

PROTOCOL FOR THE PROVISION OF INFORMATION ON EMPLOYMENT TRIBUNAL CASES

INTRODUCTION

1. This report sets out a protocol relating to the provision of information to the Police Authority on employment tribunal cases. The protocol has been developed to ensure that Members have clear oversight of the procedures relating to employment tribunals, thus helping to discharge their statutory duty to secure an efficient and effective police force. The report also sets out details of employment tribunals concluded in the last twelve months (June 2005-May 2006), ongoing and new cases for Members' scrutiny.

BACKGROUND

2. In July 2002, the APA launched "People Matters" – a framework for police authority oversight of force human resources planning, policies and practices. In January 2004 a supplement to this framework was also published: "Tackling Discrimination: police authority oversight and scrutiny of grievance procedures and employment tribunals" to help police authorities exercise effective oversight and scrutiny of force grievance procedures and employment tribunals (ETs), particularly those involving discrimination which make up the majority of cases.
3. This Guidance draws upon the lessons learned from recent and past high-profile cases as well as the experiences of forces and authorities around the country. It states that "*Grievance and ET cases provide a significant insight into the health of any organisation*" and goes on to state that "*Police Authorities need to clearly hold forces to account for how they deal with such cases through regular strategic analysis and scrutiny*".
4. In line with the APA's framework, formal arrangements have already been introduced to facilitate Members' effective monitoring and scrutiny of grievance procedures and these arrangements have recently been expanded to include a 'pilot' for Members' dip sampling of completed grievance cases (see reports elsewhere on this agenda). There is now also a need to expand this scrutiny role further to include ETs.

PROPOSED REPORTING MECHANISMS

5. It is proposed that a two-tier framework for scrutiny of ETs be established, as set out in Appendix 1. This will involve an annual report to this Committee to include information on those ETs concluded, ongoing and new cases in the last year to, ultimately, enable patterns and trends to be identified. One of the most important parts of this annual report will be a commentary on any identifiable trends and, particularly, any lessons that have been learnt by the Force from ETs over the past year and, crucially, how they are being shared across the Force and the police service where relevant.

6. The first of such annual reports is included at Appendix 2 for Members' scrutiny.
7. In order to ensure that any high profile cases are brought to the attention of the Police Authority at an early stage, it is also proposed that the Chief Executive, Chairman and Vice Chair of the Authority are informed of such "*significant cases*" at the monthly meetings held with the Chief Constable.
8. In addition to notification of "*significant cases*", the APA framework suggests that there may be "*exceptional cases*" that require Police Authority approval to settle or otherwise make a payment. The definition of an "*exceptional case*" in this context is any case with the potential to cause real damage to the Police Authority or to the Police Service. A number of police authorities contacted do not normally involve themselves in approving the settlement of cases. However, this requirement is included by the Metropolitan Police Authority in their protocol, primarily due to the Morris Inquiry Report recommendations.
9. It is proposed that a third-tier involving the approval to settle is not included in the Humberside protocol. Already, the two tier framework outlined above requires that the Police Authority is informed at an early stage if the ET is "*significant*". Also, standing orders require the Chief Constable to consult the Chairman of the Police Authority on any settlements that involve virements between £100k and £250k and for virements over £250k, approval is required from the Police Authority. In any case, information on any high profile cases will also be made available through discussion of the Force Risk Register at the Force Audit Board attended by a Member (Mr John Shipley) and the Director of Performance and Resources.
10. Overall, it is felt that all of these mechanisms will provide sufficient means of ensuring that the Police Authority is kept informed of any ETs that have the potential to cause damage to the Police Authority or to the Police Service and should make certain that there are no surprises for the Police Authority with regard to ETs. However, it is proposed that this position be reviewed in 12 months time to ensure that the process continues to meet the requirements of the Police Authority.

RECOMMENDATIONS

11. It is recommended that Members of the Committee:
 - (i) Adopt the protocol for the provision of information to the Police Authority on employment tribunal cases;
 - (ii) Scrutinise the employment tribunal case information provided in this report; and
 - (iii) Receive a report on the adequacy of the protocol in 12 months time.

John Bates
Director of Performance and Resources

Contact Officers: Jo Smith Telephone (01482) 317002

Background Papers: APA Guidance PEOPLE MATTERS: Tackling discrimination: police authority oversight and scrutiny of grievance procedures and employment tribunals

PROTOCOL

THE PROVISION OF INFORMATION ON EMPLOYMENT TRIBUNAL CASES

Introduction

This protocol sets out the arrangements agreed between Humberside Police Authority and Humberside Police for the provision of information on Employment Tribunal (ET) cases to the Police Authority.

