



Meeting	Legal Committee
Date	13 March 2023
Location	MS Teams
Title of Paper	Review of SPA Litigation and Claims Procedures
Presented By	Susan Montgomery, Lead Solicitor, SPA
Recommendation to Members	For Approval
Appendix Attached	Yes – revised Litigation and Claims Procedures

PURPOSE

The purpose is to seek the Committee’s approval of the attached revised SPA Litigation and Claims Procedures

1 BACKGROUND

- 1.1. The Litigation and Claims Procedures were approved by the Legal Committee on 13 December 2021. The procedures require to be reviewed annually. That review has now taken place, and some minor revisions have been made to the procedures. The revised procedures are presented to the Committee for approval.
- 1.2. The procedures apply only to litigation and claims handled by the SPA's legal team.

2 REVISIONS

- 2.1. Upon review the SPA Legal team agreed that the Litigation and Claims Procedures remained fit for purpose with only minor revisions and a general 'tidy up' required.
- 2.2. The Litigation and Claims Procedures document provided links to SPA legal spreadsheets and databases. The links no longer worked. The linked SPA legal documents contained confidential information and could only be accessed by the SPA Legal team. It was agreed that the links were unnecessary and were removed from the document.
- 2.3. Paragraph 4.1(2) refers to claims against the SPA which may be handled by Police Scotland Legal Services because they relate to the performance of a service provided by Police Scotland, such as Estates, Procurement, ICT, Fleet and HR. These services are now listed in the schedule to the section 83 agreement. Accordingly the section 83 agreement has now been referred to in paragraph 4.1(2)
- 2.4. Email addresses which appear in the procedures have been updated.

3 FINANCIAL IMPLICATIONS

- 3.1. There are no financial implications in this report.

4 PERSONNEL IMPLICATIONS

- 4.1. There are no personnel implications in this report.

5 LEGAL IMPLICATIONS

5.1. There are no legal implications beyond what is stated in this report.

6 REPUTATIONAL IMPLICATIONS

6.1. There are no reputational implications in this report.

7 SOCIAL IMPLICATIONS

7.1. There are no social implications in this report.

8 COMMUNITY IMPACT

8.1. There are no community implications in this report.

9 EQUALITIES IMPLICATIONS

9.1. There are no equality implications in this report.

10 ENVIRONMENT IMPLICATIONS

10.1. There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to approve the revised Litigation and Claims Procedures.

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LITIGATION AND CLAIMS PROCEDURES

Owner	Robin Johnston
Version Number:	1.4
Authors	Robin Johnston, Susan Montgomery, Eric Leggat
Approved by	SPA Senior Management Team: 29 November 2021 Legal Committee: 13 December 2021
Date implemented	14 December 2021 Applicable to all litigation and claims intimated on or after that date
Date of next Review	13 December 2022

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1. Purpose

- 1.1 The purpose of these procedures is to set out the steps to be taken by the SPA's Legal team when dealing with litigation and claims.

2. Application

- 2.1 These procedures apply to all forms of litigation and claims handled by the SPA's Legal team.

3. Initial steps

- 3.1 Immediately following service on the SPA of a summons, initial writ, petition, ET1 (Employment Tribunal) form, or on receipt of a claim, the solicitor dealing with the matter will inform the Chief Executive (or, if not available, one of the Deputy Chief Executives), and the Head of Legal Services¹.
- 3.2 Where the action or claim is to be dealt with by the SPA's legal team (see paragraph 4 below for circumstances in which the SPA's legal team might not deal directly with an action or a claim), the solicitor will agree with the Chief Executive or a Deputy Chief Executive the identity of the person who will provide instructions in the case (see paragraph 5 below).
- 3.3 The solicitor will then record the details of the case in the following:
- (1) the Litigation, Awards and Settlements spread sheet
 - (2) the most recent version of the SPA Litigation table

