

**Report of the Review of Chief Police Officer Remuneration Terms and  
Conditions commissioned by Chief Constable Dave Jones and Police and  
Crime Commissioner Julia Mulligan**

The following warranted chief officers were in post and in receipt of payments in North Yorkshire during the financial years 2008 to 2013 (changes or new appointments are in bold);

**Financial year 2008 – 2009**

Chief Police Officers in post during all or part of this financial year;

- Chief Constable Grahame Maxwell
- Deputy Chief Constable Adam Briggs
- Assistant Chief Constable David Collins
- Assistant Chief Constable Peter Bagshaw
- Assistant Chief Constable Sue Cross
- Assistant Chief Constable Steven Read

**Financial year 2009 – 2010**

Chief Police Officers in post during all or part of this financial year;

- Chief Constable Grahame Maxwell
- Deputy Chief Constable Adam Briggs

- Assistant Chief Constable Sue Cross
- **Assistant Chief Constable Tim Madgwick**
- Assistant Chief Constable Steven Read

**Financial year 2010 – 2011**

Chief Police Officers in post during all or part of this financial year;

- Chief Constable Grahame Maxwell
- Deputy Chief Constable Adam Briggs
- Assistant Chief Constable Sue Cross
- Assistant Chief Constable Tim Madgwick

**Financial year 2011 – 2012**

Chief Police Officers in post during all or part of this financial year;

- Chief Constable Grahame Maxwell
- Assistant then **Deputy Chief Constable Tim Madgwick**
- Assistant Chief Constable Sue Cross
- **Assistant Chief Constable Iain Spittal**

**Financial year 2012 – 2013**

Chief Police Officers in post during all or part of this financial year;

- Chief Constable Grahame Maxwell
- Deputy then **Temporary Chief Constable Tim Madgwick**
- Assistant then **Temporary Deputy Chief Constable Sue Cross**
- Assistant Chief Constable Iain Spittal

**1. When were decisions reached about each element of payments, and by whom and on what legal basis if apparent from the records?**

In obtaining the information in this section the following sources were checked for information: payroll files, personnel files (where available), minutes of Police Authority meetings and other records available from Police Authority files.

**Chief Constable Grahame Maxwell**

Mr Maxwell was Chief Constable during at least of part of each year covered by the review.

- Appointment in 2007

i) At a Police Authority Leadership Board in 5 April 2007 (Document 1), the board considered the terms for Chief Officers as follows;

*'At the Leadership Board of 21 January 2005, Members reviewed the Terms and Conditions for Chief Officers. Appendix A of this report, is the letter sent to successful candidates, which contains general details of the Chief Officers' Pay and Conditions, on the basis of the PNB agreement on Chief Officers' Pay and Conditions.*

*The recommendation of the oral report given by the Director of Human Resources is that the letter be amended to contain further specific details of the Terms and Conditions, to allow the Authority to retain a stronger position when negotiating with the successful applicant.'*

There is no reference to the legal basis of such changes in the minutes.

ii) At a PA Leadership Board held on 18 April 2007 (Document 2) the appointment of Mr Maxwell as Chief Constable was confirmed

iii) There is reference to offer of appointment letter being dated 30 April 2007 however the copy located is dated 14 May 2007 (Document 3). This letter is from the NYPA Chief Executive and includes that conditions of service will be in accordance

with Police Act 1996, the Police Regulations 2003 and the latest PNB agreement on pay and conditions of service of Chief Police Officers.

In relation to allowances the letter states that these will be payable in accordance with the Police Regulations 2003 in addition to salary and that the Police Authority has in place some local allowances for Chief Officer of Police. The letter sets out the detail of these which are

1. ACPO and CPOSA membership costs and personal liability insurance through CPOSA
2. Up to £3000 towards the cost of private medical care subject to evidence on request that personal private medical cover is maintained
3. A force vehicle and an allowance towards the purchase of a further vehicle – current appropriate vehicle set out in letter, and amount £32,107.
4. Removal expenses up to £12,000.

The letter states that the Chief Executive knows that Mr Maxwell wished to discuss the possible replacement or amendment of the local allowances and is anxious to revisit the local allowances and the letter is therefore described as being without prejudice to those discussions.

This letter does not include any reference to the legal basis for the local allowances with the exception that removal expenses stated to be in accordance with the Police Regulations.

iv) On an oral report of the PC Chief Executive changes to the terms and conditions for the Chief Constable and DCC were agreed by the PA Leadership Board 17 May 2007 (Document 4). There are no references to the details of the terms and legal basis for the amendments.

v) In a letter dated 7 June 2007<sup>1</sup> (Document 5) from NYPA Chief Executive the following terms are offered in relation to local allowances;

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<sup>1</sup> The dates included in this report as dates of letters of the Police Authority Chief Executive may not be accurate due to the poor state papers records and a system of auto dating which was used on template letters means the date of any copy of a letter can no be relied upon.

1. The cost of membership of the Association of Chief Police Officers, the Chief Police Officers Staff Association, the Institute of Directors and the Chartered Institute of Management will be borne by the PA. This includes the cost of personal liability insurance cover provided through CPOSA, and in the event of retirement from the police service immediately after the end of appointment, for a period of six years thereafter.
2. An annual non-pensionable allowance of £15,000 paid monthly as part of salary to cover the cost of private medical insurance, personal development and private vehicle costs. The letter includes that 'whilst it is intended to cover these issues, expenditure on these items is entirely at the discretion of the post holder'.
3. The post holder will be provided with a Force vehicle and driver for carrying out duties of Chief Constable and will be entitled to use the vehicle for his private use.
4. Subject to some conditions and in accordance with the Police Regulations, an allowance of up to £42,000 for the purchase of an apartment within the force area, to include the actual cost of legal fees and a disturbance allowance.

The letter asserts of the legal basis of conditions of service and allowances as being those in the Police Act 1996, the Police Regulations 2003 and the latest PNB agreement on pay and conditions of service of Chief Police Officers.

Then in reference to allowances the letter includes the following:

*'Subject to the provisions set out below, allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition to salary'*

The provisions set out below referred to in this paragraph are the allowances listed at 1-4 above. With the exception of (4) removal expenses, this letter does not set out the legal basis for payments made at points (1-3).

vi) In a letter dated 26 June 2007 (Document 6) from NYPA Chief Executive an amendment is made to the terms and conditions offered, this is that rather than a

£42,000 allowance the Authority agrees to meet the cost up to £1500 per calendar month of the lease of a suitable property within reasonable travelling distance from Police HQ for an initial period of 12 months. In addition the Authority will meet the cost of reasonable furnishing of the leased property and any personal tax liability incurred under this arrangement.

The letter does not include any reference to the legal basis for this allowance.

- Changes to terms and conditions in 2010

i) At a meeting of the PA Management Board on 13 August 2009 (Document 7) the following items were discussed

- a request from the APA<sup>2</sup> to review existing conditions of service of Chief Police Officers
- a proposal from the Chief Constable for an increase in the personal car allowances for Chief Officers.

The following was resolved:

- That the views of the Board be reflected at the APA's People Policy Group, attended by the NYPA Vice-Chairman, which is due to discuss and prepare guidance for police authorities on chief officers conditions of service;
- That the existing terms and conditions for Chief Officers of Police and of the Chief Finance Officer relating to the provision of a vehicle, or an allowance for a vehicle, be amended to provide for the provision of a motor vehicle of up to the following values

Chief Constable	£40,000
DCC	£35,000 (87.5% of the Chief Constable)
ACC & CFO	£30,000 (75% of the Chief Constable)

except that any element of the allowance not used to purchase a vehicle should not be available to supplement any other income or allowance.

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<sup>2</sup> Association of Police Authorities

- That further negotiations take place with any officer whose existing terms and conditions of employment or engagement suffer any detriment through the above revised arrangements.

ii) At a meeting of the PA Management Board in November 2009 (Document 8) the package of remuneration to the Chief Constable was discussed at his request for an enhancement to the payments he received. Advice was contained in this paper to the Board (Document 9) on this matter about the restrictive nature of the regime of chief officer terms and conditions and that to go further that the current package would be 'politically and legally risk'. It was recommended the bonus payment would be lawfully reconsidered for the year. The Board resolved to pay one-off payments in lieu of bonus payments in the sum of £15,000 for the Chief Constable and £12,000 for the DCC. However this decision was later overturned due to doubt about the lawfulness of such payments outside the bonus scheme.

iii) At a meeting of 11 December 2009 the PA Management Board (Document 10) then approved a paper (Document 11) setting out changes to the framework for the terms and conditions of Chief Officers.

The change implemented were that the Chief Constable and Deputy Chief Constable would no longer receive a non-pensionable allowance of £15,000 and £10,000 respectively but would instead received the following allowances:

Medical allowance to be applied at discretion of recipient - £3000

Development allowance to be applied at discretion of recipient - £5000

Business allowance - £4000 for Chief Constable and £2000 for Deputy Chief Constable. This allowance is subject to the condition that they do not submit personal expenses claims (except those to which they are otherwise entitled under Police Regulations) for any amount under £50.

The PA Management Board paper states that the changes were proposed following discussion at which legal advice was available. The paper does include rationale for each element of the payments but not the legal basis for the payments.

In addition at the PA Management Board, bonus payments to the Chief Constable and Deputy Chief Constable were approved for the Chief Constable, and Deputy



Chief Constable for the year 2008/2009 at 50% of the maximum to which they were eligible. The email acknowledged a previous request by the Chief Constable and Deputy Chief Constable not to be considered for a bonus but resolved to pay the bonus payments.

