bracadale has intimated that there will be no more than six oral hearings and each will last no more than eight weeks.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

### **2.1 PUBLIC INQUIRY TEAM UPDATE**

#### **Counsel Support Team**

[REDACTED]

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

**Retrieval/Research/Review (R3) and Governance and Assurance**

Ingathering is now complete and a review of assurance certificates conducted. Any residual material which now comes to light will be assessed and disclosed if relevant. This will be an ongoing process.

[REDACTED]

[REDACTED]

**Organisational Learning Group**

[REDACTED]

4Action will track progress and be used to record any future recommendations.

**Professional Reference Group (PRG)**

PRG meet on a monthly basis with the last meeting being 6<sup>th</sup> July 2022 at the Scottish Police College. The session focussed on development of Police Scotland’s anti-racist approach and training. The next meeting is scheduled for 2<sup>nd</sup> September 2022.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

## **2.2 LEGAL**

### **PUBLIC HEARINGS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **SECTION 21 NOTICES/INFORMAL REQUESTS**

The issuing of Informal Requests rather than section 21 Notices by the Public Inquiry is now well established. That process continues to work well and is kept under careful and constant review.

Less informal requests were received over July. These are expected to increase as we approach November.

### **3. FINANCIAL IMPLICATIONS**

Lord Bracadale has intimated that there will be a maximum of six hearings with each lasting no more than 8 weeks in length. Hearings 1 and 1(A) will conclude in 2022 with Hearing 2 expected early 2023.

The Police Scotland Public Inquiry Team is budgeted for as a discrete item – in relation to internal staffing costs as well as external costs (such as legal costs in the instruction of Senior and Junior Counsel). Revenue budgets will be considered annually as part of the budget setting exercise within Police Scotland in line with the budget setting guidelines set out by

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Scottish Government. These will be based on latest assumptions and requirements as dictated by the pace of the Inquiry and agreed with budget holders each year.

Robust measures are in place to regularly monitor, report, and – where appropriate – control expenditure. Financial data collated during Hearing 1 can now be used to forecast future costs.

#### **4. PERSONNEL IMPLICATIONS**

The Wellbeing and Community Impact Group continues to be chaired by ACC Criminal Justice and meets regularly to ensure all officers and staff who are affected by the Public Inquiry both serving and retired, are fully supported and kept up to date of all developments. A welfare network has been established and provides support at a local level.

There was positive feedback from officers cited to give evidence during the first oral hearing on the level of support they received, both in terms of logistics and welfare.

#### **5. LEGAL IMPLICATIONS**

The advocacy team for Police Scotland consists of Senior Counsel supported by two Junior Counsel. Furthermore, Operation Tarn have two dedicated solicitors supporting the team on a full time basis.

#### **6. REPUTATIONAL IMPLICATIONS**

Robust governance structures are in place to maintain strategic oversight of the Public Inquiry. [REDACTED]

[REDACTED]

[REDACTED]

The Professional Reference Group and Operation Tarn Learning Group will further assist in mitigating against any reputational implications. [REDACTED]

[REDACTED]

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

[REDACTED]

## **7. SOCIAL IMPLICATIONS**

The opening statement made on behalf of the Chief Constable publically pledged that Police Scotland would become an anti-racist organisation. The social implications of these words are positive with anecdotal feedback suggesting that Black and Minority Ethnic communities welcome this approach. UK policing mirrored Sir Iain Livingstone's stance shortly after his opening statement when National Police Chiefs Counsel (NPCC) adopted a similar position.

Work is proceeding at a pace to ensure Police Scotland deliver against the Chiefs promise.

## **8. COMMUNITY IMPACT**

Community Impact Assessments at both National and Local levels remain updated to ensure any impact on the community is regularly assessed and considered. This is reported to and monitored at both the Wellbeing and Community Impact Group and Tactical Oversight Group.

[REDACTED]

## **9. EQUALITIES IMPLICATIONS**

As per previous updates to the Committee, a Professional Reference Group is established in order to ensure Police Scotland is open to challenge and debate on such topics throughout the Public Inquiry and beyond.

