



ICC CIRCULAR 15/2008

TO ALL IBB SECRETARIES

LIABILITY

The purpose of this circular is to explain the main elements of the position regarding personal liability.

The main types of liability are:

- (i) civil liability;
- (ii) criminal liability; and
- (iii) liability in misconduct proceedings.

Civil liability

A person who suffers loss or damage as the result of a legal breach by another can bring civil legal proceedings. The remedy in such cases is usually an award of compensation. There are many different types of legal claims including negligence, wrongful arrest and unlawful discrimination (e.g. on grounds of sex, race or for other protected characteristics).

The nature of police service is such that officers may face claims that they have breached the rights of others and legal proceedings may result.

Fortunately, there is significant protection for police officers against personal liability.

The principle of "vicarious liability" means that in an ordinary employment context an employer is responsible in civil proceedings for the acts and omissions of his or her employees when done in the course of their employment. As a result most claims are brought against the employer.

Police officers are not employees, but specific provision is made in the Police Act 1996, to deal with vicarious liability.



Section 88 deals with the wrongful acts of constables (and covers all ranks). It provides that a chief officer is liable for any unlawful acts of constables under his direction and control in the performance or purported performance of their duties in the same way as an employer is liable for employees.

While in practice claims are therefore usually brought against the chief officer, section 88 does not prevent a person bringing a claim against an individual officer, either as well as the chief officer, or alone. As with ordinary employees, the individual officer can be individually liable.

There is however protection for officers in that situation as section 88 goes on to provide that a police authority may pay any damages or costs resulting from a claim brought against an individual police officer.

Home Office Circular 43/2001 sets out guidance on the approach that police authorities should adopt. The core principle is expressed to be as follows:

“It is important that police officers should be able to carry out their duties in the confidence that their police authority will support them by providing financial assistance in legal proceedings taken against them and progressed by them, if they act in good faith and exercise their judgement reasonably.”⁰

This is re-stated at the end of the Circular:

“In summary, police officers must be confident that Police Authorities will provide financial support for officers in legal proceedings where they have acted in good faith and have exercised their judgement reasonably. Police Authorities will need to decide each case on its own merits, but subject to that there should be a strong presumption in favour of payment where these criteria are met.”

Thus any officer who acts in good faith and exercises their judgement reasonably should be indemnified by their police authority in the event of facing civil proceedings.

Criminal liability

If a police officer commits a criminal offence in the course of his or her duties then he or she will be individually liable.

Home Office Circular 43/2001 makes it clear that there may be circumstances in which it may be appropriate for a police authority to meet the defence costs of police officers in defending criminal proceedings. However, this will not apply to any financial penalty or order to pay prosecution costs made against the officer by the court.

One case, prior to the guidance, which led to judicial review proceedings, involved a chief superintendent and superintendent who faced a private prosecution following the Hillsborough disaster. They sought police authority funding and were denied it, the police authority considering that it did not have the power to fund. The court held that the authority did have the power to fund the defence of proceedings just as it was entitled to fund any other activity which the chief constable considered conducive to the maintenance of an efficient and effective police force.

The Federation provides extensive legal support to members who face criminal proceedings arising out of their duty.

Specific concerns have recently been raised about the position in relation to corporate manslaughter and health and safety.

In relation to corporate manslaughter, no individual liability is possible, the purpose of the legislation is to allow corporate bodies (including police forces) to be prosecuted rather than individuals.

In relation to health and safety, there are duties on employees (including police officers) to take reasonable care for the health and safety of themselves and of other persons who may be affected by their acts or omissions at work and to co-operate with the employer to enable the employer's duties to be complied with. It is however important to emphasise that the primary focus of the legislation is upon employers (including police forces) and it is upon the employer that duties are generally imposed.

Misconduct

As with criminal offences, if a police officer commits a conduct offence in the course of his or her duties then he or she will be individually liable.

The Federation provides representation and legal support to members who face misconduct proceedings.



George Appleby
General Secretary

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