With regard to the business allowance in July 2010 the Chief Constable wrote to the Chief Executive of the Police Authority (Document 12) following his letter dated 22 June 2010 (no copy found). The Chief Constable's letter includes that his understanding of what had been agreed was slightly different and he proposes the following;

- Police Regulations apply to claims for expenses
- Corporate Credit cards will be used for accommodation (when no pre-booked), meals as per police regulations (reasonable expenditure) this will reflect the standard of accommodation, rank etc. Corporate hospitality, travel (when not pre-booked), vehicle parking etc and any other corporate uses
- Covered by the allowance will be a) Incidental minor case expenses (under £10) e.g. cash only car parks, taxi fares under £10, dry cleaning, light beverages
- b) expenses occurred outside HQ associated with social and ceremonial duties up to a maximum of £50
- c) any claims for lunches

- Changes to terms and conditions in 2011

i) The standard terms and conditions were amended by a version of the NYPA Terms and Condition of Service for Chief Police Officer (amended March 2011) (Document 13). In particular this changed the development allowance to be payable as receipted expenditure and changed the way in which the Business allowance was written up as follows:

***Business Allowance*** – created for the Chief and Deputy Chief Constable positions. The posts entail a considerable amount of travelling and attendance at professional and civic events, locally, regionally, nationally and increasingly internationally. When attending such events, the CC and DCC are representing North Yorkshire Police and sometimes the area of North Yorkshire and York. These elements of the duties of the post normally entail a considerable amount of cumulative personal expenses which is covered by an annual non-pensionable allowance, paid monthly as part of salary, of

*£4,000 for the Chief Constable and £2,000 for the Deputy Chief Constable. It is understood and agreed by the post holders that this allowance is provided strictly on the basis as set out as follows*

*Claimable as individual claims (either by use of force charge card or claimed reimbursement)*

- 1. Accommodation (where not prebooked by HQ)*
- 2. Travel (where not prebooked by HQ)*
- 3. Meals on the basis that the first £5 (breakfast and/or lunch) or £10 (dinner) will be paid by extension of the application of the 'reasonable expenditure' provisions applicable. These are the limits applicable to police staff. There are no limits set out for officers but it could be considered that the set out rate for staff sets an agreeable level.*

*Not to be claimed (covered by the allowance)*

- 1. Subject to (3) above, the cost of meals.*
- 2. Any other individual instance of incidental expense below £50.*

ii) A letter dated 4 April 2011 from NYPA Chief Executive (Document 14) informs Mr Maxwell that the PA Management Board have agreed with his suggestion that the current Development allowance should from 1 May 2011 cease to be paid as part of salary but instead a sum of up to £5,000 per annum will be made available to the officer concerned to pay for receipted expenditure for the purpose of which the allowance is intended.

The letter also informs Mr Maxwell that in respect of private medical insurance, members decided to change the scheme to treat these allowances in a similar way to the Development allowance but that this change will take effect for any current and new vacancies.

- Departure in May 2012

An offer was made by the Police Authority to pay £8000 towards the Chief Constables re-training (Documents 15 and 16). The correspondence on this issue is

not complete but no reference has been found to the legal basis for such payment. Although this may appear to of a generous/ex gratia nature as detailed later in this report the payment had a sound regulatory foundation.

**Deputy Chief Constable Adam Briggs**

Mr Briggs was the DCC for all or part of the years covered by the review until his departure in February 2011.

Note – the changes made to the terms and conditions of the Chief Constable and DCC are set out in the section above relating to Mr Maxwell. These changes are also applicable to Mr Briggs but are not repeated below.

- Appointment in 2007

i) The appointment of Mr Briggs as DCC was confirmed by the PA Leadership Board held on 27 April 2007 (Document 17).

ii) In a letter dated 7 June 2007 from NYPA Chief Executive (Document 18) the terms and conditions offered include that conditions of service will be in accordance with Police Act 1996, the Police Regulations 2003 and the latest PNB agreement on pay and conditions of service of Chief Police Officers.

In relation to allowances the letter states that these will be payable in accordance with the Police Regulations 2003 in addition to salary. In addition the Police Authority has in place some local allowances for Chief Officers of Police. The letter sets out the detail of these which are

- ACPO and CPOSA membership costs and personal liability insurance through CPOSA
- Up to £3000 towards the cost of private medical care subject to evidence on request that personal private medical cover is maintained
- A force vehicle and an allowance towards the purchase of a further vehicle – current appropriate vehicle set out in letter, and amount £29,337.
- Removal expenses up to £12,000.

The letter states that the Chief Executive knows that Mr Briggs wishes to discuss the possible replacement or amendment of the local allowances and the letter is therefore described as being without prejudice to those discussions.

This letter does not include any reference to the legal basis for the local allowances with the exception that removal expenses are in accordance with the Police Regulations.

iii) In a letter dated 4 July 2007 from NYPA Chief Executive (Document 19) there is reference to a letter of 30 April offering the post (however same letter on file one dated 14 May and one dated 7 June 2017). This letter includes the following allowances:

1. The post of membership of the Association of Chief Police Officers, the Chief Police Officers Staff Association, will be borne by the PA. This includes the cost of personal liability insurance cover provided through CPOSA, and in the event of retirement from the police service immediately after the end of appointment, for a period of six years thereafter.
2. An annual non-pensionable allowance of £10,000 paid monthly as part of salary to cover the cost of private medical insurance, personal development and private vehicle costs. The letter includes that 'whilst it is intended to cover these issues, expenditure on these items is entirely at the discretion of the post holder'.
3. The post holder will be provided with a Force vehicle or an allowance toward the purchase of a vehicle in accordance with terms and conditions as prescribed. The appropriate vehicle is set out and the equivalent monetary value is £29,337.
4. Agreement to meet the cost of reasonable enhanced security commensurate with any risk you personally assume in connection with this post.

The letter sets out that the conditions of service and allowances as being those in the Police Act 1996, the Police Regulations 2003 and the latest PNB agreement on pay and conditions of service of Chief Police Officers. However in terms of allowances the letter includes the following:

*'Subject to the provisions set out below, allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition to salary'*

The provisions set out below in the letter are the terms listed at 1-4 above. This letter does not set out the legal basis for payments made at points 1-4.

**Tim Madgwick – Assistant/Deputy and Temporary Chief Constable**

- Appointment as Assistant Chief Constable in October 2009
- i) At the PA Management Board on 25 September 2009 (Document 20) it was resolved that Mr Madgwick would be appointed an ACC with North Yorkshire Police.
- ii) In a letter dated 1 October 2009 from NYPA Chief Executive (Document 21), the appointment is confirmed and the letter sets out as follows:
- Starting salary of £88,470 in accordance with the latest PNB agreement (point 1 on ACC pay scale)
  - The followings specific terms are set out
1. The cost of membership of the Association of Chief Police Officers, the Chief Police Officers Staff Association, will be borne by the PA. This includes the cost of personal liability insurance cover provided though CPOSA, and in the event of retirement from the police service immediately after the end of appointment, for a period of six year thereafter.
  2. Up to £3000 towards the cost of private medical care subject to evidence on request that personal private medical cover is maintained
  3. The post holder will be provided with a Force vehicle or an allowance toward the purchase of a vehicle in accordance with terms and conditions as prescribed. The monetary value of the allowance is set at up to £30,000 for ACC's.

The letter further sets out that Mr Madgwick will be required to participate in the Chief Police Officer PDR and Bonus Scheme in accordance with the PNB agreement of 2004, and that incremental progression up the national ACC pay scale will be determined annually as a result of the PDR process and in accordance with the national agreement on Bonus payments.

In relation to allowances the letter includes the following:

*'Allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition to salary.*

*In addition the Police Authority has some additional local allowances for Chief Officers of Police. These conditions of service are reviewed on a biennial basis – the next review taking place in May 2011 – but currently are as follows'*

The local allowances are then set out and are the terms listed at 1-3 above. This letter does not set out the legal basis for payments made at points 1-3.

- Appointment as T/Deputy Chief Constable in September 2011

i) At a PA Management Board on 29 July 2011 (Document 22) it was resolved that Mr Madgwick would be appointed as T/DCC with a further round of recruitment to fill the post permanently to take place in December 2011.

It has not been possible to locate documents setting out the terms and conditions of the appointment.

- Appointment as Deputy Chief Constable in December 2011

i) At a PA Management Board on 8 December 2011 (Document 23) it was resolved that Mr Madgwick would be appointed as Deputy Chief Constable.

A letter was sent to Mr Madgwick setting out the terms and conditions of appointment from the PA Chief Executive in December 2011 (date unknown) (Document 24). This letter set out the terms as follows:

- the Conditions of Service shall be those that are in force at the commencement of the appointment as prescribed in the Police Act 1996 (as amended) and the Police Regulations 2003 as amended or replaced before or during the period of the appointment and/or as set out in the latest PNB agreement on pay and conditions of service of Chief Police Officers.

-Allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition



to the salary. In addition, the Police Authority has in place some additional local allowances for Chief Officers of Police, as set out in the attached **Appendix**.

- the cost of membership of the Association of Chief Police Officers and the Chief Police Officers Staff Association will be borne by the Police Authority (to include the cost of personal liability insurance cover provided through the Chief Police Officers Staff Association and the Superintendents Association in respect of previous service in the Superintendent ranks during the term of the appointment and, in the event of retirement from the police service immediately after the end of the appointment, for a period of six years thereafter)'.

The Appendix is a document entitled NYPA Terms and Conditions of Service for Chief Police Officers (amended March 2011) (Document 13). The start of the document is two paragraphs which repeat that conditions of service are as prescribed by the Police Act 1996, the Police Regulations 2003 and the latest PNB agreement on pay and conditions of service of Chief Police Officers, and repeat that allowances to which the post holder is entitled are those payable in accordance with the Police Regulations 2003.

The document then sets out a series of allowances, but does not provide a specific legal basis for each element with the exception of removal allowance which the post holder will be due in accordance with the Police Regulations

The allowances are

- payments in respect of the staff associations
- medical allowance
- car allowance
- development allowance (for Chief Constable and DCC only)
- business allowance (for Chief Constable and DCC only).
- removal/relocation allowances
- uniform

The document includes that the scheme is in force until December 2012 and the Police Authority will not be prepared to vary this scheme to accommodate individual circumstances.

- Appointment as Temporary Chief Constable in May 2012

i) Following the retirement of Chief Constable Maxwell in May 2012 Mr Madgwick as the Deputy Chief Constable became Acting Chief Constable due to the provisions of the Police Act s12.

ii) A letter was sent to Mr Madgwick setting out the terms and conditions of this appointment from the PA Chief Executive in or around May 2012 (date unknown) (Document 25). This letter set out that Mr Madgwick;

- would not be afforded the Chief Constable's car allowance during this temporary appointment but would continue on the DCC's car allowance
- All the other allowances and conditions to which the Chief Constable would be entitled will be available to you for the period of your appointment<sup>3</sup>.