## **10. ENVIRONMENT IMPLICATIONS**

There are no known environmental implications of the Public Inquiry at this time. All logistic planning is cognisant of environmental factors and where possible, favour eco-friendly options. One example being the use of

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This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

fully electric cars for the transport plan during the first hearing which will be replicated in the future.

**RECOMMENDATIONS**

Members are invited to discuss the contents of this report.

This paper is presented in line with paragraphs 20(a) and (d) of the standing orders.

<b>Meeting</b>	<b>Legal Committee</b>
<b>Date</b>	<b>6 September 2022</b>
<b>Location</b>	<b>Microsoft Teams</b>
<b>Title of Paper</b>	<b>SPA/Police Scotland Litigation Tables</b>
<b>Presented By</b>	<b>Susan Montgomery, SPA, and James Douglas, Police Scotland.</b>
<b>Recommendation to Members</b>	<b>For Noting and discussion</b>
<b>Appendix Attached</b>	<b>Yes Appendix A – Litigation tables Appendix B - proposed revised style litigation tables</b>

## PURPOSE

The purpose of this paper and Appendix A is to provide details of significant ongoing litigation involving the SPA and/or Police Scotland, and to propose revising the style of the litigation tables.

The paper is presented in line with the Scottish Police Authority Legal Committee Terms of Reference.

This paper is submitted for noting the contents of the report and the litigation tables at Appendix A



This paper is presented in line with paragraphs 20(a) and (d) of the standing orders.

## **1. BACKGROUND**

- 1.1 In February 2019, the SPA's legal team began producing regular summaries of significant litigation involving the SPA and/or Police Scotland. Initially, the summaries (known as the "litigation tables") were provided to the Chief Executive to allow him to advise Board members of the cases in which approval of financial settlement may be sought in the short to medium term. The tables were later extended, at the request of the then Chief Executive, to cases which appeared likely to attract media attention or give rise to significant reputational implications.
- 1.2 The tables now fall within the remit of the Committee, whose terms of reference provide that it will monitor the handling of legal actions, claims and appeals, seek information on themes and trends, and review the arrangements in place for handling these matters.
- 1.3 It is now proposed that the litigation tables be reviewed to incorporate additional information of interest to the Legal Committee and that that information is presented in the most useful way for Members.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

- 2.1 The litigation tables attached in Appendix A contain details of all litigation to which the SPA is a party. In respect of Police Scotland, however, the tables contain only those cases which may at some stage come to the Committee or Board for approval of any financial settlement; and a number which appear likely to attract media attention or give rise to significant reputational implications. The Police Scotland table also contains cases raised against the SPA as the legal employer of police staff. As police staff are under the direction and control of the Chief Constable, these cases are

This paper is presented in line with paragraphs 20(a) and (d) of the standing orders.

conducted by Police Scotland and are accordingly included in the Police Scotland table.

2.2 A verbal update will be provided at the meeting if there have been any developments in any other cases since the date the tables were produced.

2.3 Appendix B is the litigation tables in the proposed new style. Following discussions between Robin Johnston, Head of Legal, and Grant Macrae, Legal Committee Member, it has been suggested that the RAG status be reviewed so that the RAG status now indicates if a case is likely to come to the Legal Committee for settlement during the current financial year. An additional column has also been added to the tables, for details of the reserve/provision to be inserted for each case.

### **3. FINANCIAL IMPLICATIONS**

3.1 There are financial implications arising from this report. Some of the cases listed in Appendix A may come to the Committee or Board for approval of financial settlement, and in others the court or tribunal may make an award against the SPA or Chief Constable.

### **4. PERSONNEL IMPLICATIONS**

4.1 There are personnel implications associated with this paper in that some of the proceedings referred to in Appendix A have been raised by serving police officers and staff.

### **5. LEGAL IMPLICATIONS**

5.1 There are legal implications arising from this paper in that Appendix A contains details of ongoing legal proceedings.

### **6. REPUTATIONAL IMPLICATIONS**

6.1 There may be reputational implications associated with this paper in that some of the cases listed in Appendix A allege acts and omissions for which compensation may be payable.

This paper is presented in line with paragraphs 20(a) and (d) of the standing orders.

