



Reference No: 04 - 2015

## THE POLICE & CRIME COMMISSIONER FOR CLEVELAND

### DECISION RECORD FORM

**REQUEST:**

That the PCC formally records his decision to discontinue High Court proceedings against Sean Price.

**Title:**

Discontinuance of proceedings

## Executive Summary:

In 2012 recommendations made by Cleveland Police Authority's External Auditor, as part of the annual audit and assurance process, asked that it should examine the scope to recover payments made in previous years to former Chief Constable Sean Price.

In consideration of this and on the recommendation of its then Monitoring Officer, the former Police Authority reached the decision to pursue the recovery of these payments.

I took office as Police & Crime Commissioner shortly afterwards, inheriting the Police Authority's chosen course of action in this regard. After taking office I considered all of the circumstances and the legal advice available to me and determined with the Chief Executive and the OPCC legal advisors, that if the action were to continue it be on the following basis : that the action was brought by the Office of the Police & Crime Commissioner rather than me personally; that costs would be managed and controlled as appropriate; that the action could be halted at any time deemed appropriate by the PCC.

With that in mind, I determined that the appropriate course of action would be for me to respect the decision of the former Police Authority and allow this civil litigation to proceed as part of our commitment to examine the scope to recover these payments.

The case is based, in the main, upon the legal argument that the former Authority made such payments by mistake of law and that in principle, such payments are recoverable from the recipient. Former Chief Constable Price has defended the case since its outset.

Former Chief Constable Price has very recently extended an improved offer to finalise the litigation. In the circumstances I considered myself under a duty to give very careful consideration to that offer, which invited me to discontinue the litigation upon payment of the sum of £23,000 (twenty-three thousand pounds).

Although the offer represents a modest proportion of the sum the Authority had committed to try to recover and the legal costs of doing so, it was extended in good faith by Mr Price by reference to his ability to pay.

Before consideration of this offer, Mr Price was informed he must allow access to certain financial documents in an attempt to ascertain what funds he has available. Mr Price has allowed access to these documents.

I concluded that I faced a choice either to accept a sum which Mr Price had demonstrated he could afford, or proceed to court risking an estimated overall six figure sum in court costs which was unlikely to be realistically recoverable.

When weighing up this offer, I considered how best to serve the best interests of the public of Cleveland in view of my assessment of the following factors:

- The chances of winning this case, were it to go to court based on legal and other advice received
- The estimate of approximately £30,000 of external barristers' fees incurred to date and the costs of the OPCC's in-house solicitors.
- The overall question of cost to the public purse at a time of austerity of investing in litigation, when I have given a commitment to ensuring resources are focussed on retaining and developing neighbourhood policing, delivering a better deal for victims and witnesses and addressing reoffending.
- The fact that several other PCCs and Police Forces considering litigation of this nature have decided against bringing the matter to court
- The fact that these matters are understood to have been considered as part of the work of Operation Sacristy, which did not result in criminal charges. I am keen to support Cleveland Police in moving on from these issues.
- The undertaking of the former Police Authority to the auditor to 'examine the scope' for recovering this money.
- My responsibility to deal proportionately with a claim which is against a private individual by reference to his ability to repay even if ultimately ordered to do so by the court.
- My duty to reach an appropriate outcome to the litigation to recover losses to the police fund in a way which is appropriate and which satisfies the public interest; and
- The importance to the public interest of resolving such doubt as exists about the law on additional payments to chief officers.

Although ending the claim will mean that the court will not have the opportunity to address the legal questions, taking all of the circumstances in the round, I have determined that it would be appropriate to conclude the matter on the basis of the payment of the sum offered.

**Decision:**

That the amount offered by Mr Price be accepted and upon receipt of payment, the proceedings be discontinued.

**Implications:**

Has consideration been taken of the following:	Yes	No	
Financial	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Equality & Diversity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Human Rights	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sustainability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Risk	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(If yes please provide further details below)

## Decision Required – Supporting Information

Financial Implications: (Must include comments of the PCC's CFO where the decision has financial implications)

Financial information was provided to the PCC as part of the Legal Advice. The PCC's CFO was not asked to provide advice prior to the decision being taken to discontinue with this legal case.

Legal Implications: (Must include comments of the Monitoring Officer where the decision has legal implication)

Legal advice (including advice upon this particular decision) has been provided throughout the conduct of the proceedings.

Equality and Diversity Implications

None arise

Human Rights Implications

None arise

Sustainability Implications

None arise

Risk Management Implications

None arise separately from those dealt with in legal advice.

### OFFICER APPROVAL

#### Chief Executive

I have been consulted about the decision and confirm that advice has been taken into account as shown above. I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner.

Signed: 

Date: 6 February 2015

#### Police and Crime Commissioner:

The above request HAS / ~~DOES NOT HAVE~~ my approval.

Signed: 

Date: 6 February 2015