As this was a temporary promotion to the rank of Chief Constable there were two ways in which the salary increase could be implemented. This was discussed at a PA Management Board on 15 June 2012 (Documents 26 and 27) and the at meeting of the PA Management Board on 23 July 2012 (Documents 28 and 29) when it was resolved

a) That, during his term of temporary office, T/CC Madgwick be offered two options for the method of remuneration and for him to confirm his preferred choice to the Police Authority:

- An honorarium payment of £8,000 OR
- The payment of a salary of £117,782 in which case T/CC Madgwick would bear any extra tax liability incurred

b) That T/DCC Madgwick be reimbursed £375 of the cost of him seeking independent financial advice relating to his temporary position.

iii) In a letter to the PA Chief Executive dated 27 July 2012 (Document 30) Mr Madgwick confirms that he wishes to receive an annual non pensionable £8000 honorarium.

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<sup>3</sup> The allowances taken are set out later in this report at section 3

**Sue Cross – Assistant Chief Constable and Temporary Deputy Chief Constable**

- Appointment as A/ACC in September 2008

i) In a letter dated 23 September 2008 from NYPA Chief Executive (Document 31) the appointment as Acting ACC is confirmed as commencing 4 September 2008. The letter sets out that 'all condition of service during appointment will be in accordance with Police Regulations and in particular salary will be in accordance with Police Regulations 24 and with the Home Secretary's determination Annex F (Part 8)(i).

The only specific condition itemised in the letter is that the ACC will be provided with a motor vehicle for official duties at the Chief Constables discretion.

There is no reference to the legal basis for the provision of a vehicle in this letter.

- Appointment as Assistant Chief Constable in December 2008

i) At a meeting of the PA Management Board on 31 October 2008 (Document 32) it was resolved that Sue Cross would be appointed as the ACC from 1 December 2008.

ii) No records can be found setting out the terms and conditions of this appointment

- Appointment as T/DCC from February 2011

For a short period in 2011 Sue Cross was temporarily appointed to the role of DCC following the retirement of DCC Briggs. No record can be found of the terms of this appointment except an email from Graham Hartley (Head of Pay and Pensions) (Document 33) which questions whether there is an entitlement under this temporary arrangements to development and business allowance under the agreement reached by the PA management Board on 11 December 2009.

No record of the response to this email has been located.

- Secondment to NPIA from 9 January 2012 to March 2012

The terms of this secondment were set out in a letter from NPIA dated 11 October 2011 (Document 34).

- Appointment as T/DCC from May 2012

i) A letter of 27 July 2012 from NYPA Chief Executive (Document 35) includes a paragraph from the Police Regulations as follows;

*'After 28 consecutive days of being required to perform the duties normally performed by a member of the force of a higher rank than his own, an officer of a substantive rank of or above ACC will be paid at a rate equivalent to 90% of the higher ranks basic pay or receive an honorarium of an amount determined by the police authority'.*

The Authority therefore offered a choice of 90% which equated to £98,803.80 or an annual honorarium of £3021 (which would take remuneration to top of ACC scale). (Documents 28 and 29)

No other amendment to conditions is included in letter.

ii) An email dated 12 June 2012 from NYPA to Chief Executive (Document 36) to ACC Cross includes that there will be no change to the substance of local conditions, the only possible difference would be access to the Business Allowance and includes that if this is specifically required such access could be authorised separately.

**Assistant Chief Constable Iain Spittal**

- Appointment as A/ACC in September 2011

i) At a PA Management Board on 29 July 2011 (Document 22) it was resolved that Mr Spittal would be appointed as A/ACC, due to the temporary promotion of Mr Madgwick from ACC to T/DCC prior to with a further round of recruitment to fill the post of DCC permanently to take place in December 2011.

No record can be found of the terms of this appointment.

- Appointment as ACC in April 2012

i) At a PA Management Board on 16 April 2012 (Document 37) it was resolved that Mr Spittal would be appointed as Assistant Chief Constable.

ii) In a letter dated 20 April 2012 from NYPA Chief Executive (Document 38) Mr Spittal is formally offered the post and the letter sets out that the conditions of service are those in the Police Act 1996, the Police Regulations 2003 and the latest PNB agreement on pay and conditions of service of Chief Police Officers.

It further includes the following in relation to allowances;

*'Allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition to salary.*

*In addition the Police Authority has some additional local allowances for Chief Officers of Police. These conditions of service are reviewed on a regular basis – the next review taking place in December 2012 – but currently are as set out in the attachment to this letter'.*

The attachment is a document entitled NYPA Terms and Conditions of Service for Chief Police Officers (amended March 2011) (Document 13). The start of the document is two paragraphs which repeat that condition of service are as prescribed by the Police Act 1996, the Police Regulations 2003 and the latest PNB agreement

on pay and conditions of service of Chief Police Officers, and repeat that allowances to which the post holder is entitled are those payable in accordance with the Police Regulations 2003.

The document then sets out a series of allowances, but does not provide a specific legal basis for each element with the exception of removal allowance which the post holder will be due in accordance with the Police Regulations

The allowances are

- staff associations
- medical allowance
- car allowance
- development allowance (for Chief Constable and DCC only)
- business allowance (for Chief Constable and DCC only).
- removal/relocation allowances
- uniform

The document includes that the scheme is in force until December 2012 and the Police Authority will not be prepared to vary this scheme to accommodate individual circumstances.

**Assistant Chief Constable David Collins**

- Appointment as Acting ACC in January 2004

i) In a letter from the Chief Executive of the PA dated 9 January 2004 Mr Collins is informed of his appointment. Terms were set out in document headed Appointment of David Collins as Temporary Assistant Chief Constable of North Yorkshire Terms and Conditions of Appointment.

These terms were then superseded by those on his substantive appointment to the role in October 2004 (see below).

- Appointment as Assistant Chief Constable in October 2004

i) At a PA Leadership Board on 17 September 2004 (Document 39), it was resolved that Mr Collins would be appointed as ACC.

ii) In a letter of 12 October 2004 from NYPA Chief Executive (Document 40) the appointment is confirmed and includes that conditions of service would be those prescribed by the Police Act 1996, the Police Regulations 1995, and Police Pension Regulations 1987 and as amended or replaced during the period of appointment. The letter further includes that

*Allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition to salary.*

The letter then sets out specific allowances

1. The cost of membership of the Association of Chief Police Officers, the Chief Police Officers Staff Association, will be borne by the PA. This includes the cost of personal liability insurance cover provided through CPOSA, and in the event of retirement from the police service immediately after the end of appointment, for a period of six years thereafter.

2. Equivalent monetary value of the cost of cover under the Police Federation Private Medical Scheme as a contribution towards the cost of medical insurance from any provider, subject to the production to the Police Authority on request of evidence that personal private medical cover is maintained.

3. The post holder will be provided with a Force vehicle or an allowance toward the purchase of a vehicle in accordance with terms and conditions as prescribed.

4. Reasonable removal expenses up to £12,000.

The letter does not make reference to the legal basis for these payments with the exception of 4 which it is included is to be paid in accordance with the Police Regulations.

The allowances are also set out in a document headed Appointment of David Collins as ACC (Territorial Policing) Terms and Conditions of Appointment in Mr Collins personal file however this is not signed. As with the letter with the exception of removal expenses the document does not set out the legal basis for payment of these allowances.

No documents have been located showing changes to any of above terms and conditions prior to date of his departure from NYP in October 2009.



**Assistant Chief Constable Bagshaw**

- Appointment as Assistant Chief Constable in March 2000

i) On appointment terms and conditions were set out in a document headed 'North Yorkshire Police Authority Appointment of Peter Howard Bagshaw BA (Hons) as ACC of North Yorkshire Police Terms and Conditions of Appointment' (Document 41)

The document set out the following terms;

- Allowances payable under the Police Regulations – Allowances to which the ACC is entitled during the Period of Appointment will be payable in accordance with the Police Regulations 1995 (as amended) in addition to salary.
- Membership Fees and Personal Liability Insurance - The cost of membership of the Association of Chief Police Officers and the Chief Police Officers Staff Association will be borne by the Police authority (to include the cost of personal liability insurance cover provided through the Chief Police Officers Staff Association during the term of appointment and in the event of retirement from the police service immediately after the end of the appointment, for a period of six year thereafter).
- Provision of Telephone Facilities – reimbursement of the cost of rental of a telephone line and handset at the officers' home address, together with a contribution of £50 per quarter towards official calls. And provision of a mobile phone – private calls to be reimbursed to the Police Authority with a contribution towards the airtime contract for such calls.
- Provision of a vehicle – vehicle to be provided up to the maximum value and in accordance with the terms and conditions prescribed from time to time on behalf of the Police Authority.
- Premiums for Health Insurance - Equivalent monetary value of the cost of cover under the Police Federation Private Medical Scheme, as a contribution towards the cost of medical insurance from any provider, subject to the production to the Police Authority on request of evidence that personal private medical cover is maintained.

There are no documents on Mr Bagshaw's personal file to indicate that the terms and conditions of service were amended prior to his retirement in September 2008.

**Acting Assistant Chief Constable Steven Read**

- Appointment as Acting ACC in November 2006

In a letter dated 28 November 2006 from NYPA Chief Executive (Document 42) the appointment as Acting ACC is confirmed from 20 December 2006 and the letter encloses a copy of terms and conditions of appointment (Document 43). These accompanying terms and conditions include that

- conditions of service would be those prescribed by the Police Act 1996, the Police Regulations 1995, and Police Pension Regulations 1987 and as amended or replaced during the period of appointment. The letter further includes that

- Allowances to which the post holder is entitled during the period of employment will be payable in accordance with the Police Regulations 2003 (as amended) in addition to salary.