## **7. SOCIAL IMPLICATIONS**

7.1 There are no social implications associated with this paper.

## **8. COMMUNITY IMPACT**

8.1 There are community implications associated with this paper, as some of the cases in Appendix A have been raised by members of the public.

## **9. EQUALITIES IMPLICATIONS**

9.1 There are equality implications associated with this paper, as some of the cases involve claims of sex, disability and race discrimination.

## **10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications associated with this paper.

## **RECOMMENDATIONS**

Members are requested to:

1. Note the information contained in this report and Appendix A;
2. To discuss the proposed new style of litigation tables contained in Appendix B

**ONGOING LITIGATION INVOLVING THE SPA AND POLICE SCOTLAND (AS AT 25 AUGUST 2022)**

**Purpose**

The purpose of this report is firstly to highlight all ongoing litigation in which the SPA is a party; and secondly to highlight litigation which has been raised against the Chief Constable in which Police Scotland may seek the approval of the Legal Committee for proposed financial settlement.

The report also contains a summary of legal and procedural provisions relevant to the SPA's consideration of proposed settlements.

**Key legal and procedural provisions**

*The Police and Fire Reform (Scotland) Act 2012 ("the Act")*

Section 24(1) of the Act provides that the Chief Constable is liable in respect of any unlawful conduct on the part of, among others, constables under his/her direction and control. The Chief Constable's liability for such conduct applies to the carrying out (or purported carrying out) of a constable's functions, in the same manner as an employer is liable for any unlawful conduct on the part of an employee in the course of employment.

Section 24(3) provides that the SPA must pay –

- (a) any damages or expenses awarded against the Chief Constable in any proceedings brought by virtue of section 24,
- (b) any expenses incurred by the Chief Constable in relation to such proceedings (in so far as not recovered in the proceedings), and
- (c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the SPA).

Section 24(3)(c) is therefore the statutory basis on which Police Scotland may seek the Legal Committee's approval of proposed financial settlements.

*Terms of Reference – Legal Committee*

The terms of reference for the Legal Committee states:

"Meetings will be used to:

- (i) Consider and approve settlement of civil legal actions and claims (including claims raised in the Employment Tribunal) against the Authority and/or the Chief Constable within the financial authorisations contained within the Authority's Governance Framework.
- (ii) Consider and provide instructions on legal matters, including agreements and memoranda of understanding, and civil legal actions and claims, involving matters which may be considered novel or contentious, include ethical or substantial reputational issues, or are of significant public interest;

...

- (ix) Monitor the handling of legal actions, claims and appeals within the remit of this Committee, seek information on themes and trends as appropriate, and review the arrangements in place for the handling of these matters;”

**The Tables**

Table 1 contains details of ongoing litigation to which the SPA is a party.

Table 2 contains details of litigation raised against the Chief Constable in which the SPA may be asked to approve proposed financial settlement. It also includes cases raised against the SPA where the subject matter of the claim is within the direction and control of the Chief Constable, for example claims raised by police staff who are employees of the SPA but are under the direction and control of the Chief Constable.

The following colour coding has been used for both tables:

<b>Green</b>	Included for information
<b>Amber</b>	Based on information provided by Police Scotland, SPA approval of proposed financial settlement may be sought in the short to medium term (i.e. within 6 months); and/or there appears to be a real possibility of media attention or reputational impact in the near future arising from the proceedings.
<b>Red</b>	SPA approval of proposed financial settlement has been/is being sought, or based on information provided by Police Scotland will be sought imminently (i.e. within one month); and/or there appears to be an imminent likelihood of media attention or reputational impact arising from the proceedings.

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### ONGOING LITIGATION INVOLVING THE SPA AND POLICE SCOTLAND (AS AT )

#### Purpose

The purpose of the litigation tables is firstly to highlight all ongoing litigation in which the SPA is a party; and secondly to highlight litigation which has been raised against the Chief Constable in which Police Scotland may seek the approval of the Legal Committee for proposed financial settlement. The tables will also provide details of civil actions and claims which may be considered novel or contentious, include ethical or substantial reputational issues, or are of significant public interest.

A summary of legal and procedural provisions relevant to the SPA's consideration of proposed settlements is noted below.