Purpose

- To set out agreed arrangements for notifying Humberside Police Authority on a regular basis as to significant ET cases
- To set out agreed arrangements for the type and level of information to be provided to the Police Authority on an annual basis on all ET cases

Tier 1: Annual reporting of summary information

Annual report to Personnel Committee to include:

- Total number of ETs:
 - concluded in the last year
 - ongoing
 - new cases in the last year
- Information in relation to each ET to include:
 - grounds of the ET
 - rank and type of personnel i.e. police officer/staff/special/PCSO
 - gender and ethnicity of claimants
 - location of claimant (by Division/Branch)
 - length of time taken to deal with/conclude the case
 - current position with the case or results of the case to include:
 - how/when resolved
 - cost of settlement awarded
 - compensation awarded
 - costs of the proceedings
 - re-instatement
- Comparison against the previous year (and against the Most Similar Forces if available)

- A commentary on any identifiable trends and the lessons that have been learnt from ETs, how they have led to changes in policy and practice and how the lessons are shared across the Force

All information will be presented in an anonymous way so that the report can be considered in the open part of the agenda. If Members wish to be able to further scrutinise individual cases, they will be able to do this in the closed part of the agenda.

Tier 2: Significant case notification

To ensure that high profile cases are brought to the attention of the Police Authority at an early stage, information on such cases will be submitted by the Chief Constable for discussion at the monthly meetings between the Chairman, Vice Chair and Chief Executive of the Police Authority.

As an alternative, if such a meeting is not planned for some time, a written report will be submitted to the Chief Executive for circulation to the appropriate parties, to ensure that the Police Authority is aware of such a significant case at an early stage.

Cases will be deemed significant, and reported to the Police Authority at an early stage, if any one or more of the following criteria are met:

- It has the real potential to attract an award of £50,000 or more (to include multiple claims/claimants)
- It involves any issues of principle and/or financial policy
- It is in nature a test case
- It is likely to attract significant adverse publicity, e.g. if it involves a well known claimant or witness, a high ranking police officer(s) and/or member of police staff, or there is particular public interest in the case
- There is a risk that either the Force or a Police Authority Member will be exposed to public criticism and/or weakness in, or lack of, policy, practices or procedures will be revealed
- It is likely that the settlement will give rise to media comment

The type of information to be included in such a briefing would include:

- Name of the claimant (unless the information needs to be depersonalised/anonymised for operational or legal reasons)
- Summary of the ET claim
- Details of the current position with the case

EMPLOYMENT TRIBUNAL CASES COMMENCED/CONCLUDED IN THE PERIOD 01/06/05-31/05/06

APPENDIX 2

APPLICANT	POLICE/SUPPORT	LOCATION	GENDER	ETHNICITY	TYPE OF CLAIM	DATE OF COMMENCEMENT	GROUNDS OF CLAIM	CONCLUDED/ONGOING	DATE OF CONCLUSION	MEANS OF CONCLUSION	CURRENT POSITION
'A'	P	'D'	M	W1	Race discrimination	01/07/04	This Probationer Constable claimed that he had been the subject of less favourable treatment on the grounds of his gender following his choosing to resign from Humberside Police rather than having his services dispensed with pursuant to Regulation 13 of the Police Regulations 2003. Allegations were made concerning the claimant's inappropriate behaviour towards fellow female probationers whilst undergoing training. The claimant compared his treatment with that of an Asian male officer. The claim was resisted throughout. The matter was listed for a hearing in November 2005 but the claimant, who had up to that point had the benefit of legal representation, withdrew his claim. No payment was made and each party bore their own costs.	Concluded	20/10/05	Withdrawn	Finalised
'B'	P	'C'	M	W1	Disability discrimination	19/10/04	The Claimant was a police officer (now retired) who issued a claim for disability discrimination for a failure to progress his application for a 'Competency Related Threshold Payment'. The reason for not progressing his application was that he did not meet the required attendance criteria. The nature of the disability was a gall bladder complaint which initially went undiagnosed and it was during this time that most of the sickness absence occurred. Upon diagnosis the gall bladder was removed and following the recovery period the claimant had no further episodes of sickness. A medical report was commissioned and the expert concluded that although the symptoms were related to the claimant's condition, in the expert's opinion he could not be considered to be disabled within the meaning of the Act. The report was received in December 2005 and the claim was withdrawn in February 2006. No payment was made to the claimant and each party agreed to bear their own costs.	Concluded	10/02/06	Withdrawn	Finalised
'C'	P	'C'	M	W1	Disability discrimination	11/03/05	The claimant was a police officer who suffers from hypothyroidism (under active thyroid) and type 2 diabetes. He claimed disability discrimination following a refusal of a Special	Concluded	23/08/06	Withdrawn	Finalised