A number of specific allowances are set out:

1. The cost of membership of the Association of Chief Police Officers, the Chief Police Officers Staff Association, will be borne by the PA. This includes the cost of personal liability insurance cover provided through CPOSA, and in the event of retirement from the police service immediately after the end of appointment, for a period of six year thereafter.
2. Reimbursement of cost of rental of telephone line (and handset) at the officers home address, together with a contribution of £50 per quarter towards official calls.
3. A mobile phone will be supplied. All private calls made on the mobile will be reimbursed to the Police Authority, together with a proportional contribution towards to airtime contract for such calls.
4. The post holder will be provided with a Force vehicle or an allowance toward the purchase of a vehicle in accordance with terms and conditions as prescribed.

The document does not make reference to the legal basis for these payment set out above at 1-4.

The records suggest that Mr Read had a gap in his period of acting up but was then Acting ACC again in 2009/10 (Document 44) however no documents have been found showing the terms of the subsequent appointment.

**Miscellaneous matter relating to Term of Reference 2****i) Other Payments**

There are some elements of payments made to chief officers which it is not to be expected would be referred to in their terms and condition of appointment for example an allowance to which they are entitled to due to their status as a constable regardless of their rank such as replacement housing allowance, or which may have been agreed for a particular matter. Any payments of this latter type which it has been found have been paid are particularised in section 3 below.

**ii) Recent Guidance from Home Office**

In September 2013 the Home Office issued a note setting out their interpretation of the powers and regulatory provision applicable to Chief Officer pay and allowances (Document 45)

**RECOMMENDATION 1**

- *That records in respect of decisions reached about Chief Officer remuneration, performance and conduct matters (along with details of the documentation considered and the reasons for such decisions) should be recorded in writing and maintained in personnel files held by the Police & Crime Commissioner (in respect of the Chief Constable) or the Chief Constable (in respect of Deputy and Assistant Chief Constables).*

## 2. Summary of previous specialist advice taken on this topic

During the period, legal advice was not routinely taken on Chief Officer terms and conditions. It was the common understanding of Police Authorities (and those who advised them) that the general power afforded to local authorities under s111 Local Government Act 1972, provided a basis for paying additional allowances to Chief Officers.

Two instances of specific advice taken have been identified.

- Advice from the Force Solicitor in 2009

This advice was provided to the Chief Executive by the Force Solicitor in 2009 at the request and with the mutual consent of the Chair of the Police Authority and the Chief Constable, in order to assist the Chief Executive with resolving a dispute between the Authority and the Chief Constable about adjustments to the scheme of allowances afforded to the Chief Constable. That advice was in part not supported by (in so far as it related to Development Allowances) the later specialist advice taken in 2011 from Leading Counsel. In the course of undertaking this Review, the Force Solicitor has given assurances to both the Commissioner and the Chief Constable as to the bona fides of the earlier advice.

- Advice of Mr James Watson QC in respect of the development allowance paid to Chief Constable Maxwell received in September 2012 (Document 46)

Leading Counsel was instructed to advise the Authority in connection with the District Auditor's concern about the lawfulness of a small sum in allowance paid to Chief Constable Maxwell during the 2011/12 financial year. His Advice incorporated a thorough review of the legal environment which has proved to be of continuing value in connection with the matters under consideration in this review. Counsel concluded that the legal regime was far more restrictive than had previously been understood to be the case. Of particular note and a change to the way in which the law that been thought by many to apply, is that the advice is clear that payment of an allowance which is not sanctioned by a determination to the Police Regulations will be ultra vires.

In summary the advice concluded that the circumstances in which payment by way of allowance or expense to chief officers were or could be argued to be lawful were:

- allowances or expense paid under the provisions of the Police Regulations 2003 and specifically regulations 34 and 35 and determinations thereto.
  
- in very limited circumstances an Authority could have contemplated reliance upon the general power under s111 of the Local Government Act 1972, due to the residual discretion upheld by the House of Lords in the case in Shields (In Re Shields [2003] UKHL 3). This may include for example a decision to make payment for a specific training course which the officer will then pay to a third party to provide such training.

This general power is preserved and transferred to the Police and Crime Commissioner (paragraph 14 of Schedule 1 to the Police Reform and Social Responsibility Act 2011), along with the duty to secure the maintenance of the police force for that area, and secure that the police force is efficient and effective (s1(6) Police Reform and Social Responsibility Act 2011). The equivalent general power in respect of the Chief Constable is found in paragraph 7 of Schedule 2 of the Police Reform & Social Responsibility Act 2011.

- reimbursement of expenses where the Authority has (a) expressly or impliedly authorised that kind of expense and/or limits applicable claims of such expenses (b) is satisfied that the expense is indeed one which has been in fact incurred in connection with the execution of the officers' duty and (c) has verified the expenditure claimed in the normal manner applying such expenses e.g. against receipts.

This would be the reimbursement of expenses not catered for by the provision of regulation 34 or 35 and therefore can lawfully be paid if the correct approach is taken to payment, by virtue of regulation 34(3).

**3. Is there any doubt about lawfulness of any elements of the payment made and if so what is that doubt?**

**a) Salary**

- **Basic Salary**

This element has been paid to all chief officers.

There is no doubt about lawfulness of the element of payment of basic salary.

The basic salary payable to the all members of police forces is determined by the Secretary of State in accordance with Regulation 24 of the Police Regulations 2003. This is implemented by way of determination to Regulation 24 and specifically in relation to Chief Officers this is found at Annex F. Any pay awards are documented in Police Negotiating Board Circulars. The determination is then formally updated by way of Home Officer Circular which implements the PNB Circular (if agreed by the Secretary of State).

Each force has a weighting and the level of pay is set for each Chief Officer rank in accordance with the weighting. For Chief Constables and Deputy Chief Constables a fixed rate throughout the applicable period, for Assistant Chief Constables there is a range through which there can be incremental progression. Individual incremental progressions have not been scrutinised as part of this review.

All salaries paid to Chief Officers holding the post on a permanent basis within the period subject to review have been in accordance with the salaries set by the Secretary of State and have therefore been lawful. Temporary appointment will be considered separately.

Note: this section covers basic salary, any element of payment or allowance which may have been described as being paid as part of salary is considered below.

- **Salary while in temporary role**

Annex I to Regulations 27 of the Police Regulations at that time provided that

'After 28 days consecutive days of being required to perform the duties normally performed by a member of the force of a higher rank than his own, an officer of the substantive rank of or above assistant chief constable will be paid at a rate equivalent to 90% of the higher rank's basic pay or receive an honorarium of an amount determined by the police authority'

The records show that those officers in these circumstances have been paid in accordance with the regulatory provisions.

#### Documents

Document 47 - Table of Salaries payable in North Yorkshire and supporting regulatory material

Document 48 - Print out of salaries for each Chief Officer in review period

#### **b. Business Allowance**

This was an annual allowance of £4000 for the Chief Constable and £2000 for the Deputy Chief Constable. It was paid to Chief Constable Maxwell and Deputy Chief Constable Briggs between 1 January 2010 and the dates of their respective departures from NYP.

This allowance is described in the Police Authority Management Board Paper – Chief Officer Conditions of Service 11 December 2009 as being;

*'created for the Chief and Deputy Chief Constables positions. The posts entail a considerable amount of travelling and attendance at professional and civic events, locally regionally, nationally and increasingly internationally. When attending such events the CC and DC are representing North Yorkshire Police and sometimes the area of North Yorkshire and York, These elements of the duties of the post normally entail a considerable amount of cumulative personal expenses which it is suggested should now be covered by an annual allowance - on the basis that both the Chief Constable and Deputy Chief Constables do not from henceforth submit personal expense claims (except those to which they are otherwise entitled under Police Regulations) for any amount under £50.'*



In July 2010 the Chief Constable wrote to the Chief Executive of the Police Authority following his letter dated 22 June 2010 (no copy found). The Chief Constables' letter states his understanding of what had been agreed was slightly different and he proposes the following;

- Police Regulations apply to claims for expenses
- Corporate Credit cards will be used for accommodation (when no pre-booked), meals as per police regulations (reasonable expenditure) this will reflect the standard of accommodation, rank etc. Corporate hospitality, travel (when not pre-booked), vehicle parking etc and any other corporate uses
- Covered by the allowance will be a) Incidental minor case expenses (under £10) e.g. cash only car parks, taxi fares under £10, dry cleaning, light beverages
- b) expenses occurred outside HQ associated with social and ceremonial duties up to a maximum of £50
- c) any claims for lunches

In March 2011 the standards terms and conditions were amended by the Police Authority and the business allowance was then written up as follows;

***Business Allowance*** – created for the Chief and Deputy Chief Constable positions. The posts entail a considerable amount of travelling and attendance at professional and civic events, locally, regionally, nationally and increasingly internationally. When attending such events, the CC and DCC are representing North Yorkshire Police and sometimes the area of North Yorkshire and York. These elements of the duties of the post normally entail a considerable amount of cumulative personal expenses which is covered by an annual non-pensionable allowance, paid monthly as part of salary, of £4,000 for the Chief Constable and £2,000 for the Deputy Chief Constable. It is understood and agreed by the postholders that this allowance is provided strictly on the basis as set out as follows

Claimable as individual claims (either by use of force charge card or claimed reimbursement)

1. Accommodation (where not prebooked by HQ)
2. Travel (where not prebooked by HQ)
3. Meals on the basis that the first £5 (breakfast and/or lunch) or £10 (dinner) will be paid by extension of the application of the 'reasonable expenditure' provisions

*applicable. These are the limits applicable to police staff. There are no limits set out for officers but it could be considered that the set out rate for staff sets an agreeable level.*

*Not to be claimed (covered by the allowance)*

- 1. Subject to (3) above, the cost of meals.*
- 2. Any other individual instance of incidental expense below £50.*

There is no specific regulatory provision for the payment of a business allowance. However some of the types of payments anticipated to be covered by this allowance are ones which would more usually be described as expenses.

Regulation 35 of the Police Regulations 2003 provides that the Secretary of State shall determine the entitlement of members of a police force to reimbursement of any expenses incurred by such a member in or in connection with the execution of his duty.