#### Key legal and procedural provisions

*The Police and Fire Reform (Scotland) Act 2012 ("the Act")*

Section 24(1) of the Act provides that the Chief Constable is liable in respect of any unlawful conduct on the part of, among others, constables under his/her direction and control. The Chief Constable's liability for such conduct applies to the carrying out (or purported carrying out) of a constable's functions, in the same manner as an employer is liable for any unlawful conduct on the part of an employee in the course of employment.

Section 24(3) provides that the SPA must pay –

- (a) any damages or expenses awarded against the Chief Constable in any proceedings brought by virtue of section 24,
- (b) any expenses incurred by the Chief Constable in relation to such proceedings (in so far as not recovered in the proceedings), and
- (c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the SPA).

Section 24(3)(c) is therefore the statutory basis on which Police Scotland may seek the Legal Committee's approval of proposed financial settlements.

*Terms of Reference – Legal Committee*

The terms of reference for the Legal Committee states:

"Meetings will be used to:

- (i) Consider and approve settlement of civil legal actions and claims (including claims raised in the Employment Tribunal) against the Authority and/or the Chief Constable within the financial authorisations contained within the Authority's Governance Framework.

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- (ii) Consider and provide instructions on legal matters, including agreements and memoranda of understanding, and civil legal actions and claims, involving matters which may be considered novel or contentious, include ethical or substantial reputational issues, or are of significant public interest;  
...
- (ix) Monitor the handling of legal actions, claims and appeals within the remit of this Committee, seek information on themes and trends as appropriate, and review the arrangements in place for the handling of these matters;”

**The Tables**

Table 1 contains details of ongoing litigation to which the SPA is a party.

Table 2 contains details of litigation raised against the Chief Constable in which the SPA may be asked to approve proposed financial settlement. It also includes cases raised against the SPA where the subject matter of the claim is within the direction and control of the Chief Constable, for example claims raised by police staff who are employees of the SPA but are under the direction and control of the Chief Constable.

The following colour coding has been used for both tables:

Green	Included for information
Amber	Based on the most up to date information available, SPA approval of proposed financial settlement <u>may</u> be sought in the current financial year.
Red	SPA approval of proposed financial settlement has been/is being sought, or based on the most up to date information available will be sought imminently (i.e. within one month).

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**Table 2: Police Scotland Litigation in which the SPA may be asked to approve settlement**

	<b>Case (including Police Scotland case reference number)</b>	<b>Court</b>	<b>Description of proceedings (including details of damages sought)</b>	<b>Current position</b>	<b>Reserve /Provision</b>
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This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

<b>Meeting</b>	<b>Legal Committee</b>
<b>Date</b>	<b>6 September 2022</b>
<b>Location</b>	<b>Microsoft Teams</b>
<b>Title of Paper</b>	<b>Non-Disclosure Agreements – Statistical Update Jan 2022- June 2022</b>
<b>Presented By</b>	<b>James Douglas, Legal Services Manager</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>Yes Appendix 1 - Record of Confidentiality Provision in Settlement Agreement Appendix 2 - Details of NDAs entered into Jan 2022 – Jun 2022</b>

## **PURPOSE**

As part of new and stronger governance procedures relative to Police Scotland's use of Non-Disclosure Agreements, Deputy Chief Constable Taylor instructed that a Quarterly report be laid before Police Scotland's People & Professionalism (Closed) Board providing information on the number of Non-Disclosure Agreements entered into by Police Scotland in the course of the previous financial quarter together with relevant information on those agreements.

This report is to provide the SPA Legal Committee with the same information and to provide for further governance in this area.

Members are invited to discuss the contents of the report.

This paper is presented in line with SPA Corporate Governance Framework Standing Orders Section 20(f)

**1. BACKGROUND**

- 1.1 Police Scotland’s use of Non-Disclosure Agreements has been the subject of scrutiny and criticism during the course of the previous calendar year. Indeed Police Scotland’s use of NDAs has been the subject of reports and discussion at the SPA Legal Committee on three occasions within the same time period.
- 1.2 DCC Taylor introduced further governance as to the use of NDAs by instructing that a Quarterly report be laid before Police Scotland’s People & Professionalism (Closed) Board so that she might be provided with details on the number of such agreements and relevant information as to why they were used.
- 1.3 The term “Non-Disclosure Agreement” or “NDA” has been used to include Confidentiality Agreements or COT-3 Agreements.