							Priority Payment as he failed to satisfy the attendance criteria. The issues in this case were whether the claimant was disabled within the meaning of the Act and if he was whether he had been treated less favourably as a result of that disability. A medical report was commissioned which concluded that of the nine episodes of sickness in question only one was considered to be directly attributable to hypothyroidism as a result of a side effect of prescribed medication. Following receipt of the medical report the claimant withdrew his claim. No payment was made to the claimant but the Chief Constable acknowledged that the claimant was suffering from hypothyroidism and type 2 diabetes which amounted to a disability within the meaning of the Act. Each party agreed to bear their own costs.				
'D'	P	'C'	M	W1	Disability discrimination	31/05/05	The claimant alleged disability discrimination, claiming that his Competency Related Threshold Payment had been stopped because of the level of sick leave he had taken. He said that the sick leave was for a reason related to disability and therefore should not have counted. The Chief Constable took advice from medical experts and it was finally agreed that his absences were due to disability and his CRTP was reinstated and backdated. His claim to the ET was for a declaration that he had been discriminated against and for compensation for injury to feelings. Counsel's advice was taken and that was that the claimant would most likely succeed at a hearing and consequently the claim was settled for £3000, which Counsel advised was a reasonable sum in the circumstances. The Force paid £2,200 in respect of the claimant's costs.	Concluded	04/11/05	Payment of £3,000 made	Finalised
'E'	P	'C'	F	W1	Disability discrimination	13/07/05	The claimant complained that she had not been entitled to apply for specialist posts because she had breached the Attendance Criteria. She claimed that her absence record was the result of a longstanding gynaecological complaint and believed that this was a disability within the meaning of the Disability Discrimination Act 1995. A view was obtained from the Force's Assistant Medical Officer, whose view was that the claimant's condition did not constitute a disability. The matter was set down for a hearing in January 2006 but the claimant withdrew her claim shortly before this.	Concluded	09/01/06	Withdrawn	Finalised

'F'	P	'D'	F	W1	Sex discrimination	15/08/05	The claimant returned to work after maternity leave and believed that she had agreed flexible working hours, which she claims were then changed without consultation. This case is linked to that of claimant 'G'. The parties have agreed to attend mediation and the Employment Tribunal have stayed the proceedings to facilitate this. A full response has been filed on behalf of the Chief Constable.	Ongoing			It is hoped that mediation will take place in August next.
'G'	P	'D'	F	W1	Sex discrimination	15/08/05	The claimant contends that the flexible working pattern which she had agreed was altered without consultation, resulting in difficulties for her with regard to child care. A full response has been filed on behalf of the Chief Constable. This case is linked with claimant 'F'. The parties have agreed to attend mediation and the Employment Tribunal have stayed the proceedings to facilitate this	Ongoing			It is hoped that mediation will take place in August next.
'H'	P	'A'	M	W1	Sex discrimination	26/09/05	The claimant commenced detective training under the Initial Crime Investigators Development Programme (ICIDP) in early 2004. He claimed discrimination on the grounds of his gender. The claimant had also lodged a grievance. Although not specifically pleaded the claimant appeared to claim that the interests of his female colleagues had been preferred over his own in that they were provided with appropriate tutoring and sufficient time in which to complete assignments whereas he claimed he did not have consistent tutoring and placed under pressure to complete more work than his female colleagues. The Tribunal granted a stay until the grievance was finalised which resulted in the claimant finally accepting the third stage resolution of the grievance. The claim to the Employment Tribunal was withdrawn following this resolution. No payment was made to the claimant and each party agreed to bear their own costs.	Concluded	30/03/06	Withdrawn	Finalised
'F'	P	'D'	F	W1	Sex discrimination	23/01/06	The claimant contended that a period of absence in 2003, which caused her to fall outside the Attendance Criteria, resulted from depression following a miscarriage. The claimant contended that this was therefore pregnancy related and should be discounted for the purposes of the Attendance Criteria. Counsel's advice was sought and his firm view was that this period of absence could not be said to be pregnancy related and accordingly the application was resisted. The claim was	Concluded	05/05/06	Withdrawn	Finalised

							subsequently withdrawn without payment to the claimant.				
'I'	S	'A'	M	W1	Unfair Dismissal	18/05/06	The claimant has issued proceedings alleging unfair dismissal. He is saying that he has been constructively dismissed because of the way the Force and the Police Authority have dealt with a number of grievances he has made over the past 4 years. A full response has been filed on behalf of the Chief Constable and the Police Authority.				The claim is in its very early stages and the Force will be making a number of preliminary applications to the ET with regards to the content of the claim, jurisdiction and number of Respondents.

EMERGING TRENDS

The Disability Discrimination Act 1995 was extended to cover police officers in October 2004. In the aftermath of this change we have seen the number of Disability Discrimination claims exceed those for other forms of discrimination. These claims have not, in the main, been successful and it is proposed that the Legal Services Unit will enter into discussions with the Police Federation to consider what might be learnt from those cases that have been dealt with over the past year.

It is hoped, in the future, when submitting this report, to be able to provide some information whereby the number and type of claims received by this Force can be compared with those received by our Most Similar Forces. Indeed, if possible, an interim report will be submitted with this information. In all, six cases were commenced within the Employment Tribunal in the year to the 31st May 2006, compared with four cases in the previous year. Neither the overall number of cases, nor the increase on the previous year is believed to be excessive or disproportionate.

The Employment Equality (Age) Discrimination Regulations 2006 come into force on the 1st October 2006. It becomes unlawful to treat persons in the work place less favourably on the grounds of their age. However, the default retirement age of 65 will not apply to police officers.

Stephen Hodgson
Head of Legal Services

28th June 2006