Annex V to Regulation 35 is the determination dealing with expenses, and includes in the section dealing with food and accommodation expenses at paragraph 3)e) that 'A member of a police force shall, if he requests, be given an advance to cover, as far as practicable, probable expense of duty away from his usual place of duty'.

Whilst we do not know the details of what this allowance was in fact spent on because it was not a requirement that receipts be produced, it appears that at least some of this allowance was to cover the types of expenses which would otherwise have been legitimately subject to a claim after they had been incurred, and the determination does allow for payment in advance of at least some of those expenses.

Other expenses are likely to have been lawfully paid by the Police Authority under the provisions of both regulation 34(3) and Section 111 because it represents in principle an expense authorised by the Authority which is neither an allowance nor an expense which is the subject of a determination by the Secretary of State under Regulation 34 or 35. However paying them in advance may cause difficulty in maintaining the argument of lawfulness because there is no system of showing that the

allowance (and therefore expenditure) was in connection with the execution of duty. Whilst it is set out in terms which link it to the execution of duty, there is no system of producing receipts so far as we are aware, and the amounts in question may well be seen to be in excess of what is necessary to cover low level incidental expenses when the majority of expenses are still paid either by booking through force system such as transport and accommodation, or still claimable as separate expenses.

An examination of the expense claims of Chief Constable Maxwell and Deputy Chief Constable Briggs during the years in which they received the business allowances shows that claims were made for expenses under £50 on several occasions, however it is not possible from the way in which the expenses are categorised and recorded to easily establish whether such claims should in fact not have been made as they were covered by the allowance.

The total claims by Chief Constable Maxwell for amounts under £50 was £792.62 and for Deputy Chief Constable Briggs was £530.68.

In summary there is doubt not only about the lawfulness of this allowance, but about whether it was financially coherent; it appears to have cost more money than it could ever have been expected to save.

#### Documents

Document 49 - Police Regulations 2003 Regulations 34 and 35 (The copy included is the version amended in 2011 to reflect the appointment of PCC's, the substance however remains the same)

Documents 50 and 51 - Spreadsheet of expenses paid to Chief Constable Maxwell and DCC Briggs under £50 during period allowance paid

#### **c. Central Service Allowance**

This allowance was paid to ACC Cross during financial year 2012-2013 in respect of a three month secondment to NPIA. ACC Cross was paid on the annual £2022 allowance pro rata and therefore received approximately £500.

This allowance has a lawful basis as set out in a Home Office document headed Home Office – Central Service – A Guide to Conditions of Service for Police Officers Seconded to Central Service.

This document sets out that the regime of terms and conditions for officers set out in the Police Regulations 2003 does not apply to those seconded to central service but that conditions will be those determined by the Home Office.

In addition the Guide provides a specific authority for payment of a 'Central Service Allowance'. This allowance may be paid to those seconded to central service as compensation for working long hours, domestic disruption or for recognition of certain skills. The level of allowances is contained within the document at £2022 annually for an ACC seconded to Centrex (the NPIA's predecessor). Although the document refers to an annual uplift, no home office documents can be located which include the any uplift has been implemented.

There is therefore no doubt about the lawfulness of this element of pay as the Police Regulations 2003 are specially dis-applied to these circumstances and the payment has been made in accordance with the scheme which replaces the Regulations while on secondment to central service. In addition NYP paid this allowance in accordance with the terms of secondment as set out in a letter from NPIA.

#### Documents

Document 52 – Extract from Home Office Central Service A Guide to Conditions of Service for Police Officers Seconded to Central Service

#### **d. Private Medical Insurance**

An allowance to cover the cost of private medical insurance has been paid in 4 ways during the period under review. Any doubt about the lawfulness therefore needs to be considered in respect of the particular features of how the allowance has been paid.

i) ACC's Bagshaw and Collins

When appointed their terms includes that they would be entitled to *'the equivalent of the monetary value of the cost of cover under the Police Federation Private Medical Scheme for a single member as a contribution towards cost of medical insurance from any provider, subject to the production to the Police Authority on request of evidence that perusal private medical cover is maintained'*.

It appears from the files that at an unknown date both ACC's were subsequently moved to being paid this allowance in the terms offered to Mr Maxwell and Mr Briggs in 2007 but which they were not appointed. As far as can be established this was the standard term by 2007 which appears to have been applied to the ACC's but departed from when Mr Maxwell and Mr Briggs were appointed.

*'The postholder will be entitled to an allowance of up to £3000 per annum towards the cost of appropriate private medical insurance for either the post holder or the post holder and immediate family at the discretion of the Chief Constable or Police Authority as appropriate  
From any provider subject to the production to the Police Authority on request of evidence that personal private medical cover is maintained'*.

The remuneration report shows that in 2008/9 ACC Bagshaw received £1000 and ACC Collins £3000. Then in 2009/10 ACC Collins received £3000.

ii) Upon their appointments this allowance was paid to Chief Constable Maxwell and DCC Briggs as part of an annual non-pensionable allowance of £15,000 in respect of Chief Constable Maxwell and £10,000 in respect of DCC Briggs. This allowance was described in the letters to both setting out their terms and conditions as follows:

*'The post holder will be entitled to an annual non-pensionable allowance of [£15,000/£10,000], paid monthly as part of salary, to cover the costs of private medical pension insurance, personal development costs and private vehicle costs, Whist intended to cover these issues, expenditure on these items is entirely at the discretion of the post holder'*.

iii) Then as of 1 January 2010 a revised scheme of conditions of service was implemented and the annual non-pensionable allowance was replaced by separate element of allowance including a medical allowance as follows (as set out in the Police Authority Management Board paper 11 December 2009 which recommends the change):

*'Medical allowance to be applied at the discretion of the recipient – as currently. £3000 for all Chief Police Officer positions. The differential between this and the Chief Finance Officer post (which has the benefit of a Police Staff Medical cover scheme) is clearly the operational nature of the Chief Police Officer position and the additional risks this presents'*

The Chief Officers who were in receipt of the allowance in this form were: Chief Constable Maxwell, DCC Briggs, ACC/DCC/TCC Madgwick and ACC/DCC Cross. The remuneration reports show that they all received an allowance of £3000 from 2010/11 onwards with the exception of Mr Madgwick who has received £1000 for 2012/13.

However there is a lack of clarity in the documents as to the payment of this allowance in respect of ACC/DCC/TChief Constable Madgwick and ACC/TDCC Cross during this period because this change was to be implemented from January 2010 and still allows the element of discretion in its application by the recipient. However in the individual terms on appointment the following paragraph was included prior to the date of this change. Mr Madgwick's appointment letter as ACC in October 2009 included

*'The postholder will be entitled to an allowance of up to £3000 per annum towards the cost of appropriate private medical insurance for either the post holder or the post holder and immediate family at the discretion of the Chief Constable or Police Authority as appropriate*

*From any provider subject to the production to the Police Authority on request of evidence that personal private medical cover is maintained'.*

iv) From March 2011 the terms of this allowance became

*'The Authority will reimburse the post holder (upon receipt of proof of expenditure) up to a maximum of £3000 per annum towards the cost of appropriate private medical insurance for either the post holder or the post holder and immediate family at the discretion of the Chief Constable or Police Authority as appropriate*

*From any provider subject to the production to the Police Authority on request of evidence that personal private medical cover is maintained'.*

The only Chief Officer to be appointed after this date was ACC Spittal and therefore subject to this system of payment of the allowance (others were promoted but not appointed). Mr Spittal was asked for proof of expenditure in May 2012. The remuneration report shows that he received approximately £300 in total by way of this allowance during his service as ACC with NYP.

With regard to all payments of an allowance to cover private medical insurance there is doubt as to the lawfulness.

There is no specific provision for this allowance in the regulatory regime.

In respect of this element of payment it is important to note that the advice obtained from Mr James Watson QC is of relevance because although he was specifically asked about the non pensionable allowance in the context of the development aspect, with regard to ii) above payment for medical insurance was part of the non pensionable allowance upon which advice is provided.

With regard to payment at ii) above on the basis of Mr Watson's advice, there is significant doubt about the lawfulness of any payment made for private medical insurance where this has been paid as part of a salary top of or non pensionable allowance to be applied at the discretion of the individual.

With regard to i) and iii) which can be taken together, on the basis of the advice of Mr Watson QC there is doubt about the lawfulness of such payments unless such payment could be evidenced as reimbursement of expenses incurred and therefore (lawful both under regulation 34(3) and Section 111) because it represents in principle an expense authorised by the Authority which is neither an allowance nor an expense which is the subject of a determination by the Secretary of State under

Regulation 34 or 35. In addition to this, even were there evidence of such reimbursement then it would further be necessary to show that the expenditure was in connection with the execution of duty.

As the allowance during this period is still described at least in some of the documentary evidence as being for use at the discretion of the recipient and the rate of £3000 has been routinely applied, rather than payment up to £3000 dependent upon the cost of any specific policy obtained, it is difficult to show that the possible lawful basis is available.

Once the change was made that this was to be paid upon receipt of proof of expenditure, if the proof is available then on the basis of the advice of Mr Watson QC it is likely this could be lawfully paid as an expense if it can be shown that the expenditure was in connection with the execution of duty. It seems that a de minimis sum and in the only case that was paid in this category the amount was £300, then it could be said that this is a legitimate area of expense in order to further the efficiency of the force by ensuring that those in the most senior positions have cover in place which allows them to gain access to treatment when needed and avoid any delay in recovery for illness or accident and therefore time away from work.

#### **e) Bonus payments**

These payment have been made to Chief Constable Maxwell and DCC Briggs for financial years 2008/9 (related to performance in year 07/08) and 2009/10 (related to performance year 08/09).

The Chief Officer bonus scheme was introduced by way of PNB Agreement 04/5 which was implemented in Home Office Circular 36/2004. Details of the scheme are found at Annex to the Circular. This Home Officer circular therefore provides the lawful basis of bonus payments to Chief Officers for performance from financial year 2005/6 until the scheme was suspended as a result of the Winsor review.

The scheme allowed for a payment of a non pensionable bonus of up to 15% of pensionable by for Chief Constables, 12.5% for DCC and 10% for ACC's.