**2. FURTHER DETAIL ON THE REPORT TOPIC**

- 2.1 This report represents the first one of its kind to be laid before the Committee. Accordingly this report provides detail on Non-Disclosure Agreements entered into by Police Scotland from 1<sup>st</sup> January 2022 to 30<sup>th</sup> June 2022. Hereafter, reports will provide information on a Quarterly basis.

At the end of March 2022, Legal Services introduced a reporting sheet that will require to be completed for any settlement agreements that contain any confidentiality clause within its terms. A copy of a blank reporting sheet is attached at Appendix 1. All reporting sheets shall be kept in a central registry within the office of the Legal Services Manager and available for DCC Taylor’s inspection at any time.

The Table in Appendix 2 provides details of the eight cases comprising twelve NDAs that were settled during the period 1<sup>st</sup> January 2022 to 9<sup>th</sup> June 2022.

[REDACTED]

This paper is presented in line with SPA Corporate Governance Framework Standing Orders Section 20(f)

Non-Disclosure Agreements or COT-3 Agreements are routinely used by parties to litigation in settling claims. Police Scotland does not enter into such Agreements to prohibit whistleblowing or any other actions protected by law. Overwhelmingly Police Scotland requests NDAs for commercial reasons. Should it become widely known the levels at which Police Scotland may agree to settle certain cases, it would be used against the organisation to ensure that settlement is always at or above that known figure.

Those instructed to act on behalf of Police Scotland have been advised that NDAs should only be used when very good reasons exist for doing so. Despite NDAs being a routinely used and legitimate tool in the settlement of cases throughout Scotland, Police Scotland has accepted that their use attracts scepticism and suspicion. Accordingly, since the introduction of further governance procedures introduced by DCC Taylor, and despite already existing at a very low base level, their use has declined.

#### **4. PERSONNEL IMPLICATIONS**

4.1 There are no personnel implications associated with this paper.

#### **5. LEGAL IMPLICATIONS**

5.1 There are no further legal implications in this paper to those listed above.

#### **6. REPUTATIONAL IMPLICATIONS**

6.1 There are reputational implications associated with this paper.

Police Scotland accepts that despite NDAs being a routine and legitimate tool used in settling claims, their use attracts suspicion and has resulted in a high level of scrutiny as to their use in the last calendar year.

#### **7. SOCIAL IMPLICATIONS**

7.1 There are no social implications associated with this paper.

#### **8. COMMUNITY IMPACT**

8.1 There are no community implications associated with this paper.

This paper is presented in line with SPA Corporate Governance Framework  
Standing Orders Section 20(f)

**9. EQUALITIES IMPLICATIONS**

9.1 There are no equality implications associated with this paper.

**10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications associated with this paper.

**RECOMMENDATIONS**

Members are invited to discuss the contents of the report.



**Record of Confidentiality Provision in Settlement Agreement**

<b>Claim Details</b>	
<b>Parties</b>	
<b>Case Reference/Claim Number</b>	
<b>File</b>	
<b>Type of Claim</b>	
<b>Solicitor</b>	
<b>External Agents</b>	

<b>Agreement Details</b>	
<b>Type of agreement</b>	
<b>Did the other party have legal representation? If so, who?</b>	
<b>Does the agreement include confidentiality provisions?</b>	
<b>What is restricted by confidentiality provisions?</b>	
<b>Do confidentiality provisions also apply to Chief Constable/SPA?</b>	
<b>Is there a carve out for whistleblowing, etc?</b>	
<b>If no carve out for whistleblowing, why?</b>	
<b>Who sought confidentiality provisions?</b>	
<b>Who instructed confidentiality provisions within PSoS/SPA?</b>	
<b>Justification for entering into agreement (including confidentiality provisions)</b>	
<b>Settlement amount</b>	
<b>Expenses paid to external agent</b>	
<b>Expenses paid to counsel</b>	
<b>Expenses paid to other party</b>	
<b>Date of agreement</b>	