In 2008/9 (for performance in 07/08) the bonus payments made were at the rates of 15% for Chief Constable and 11% for DCC.

In 2009/10 (for performance in 08/09) the bonus payments made were at the rates of 7.5% for Chief Constable and 6.25% for DCC.

The bonus payments made therefore have a lawful basis and have been paid at amounts within the scope of scheme.

Notes: 1. The bonus payment scheme sets out the criteria which should be taken into account in determining the bonus payment. This review has not scrutinised the detail of how levels of bonus payments were reached. However the PA did in 2004 set out Guidelines for the payments.

2. In June 2009 the PA Management Board determined that at the request of the Chief Officers a bonus payment would not be made for the year 08/09. However this decision was changed in December 2009 when it was decided that bonus payment would be made.

#### Documents

Document 53 - Police Authority Management Board paper for meeting on 15 June 2009 - Chief Police Officer Bonus Scheme

Document 54 - North Yorkshire Police Authority Chief Officer Bonus Scheme Guidelines and Rationale for Bonus Payments

Document 55 - Minutes of the PA Management Board meeting 15 June 2009

Document 10 - Minutes of the PC Management Board meeting 11 December 2009

#### **f) Removal Expenses**

There is no doubt that in principle payment of removal expenses are a lawful expense within the provisions of the Police Regulations 2003.

This basis for payment of expenses is Regulation 35 of the Police Regulations 2003 which provides at paragraph 1 that 'the Secretary of State shall determine the entitlement of members of a police force to reimbursement of any expenses incurred by such a member on or in connection with the execution of this duty'.

Annex V is the determination to Regulation 35 and sets out the different categories of expense which are payable.

Paragraph 2 of Annex V sets out the circumstances in which an officer is entitled to removal expenses. There have been a number of amendments to this determination since the 2003 Regulations however it has remained the case throughout that where the member moves his home on joining the force in the rank of ACC or higher, then removal expenses shall be paid. Annex V sets out what removal expenses can be made up of and therefore in order to be a lawful expense, payment of removal expenses must be in accordance with this paragraph of Annex V.

Although Chief Constable Maxwell was appointed in 2007 his terms on appointment included that 'rather than a £42,000 allowance the Authority agrees to meet the cost up to £1500 per calendar month of the lease of a suitable property within reasonable travelling distances from Police HQ for an initial period of 12 months. In addition the Authority will meet the cost of reasonable furnishing of the leased property and any personal tax liability incurred under this arrangement'.

This would take these payments into the financial year 2008-9 as 12 months in post is up to 16 May 2008.

However on examining the payment made to Mr Maxwell in respect of his accommodation arrangements the following was paid;

- In respect of a possible purchase of a property which did not take place – payment/or reimbursement of a deposit (later reimbursed), a mortgage application fee and solicitors fees.
- In respect of a rental property from July 2007 to January 2008 reimbursement for or payment of rent for a property in Newby Wiske, and a property in Kirby Fleetham from January 2008 to January 2009.
- Reimbursement in respect of a number of furnishing such as washing machine.
- Tax reimbursement in respect of relocation expenses.

The total cost of these is approximately £23,000.

The file held by the pay department deals with the above as payments in connection with a failed relocation.

However, there is no evidence that this was a failed relocation within the provisions of Annex V as Mr Maxwell was not moving his home at the request the Police Authority nor was the decision not to move his home due to a subsequent decision of the Police Authority. Even if these criteria were met, whilst the payment of a mortgage application fee and solicitors fees may be removal expenses within the meaning in Annex V this can not be said of the subsequent payment or reimbursement of rent for the two properties.

There is no other provision of removal expenses which covers rent when this is not connected or expenditure incurred incidental to a move.

If these are not lawfully removal expense then this brings into doubt not only the payments themselves but any subsequent tax reimbursement.

Outside the removal expense provisions there is no specific regulatory provision or determination authorising such payment as an allowance or expense.

There is therefore doubt about whether there is a lawful basis for this payment unless such payment could be evidenced as reimbursement of expenses incurred and therefore lawful both under regulation 34(3) and Section 111 because it represents in principle an expenses authorised by the Authority which is neither an allowance nor an expense which is the subject of a determination by the Secretary of State under Regulation 34 or 35. However, even were there evidence of such reimbursement then it would further be necessary to show that the expenditure was in connection with the execution of duty. It is suggested this would be difficult to evidence and particularly so in the event that Mr Maxwell carried out this role without this payment after January 2009 with no detrimental impact on the efficiency of the service.

#### **f) Other Expenses**

Basis for payment of expenses Regulation 35 of the Police Regulations 2003. Annex V to Regulation 35 then sets out the different categories of expense which are

payable. In addition to this, as detailed in the advice of Mr James Watson QC expense could be authorised by the Police Authority (both under Regulation 34(3) and Section 111) which are neither an allowance nor an expenses which is subject of determination by the Secretary of State under Regulations 34 or 35.

Payment of expenses have been made in the following categories since financial year 2008/9.

- Travel by air, and cost of transportation – train, taxi's and hire car
- Accommodation
- Meals and incidentals
- Other such as airport tax, telephone, car parking and other costs

All of the above categories are either ones specifically covered by the provision of Annex v namely;

- Expenses for train travel catered for at paragraph 4 to Annex V
- Expenses for accommodation catered for at paragraph 3(c) of Annex V
- Expenses for food are catered at paragraph 3(a) and (b) of Annex V

or they are expenses which the Authority has the power to authorise as set out above. In addition to having this authority it is necessary in order for such payment to be lawful for there to be a mechanism for validating such claims. Such a mechanism in place in NYP for validating such expense which includes a process by which claims are evidence so that the Authority could be satisfied that they have been incurred, and that they have been incurred in connection with the execution of duty.

Note: This review has not scrutinised the individual expense claims by the Chief Officers concerned during the period covered by the review. The lawfulness is assessed on the basis that claims have been made in the above categories and that these claims have been made honestly.

#### **g) Development Allowance**

The allowance has been paid in 3 ways since its introduction.

i) Upon their appointments this allowance was paid to Chief Constable Maxwell and DCC Briggs as part of an annual non-pensionable allowance of £15,000 in respect of Chief Constable Maxwell and £10,000 in respect of DCC Briggs. This allowance was described in the letters to both setting out their terms and conditions as follows:

*'An annual non-pensionable allowance of £15,000/£10,000 paid monthly as part of salary to cover the cost of private medical insurance, personal development and private vehicle costs. The letter includes that 'whilst it is intended to cover these issues, expenditure on these items is entirely at the discretion of the post holder'.*

ii) Then as of 1 January 2010 a revised scheme of conditions of service was implemented and the annual non-pensionable allowance was replaced by separate element of allowance including a development allowance of £5000 per annum as follows (as set out in the Police Authority Management Board paper 11 December 2009 which recommends the change):

*'Development allowance to be applied at the discretion of the recipient – for the Chief and DCC positions. It is argued that the Authority has an obligation on behalf of the service to ensure that the DCC has sufficient developmental opportunities to ensure that they are capable of assuming the Chief Officer rank – thereby continuing to supply a good pool of candidates for future vacancies. Furthermore, the Police Authorities have an obligation to ensure that Chief Police Officers have sufficient opportunity to prepare for a career outside policing once that have reached retirement age. Finally, in recognising that the Chief and Deputy Chief Officer positions can potentially present highly stressful environments, it can be argued that a PA has a duty of care obligation to ensure that stress counselling or to other assistance is available to such officers should it be necessary. This allowance is given to cover all the above needs'.*

iii) In March 2011 the £5000 became payable not as an allowance but as receipted expenditure.

The officers in receipt of the allowance in categories i) and ii) were Chief Constable Maxwell and DCC Briggs.

In considering the lawfulness of these payments it is important to note that this allowance has already been the subject of scrutiny by way of an IPCC investigation into DCC Briggs. This was an investigation into the conduct of DCC Briggs in the application of police funds to pay for training the cost of which Mr Briggs might reasonably have been expected to meet from his allowance.

It was not a matter for determination by the IPCC as to whether the allowance was lawful however the investigation highlighted the allowance to the District Auditor and lead to a comment on the 2011/12 Audit. The Auditors view at that time was that he could not find evidence that the training and development paid to the Chief Constable and DCC in 2011/12 and since their appointments in 2007 were lawful. He did not consider the general power of s111 to be available to the Police Authority due to there being a specific provision for allowances at Regulation 34 and the list of allowances provided in the determination to Regulation 34 not including a training and development allowance.

It was as a consequence of this Audit that the advice of Mr James Watson QC was sought specifically on the validity of the payment of the training and development allowance to the then Chief Constable.

Based on the advice of Mr Watson QC, which is summarised above, there is considerable doubt about the lawfulness of the payment of the development allowance under categories i) and ii) above.

In respect of payments made under iii) it does not appear that any of the officers entitled to the access this allowance have done so. But in the event that they have, on the basis of the advice on Mr Watson QC they could only arguably be lawful if they can be shown to be paid as expenses and that that there has been a mechanism in place for validating them as such. In addition it would be necessary to show that there was also expenditure in connection with the execution of duty and the advice of Mr Watson is that some elements referred to by the PA such as counselling could be but some elements such as preparing for a career outside policing are less easy to justify. Therefore should any officers have called upon this allowance, the details of what they have used it for would be key to establishing whether they could be lawful for the reason Mr Watson QC suggests.

Documents

Document 56 – Extract from 2011/12 Audit

**h) Car allowance**

A car allowance or the provision of a vehicle has been an element of the terms and conditions for Chief Officer in post throughout the period of the review and dealt with in a number of different ways for different chief officers as follows

i) The conditions of service in place when ACC Bagshaw and ACC Collins and A/ACC Read were appointed

*ACC Bagshaw – ‘The ACC will be provided with a vehicle up to the maximum value and in accordance with the terms and conditions prescribed from time to time on behalf of the Police Authority. A written agreement shall be completed on behalf of the Police Authority and the ACC for each vehicle provided during the Period of Appointment’*

*ACC Collins – ‘The post holder will be provided with a Force vehicle or an allowance toward the purchase of a vehicle in accordance with terms and conditions as prescribed from time to time on behalf of the Police Authority’.*

*A/ACC Read – ‘For the period covered by the term of appointment, the Acting Assistant Chief Constable will be provided with a Force vehicle or an allowance towards the purchase of such a vehicle in accordance with the terms and conditions prescribed from time to time by the Police Authority’.*

ii) On their appointments in 2007 the Chief Constable and DCC the following terms and conditions applied to an allowance for or the provision of vehicles

Chief Constable Maxwell

- An annual non-pensionable allowance of £15,000 paid monthly as part of salary to cover the cost of private medical insurance, personal development and private vehicle costs. This is described as follows: whilst it is intended to cover these issues, expenditure on these items is entirely at the discretion of the post holder’.
- provision of a Force vehicle and driver for carrying out duties of Chief Constable and will be entitled to use the vehicle for his private use.

## DCC Briggs

- An annual non-pensionable allowance of £10,000 paid monthly as part of salary to cover the cost of private medical insurance, personal development and private vehicle costs. This is described as follows: whilst it is intended to cover these issues, expenditure on these items is entirely at the discretion of the post holder'.
- provision of a Force vehicle or an allowance toward the purchase of a vehicle in accordance with terms and conditions as prescribed. The appropriate vehicle is set out and the equivalent monetary value is £29,337.

iii) When ACC Cross was appointed as A/ACC in September 2008 the condition in place relating to a car allowance or provision of a vehicle was

'You will be provided with a motor vehicle for official duties at the Chief Constable's discretion'.

iv) At a PA Management Board meeting on 13 August 2009 it was resolved that *That the existing terms and conditions for Chief Officers of Police and of the Chief Finance Officer relating to the provision of a vehicle, or an allowance for a vehicle, be amended to provide for the provision of a motor vehicle of up to the following values*

<i>Chief Constable</i>	<i>£40,000</i>
<i>DCC</i>	<i>£35,000 (87.5% of the Chief Constable)</i>
<i>ACC &amp; CFO</i>	<i>£30,000 (75% of the Chief Constable)</i>

*except that any element of the allowance not used to purchase a vehicle should not be available to supplement any other income or allowance.*

In July 2009 a Provided Vehicle Scheme had been drawn up to set out the way in which the provision of a vehicle would work and this included that one of the conditions of the provision of a vehicle was that it was in lieu of any essential or casual user allowance to which the Eligible Officer would otherwise be entitled.

v) In March 2011 the standard term for car allowance became;



**Car allowance** - The Police Authority has approved a scheme for the provision of vehicles to Chief Officers. Deputy and Assistant Chief Constables will be provided with a Force vehicle **or** an allowance towards the purchase of such a vehicle in accordance with the terms and conditions prescribed from time to time on behalf of the Police Authority. The Chief Constable, at his/her discretion, will be provided with a Force vehicle **and** an allowance towards the purchase of such a vehicle. Currently, the equivalent maximum monetary value for car allowance purposes for Chief Officers is

<b>Chief Constable</b>	-	£40,000
<b>Deputy Chief Constable</b>	-	£35,000
<b>Assistant Chief Constable</b>	-	£30,000

The paper which went to the PA Management Board to consider the above included at up to that time car allowances had been in line with the agreed increases in August 2009 and specifically as follows:

Chief £13,333 plus force car  
 DCC £11,666 taken as a car  
 ACC £10,000 taken as a car

These amounts, in particular the amount paid to the Chief Constable, appear to be based on payment equivalent monetary value being payable over a three year period. The records show that Mr Maxwell did receive an annual car allowance of £13,333 paid at a monthly rate of £1111.08

The commentary of the report further includes that the car allowance would continue as currently, and 'In addition, the Chief Constable post has henceforth and for the avoidance of doubt the benefit of a Force car to the same value as his personal allowance'.

With regard to all of the above, although the provision of a vehicle, or allowance has been described in a number of ways they can be summarised as follows

a) the non pensionable amounts paid to Mr Maxwell and Mr Briggs which were to be used at their discretion but include an element for private vehicle costs.

b) The cases where there was to be either an allowance or provision of a force vehicle. In all cases during the review period the remuneration reports show that the officers took the force vehicle not the equivalent allowance.

c) the cases where there was to be an allowance and the provision of a force vehicle. This only applies to Chief Constable Maxwell

In the case of a) this is the non – pensionable amount which was also used to pay development allowance which is the subject of advice from Mr Watson QC and on the basis of Mr Watson's advice, there is significant doubt about the lawfulness of any payment made for private vehicle costs where this has been paid as part of a salary top of or non pensionable allowance to be applied at the discretion of the individual.

In the case of b) the Police Regulations 2003 provide for a motor vehicle allowance at Annex U, and this can for officers at the rank of Chief Superintendent or above be paid at a flat rate as it determined (at the material time) by the Police Authority on such basis as is approved by the Secretary of State.

Whilst the provision of a motor vehicle by way of an allowance isn't explicit in Annex U, and so the lawfulness can not be absolutely beyond doubt, it seems likely that it can be taken that Police Authorities had the power by virtue of the Determination to Regulation 34 Police Regulations 2003 to provide a motor vehicle by way of allowance. Whether this extends to paying an allowance to purchase a motor vehicle to use for police duties is perhaps a step further from the regulatory provision however in the event all officer chose to be provided with a force vehicle within the value of the applicable allowance.

In relation to c) the provision of a force vehicle instead of an allowance for a vehicle is the same at a b) above. However Mr Maxwell received an allowance **in addition** to the provision of a force vehicle.

The determination to Annex U does envisage an annual rate allowance being paid to officers above the rank of Chief Superintendent to enable them to use their own vehicle to perform their duties. Therefore, were Mr Maxwell just to have been in receipt of the allowance this could have been an allowance with a lawful basis in the Regulations. However this allowance is being paid on top of providing him with a

force vehicle and therefore it is difficult to see how the power provided by Annex U to allow him to use his own vehicle and receive an allowance for it could be lawfully used when it is not necessary by virtue of the provision of a force vehicle. This is especially the case when the lawfulness of the provision of force vehicle is taken from it being an equivalent to the use of the authority in Annex U to pay an allowance.

**i) Housing/transitional rent allowance/replacement allowance**

The remuneration reports shows headings for transitional rent and housing allowance. These both represent payment made to officers who were already in service on 31 August 1994, the correct terms for such payment has since 2003 been replacement allowance, having been through previous other iterations. This allowance has the purpose of putting an officer who provided his own accommodation in the same position as one who was provided with accommodation, as it began when police officers were required to live in house provided by the Police Authority.

Payment of this allowance has a lawful basis in Schedule 4 to the Police Regulations 2003. All officers in post as Chief Officers during the review period have received this allowance and all started their service so as to mean they are entitled to the allowance. The individual amounts paid by way of this allowance have not been scrutinised as part of this review.

**j) CPOSA**

- **ACPO/CPOSA and other professional association membership fees**

In relation to Mr Maxwell the following membership fees were agreed to be paid from the police fund; ACPO, CPOSA, the Institute of Directors and the Chartered Institute of Management. In relation to all others it appears the Police fund has paid for CPOSA membership and/or ACPO membership.

The payment of these membership fees has it appear been made as a payment to a third party rather than an allowance to the individual officers. However in any event, in relation to payment of membership fees of the appropriate professional body to

which a Chief Officer might belong, this is likely to have a lawful basis under the provisions of regulation 34(3) and/or Section 111 because it could represent in principle an expense (if paid as such) authorised by the Authority which is neither an allowance nor an expense which is the subject of a determination by the Secretary of State under Regulation 34 or 35. Such expense is arguably in connection with the execution of duty as membership of such bodies (in particular membership of ACPO) gives Chief Officers membership of the necessary national network in common with other Chief Officers, and there is an expectation that they will participate. The other bodies of which Mr Maxwell was a member are more remote from policing duties.

Membership fees of CPOSA are in a different category as this is a staff association rather than a professional body. Again these membership fees have been paid, it appears directly to CPOSA rather than to the individuals to pay their fees. There is doubt about the lawfulness of the payment of these membership fees as there is no specific authority for payment, and whilst it is arguable they can be seen to be an expense incurred in the execution of duty or payments necessary to secure the maintenance of an efficient and effective police force this is not a straightforward argument in the circumstances where all other rank of officers (except Superintendents) are required to pay such membership fees themselves.

- **CPOSA Insurance**

It has conventionally been the case that the Police Authority, in addition to paying annual Chief Police Officers' Staff Association (CPOSA) membership subscriptions for Chief Officers, had met the cost of insurance cover arranged by CPOSA to cover members in respect of a range of risks.

Several Chief Officer discipline cases (including those arising in North Yorkshire) have caused the cost of those insurance premiums to rise and have drawn into sharp public focus the question of whether they should be paid at all from police funds.

The Police & Crime Commissioner (and for that matter, latterly, the Police Authority) have adopted a firm public stance to the effect that any element of insurance which can be categorised as providing for 'before the event' claimant litigation funding will not be paid. It is understood to be the case that the Commissioner may not be well

disposed towards meeting the cost of insurance which provides for representation in connection with discipline proceedings.

The amounts set out in the table are the annual amounts for subs and insurance combined, paid by the Police Authority.

<u>Officers Name</u>	<u>2008/09</u>	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>
G Maxwell	£1,100	£1,243	£1,405	£1,405	£2,472
A Briggs	£1,100	£1,243	£1,405		
P Bagshaw	£1,100				
D Collins	£1,100				
S Cross	£1,100	£1,243	£1,405	£1,405	£2,472
S Read		£1,243			
T Madgwick		£1,243	£1,405	£1,405	£2,472
I Spittal				£1,405	£2,472

The present position is that unpaid invoices are held in abeyance in respect of the 2013-14 financial year, as follows

<u>Date</u>	<u>Officer</u>	<u>CPOSA Subs</u>	<u>Legal Expenses</u> <u>Insurance</u>	<u>Total</u>
5/9/13	Paul Kennedy	£275.00	£2014.00	£2289.00
9/5/13	Iain Spittal	£275.00	£2014.00	£2289.00
8/5/13	Tim Madgwick	£275.00	£2014.00	£2289.00
8/5/13	Sue Cross	£275.00	£2014.00	£2289.00
3/5/13	Joanna Carter <sup>4</sup>	£275.00	£2014.00	£2289.00

It appears to be the case that CPOSA dues are invoiced to the host Force at the material time of them remaining unpaid. There is no convention (or at least, none of which we have been made aware) for apportionment between Forces in respect of part-year tenures. The position with Chief Constable Jones, who is missing from the above list, is that the Police Service of Northern Ireland have already paid the current year's invoice.

<sup>4</sup> Ms Carter has voluntarily indicated that she does not wish this insurance to be back paid or maintained in respect of her

Enquiries since receipt of the May contingent of invoices revealed that the element of cover which had proved most controversial - that which might underwrite the legal costs of a Chief Officer pursuing a claim against their own local policing body or force – would be met from CPOSA's Member Reserve Fund and not included within the costs levied by invoice.

Advice was provided to the Chief Executive Officer to that effect in July 2013 seeking the Police & Crime Commissioner's view of that position. Upon seeking clarification immediately prior to writing this report, we understand from the CEO that the Police & Crime Commissioner preferred to await further revisions to the policy arrangements before reaching a view.

Those further proposed revisions were received in September 2013 by way of APACE Circular 91/13. This sets out proposals for a CPOSA Reactive Insurance Cover scheme which specifically excludes any cover in respect of the pursuit of proceedings to enforce employment rights, judicial review or personal injury claims.

A key question posed within the APACE Circular in relation to the question of whether PCCs should meet the cost of this new scheme, is whether the main organisational insurance programme extends to cover in some or all respects.

An analysis of the comparison between the CPOSA 2013-14, proposed CPOSA 2014-15 and the PCC/NYP Insurance Programme has been prepared.

The main conclusions to be drawn from this analysis are

1. That the proposed CPOSA 2014-15 scheme excludes any cover in respect of the pursuit of proceedings to enforce employment rights, judicial review or personal injury claims, as stated above.
2. That the PCC/NYP Insurance Programme provides significant elements of cover upon which Chief Officers can call, albeit that a substantial excess of £75000.00 applies per claim.
3. That the principal unique features of the CPOSA 2014-15 cover are
  - a. provision of legal representation expenses in respect of police conduct proceedings or the negotiation of exit terms with the local policing body or Chief Constable as the case may be; and

- b. provision of legal representation expenses in relation to appeals to the Crown Court against refusal to allow retirement on medical grounds.

Advice has been sought from the insurance professionals in the Risk & Assurance Unit about the prevailing rules in the event that policies of insurance overlap. Their advice is that an insured party can only be allowed the benefit of indemnity under one policy and is under an obligation to appraise both insurers of the circumstances of the claim, in order that subrogation rights can appropriately be exercised.

One notable feature of the circumstances is that the CPOSA 2013-14 and CPOSA 2014-15 policies are subject to a limit of indemnity of £250,000 per claim and a £1m aggregate per insured for each period of insurance. The PCC/NYP Insurance Programme provides for £25m of cover per claim (under the general liability policy) or £5m of cover for claim (under the Officials Indemnity Policy and Professional Indemnity Policy) but in each case a £75000.00 excess applies (subject to a £1m aggregate stop loss over which insurers would meet all outlay).

On that analysis, it is possible to conclude that the PCC/NYP Insurance Programme offers a better standard of cover to Chief Officers across all but two heads of cover, albeit that the police fund would be exposed to the first £75000.00 of outlay in each regard. The PCC/NYP Insurance Programme would axiomatically not provide cover for legal representation in respect of police conduct proceedings or medical retirement appeals.

In any event, the Commissioner and the Chief Constable will wish to adopt a stance – ideally a mutually consistent one – as to the payment of CPOSA 2013-14 and/or CPOSA 2014-15 policy cover.

The power to do so arises by virtue of the general power afforded to the Commissioner<sup>5</sup> and the Chief Constable<sup>6</sup> to do anything which is conducive or incidental to their statutory functions. It follows that the correct legal approach to this question would be to decide whether the availability of legal representation in conduct matters and medical retirement proceedings, coupled with the *possibility* of

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<sup>5</sup> Paragraph 14 of Schedule 1 and s1(6) Police Reform & Social Responsibility Act 2011

<sup>6</sup> Schedule 2 Paragraph 7 Police Reform & Social Responsibility Act 2011

avoiding exposure to the PCC/NYP Insurance Programme excess, is a step which is conducive or incidental to the functions of Commissioner and Chief<sup>7</sup>.

Our conclusion is that there is a real possibility that meeting the whole cost of a policy which includes discipline cover is (a) unlawful; and in any event (b) difficult to justify to the public.

For completeness, in some instances there was an offer to pay CPOSA cover in the terms of most of the Chief Officers for 6 years after retirement. It appears this has not happened. However this offer was misconceived and should not have been made.

#### Documents

Document 57 - Analysis of the comparison between the CPOSA 2013-14, proposed CPOSA 2014-15 and the PCC/NYP Insurance Programme

#### **k) Compensatory grant**

The following HMRC Guidance (set out below verbatim) explains com grant and its tax treatment.

*'Compensatory grants in connection with rent allowances are payable, based upon the amount by which the tax deducted from earnings during the preceding year in accordance with the tax tables increased by virtue of the inclusion in earnings of a rent allowance or any compensatory grant. In the year in which any officer leaves the service, two grants are payable, one in respect of tax paid for the preceding year and the other for the year in which the officer leaves. The grants are chargeable to tax as income of the year in which they are payable.'*

From the information made available to us as part of the review, there seems to be no suggestion of doubt arising about the compensatory grant payments system as it has been operated during the period.

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<sup>7</sup> A decision by the Chief Constable not to meet the cost of this cover would necessarily trigger a review of his stance in respect of meeting the cost of cover for members of the Superintendents Association, which falls outside these terms of reference but is mentioned here for completeness.



**l) Contribution of Financial Advisor expenses**

In 2012 the PA agreed to pay half the cost of financial advice sought by Mr Madgwick in relation to the decision as to how he would be remunerated for his period as temporary chief constable. This decision arose as a result of two options being available in the relevant regulatory provision (see a)ii) above) and this choice resulted in different tax implications. The fee paid by the PA was £375.

It is unclear whether this amount was paid direct to the provider of the advice or to Mr Madgwick to reimburse the advisor and therefore it is not clear whether this was in fact an expense or a sum paid by the PC firstly to a third party. In any event the amount is de minimis and therefore further work has not been carried out on this issue as part of the review

**m) Payment for re-training on retirement**

There was an offer from the Police Authority to pay for the re-training of Mr Maxwell on his retirement. This was for a number of specific courses which Mr Maxwell provided details of to the Police Authority.

In circumstances where a FTA for a Chief Officer expires before they have 30 years services as was the case with Mr Maxwell, there is authority for the assistance to be provided to them in PNB Circular 04/05 Advisory Annex B paragraph 6 which states that *'Police Authorities should consider some additional support to Chief Officers for job hurting and training'*

**4. Is it in the best interests of the police fund to seek to recover any particular element(s) of payments made**

In principle, it is possible as a matter of law to recover payments made under a mistake of law.

[REDACTED]

[REDACTED]

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[REDACTED]

In relation to the accommodation outlay paid to Mr Maxwell, in view of the fact that this review has largely been formulated from the papers, further evidence will need to be gathered from serving colleagues within NYP (about whether and to what extent the rental properties were used at all, for example) before the correct legal advice can be formulated.

#### **RECOMMENDATION 2**

- *That the Commissioner should, in consultation with the Chief Constable, consider whether letters seeking repayment of any particular element, should be sent to former Chief Constable Maxwell and former Deputy Chief Constable Briggs.* [REDACTED]

#### **RECOMMENDATION 3**

- *That if the Commissioner thinks fit, having regard to the approach to be taken to the question of repayment under Recommendation 2, confirmation of medical cover expenditure be sought from former Chief Constable Maxwell, former Deputy Chief Constable Briggs, former Assistant Chief Constable Sue Cross and Deputy Chief Constable Tim Madgwick.*

#### **RECOMMENDATION 4**

- *That further information be gathered about the accommodation arrangements made for former Chief Constable Maxwell.*

**5. Recommendations for current/future refinements or alterations to the remuneration arrangements for chief police officers, whether they be under the remit of the Chief Constable or Commissioner**

In respect of payment for private medical insurance cover it is recommended for consistency with the terms of the current Chief Constable that this allowance is no longer available to Chief Officers. The only reasonable discretion it is suggested in the alternative would be to pay as an expense not allowance, and on the basis of receipted expenditure for cover from the Police Federation scheme which it is understood is available at a much more modest level than the £3000 allowance, with monthly payments ranging from £32.50 to £82.50.

**RECOMMENDATION 5**

- ***That neither Medical Allowances nor any other payment toward private healthcare insurance, should be paid to Chief Officers. The residual arrangement with DCC Madgwick should be brought to an end.***

In relation to CPOSA Insurance, there is an urgent need to resolve the approach to be taken. The Commissioner and the Chief Constable are advised to meet to determine this question as soon as possible. Such specialist advice as they may require, can be made available, including financial, legal and insurance advice.

**RECOMMENDATION 6**

- ***That the Commissioner and the Chief Constable meet as soon as practicable to agree a mutually acceptable approach to the question of meeting, by way of payment of an expense, the cost (in whole or part) of personal liability insurance for Chief Officers.***

**6. Advice generally on matters incidental to these terms of reference.**

In respect of removal expenses, it is recommended that a procedure is implemented to ensure compliance with Annex V - the determination to Regulation 35 and to comply with the requirement to have a published policy contained within the determination. It is understood that there may be work underway on this already but this recommendation is made for completeness.

**RECOMMENDATION 6**

- *That a policy be adopted and published (in accordance with the Determination to Regulation 35 of the Police Regulations 2003) setting out the ambit of the removal and relocation regime within NYP and NYPC and giving guidance as to how decisions about individual items of expenditure are to be made.*