4. Police Scotland's Legal Services Department (PSLSD)

- 4.1 In some cases, PSLSD will handle legal actions or claims on the SPA's behalf. This will occur most commonly in the following circumstances:
- (1) where the action or claim has been raised against the SPA by a serving or former constable or member of police staff (who, in terms of the Police and Fire Reform (Scotland) Act 2012 (the 2012 Act), are under the direction and control of the Chief Constable, rather than the SPA);
 - (2) where the action or claim against the SPA relates to the performance of a service provided by Police Scotland for the SPA in terms of section 83 of the 2012 Act, and is listed in the schedule to the section 83

¹ Where the Head of Legal Services is dealing with the case, they will take the steps under these procedures.

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agreement between the SPA and the Chief Constable (e.g. Estates, Finance, Procurement, ICT, Fleet, HR).

5. Instructions

- 5.1 SPA solicitors are agents of the SPA and therefore must act on instructions. Subject to paragraph 9.1, instructions will generally be given by the Chief Executive, a Deputy Chief Executive, the Director of Forensic Services, or a nominated senior member of staff. Instructions may also be given by the SPA Board or Legal Committee.
- 5.2 Instructions must be obtained in relation to all significant aspects of the case, such as to whether to defend or settle the proceedings, or instruct expert witnesses.
- 5.3 The solicitor will give the person who is providing instructions updates on any significant developments in the case. Significant developments should also be recorded in the SPA Litigation table.

6. File structure

- 6.1 The solicitor responsible for dealing with a new case will create an electronic file for the case, using the following naming format:

“[Surname of pursuer etc.] v SPA [and any other defender, as applicable]”

- 6.2 The following electronic file structure should be used, adapted as necessary. Standard document naming conventions should be used when saving documents to a particular file/folder:

(1) Court documents folder

This folder is used to store all court documents.

Sub-folders should be created to store individual items e.g.

- Initial Writ/Summons/Petition
- Defences/Answers
- Record
- Motions
- Joint minutes
- Interlocutors
- Judgments

(2) Correspondence folder

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This folder is used to store significant letters and emails relating to the case. If correspondence extends beyond a single calendar year, sub-folders should be created for each year.

(3) Draft Board and Committee papers

This folder is used to store all draft papers produced for the SPA Board and Committees. Finalised papers are stored in the Board Services folder, to which SPA Legal has access. Draft Committee papers should be deleted once final versions have been issued to Board Services.

(4) Advice folder

This folder is used to record any notes of advice provided by the solicitor, and by any external legal advisers such as Counsel.

(5) Evidence/Productions folder

This folder is used to store any evidence obtained in the case such as precognitions or documentary evidence; and also any court productions.

6.3 Hard copy files should not be created unless absolutely necessary. If hard copy correspondence or documents are received, these should be scanned and stored in the appropriate sub-folder in the electronic file. If that is not practicable (e.g. because of the volume of material) the documents should be stored in a lever-arch file, clearly marked with the name of the case. The lever-arch file must be stored in a secure cabinet at all times when not in use.

7. Instructing external agents (other than PSLSD) and counsel

7.1 Any instruction of external solicitors must be via the SPA/Police Scotland Legal Services Framework, and consistent with the Buyer Guide.

7.2 The solicitor dealing with the litigation/claim must estimate whether the value of the work to be done by external agents is under £50,000 (excl. VAT), and record this in a note within the file. If the estimated value of the work is below that amount, the firm may be selected from the relevant Lot and a direct award made.

7.3 The selection of a particular firm on the Framework will be based on cost; the likely quality of work based on any previous performance under the Framework;

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and availability (e.g. a firm initially selected may be unable to act due to a conflict of interest).

7.4 If the estimated value of the work is in excess of £50,000 (excl. VAT) a mini-competition must be conducted within the relevant Lot. This will be facilitated through the Procurement Department. A summary of the process for mini-competitions is provided in the Buyer Guide.

7.5 Counsel are not covered by the Framework. The circumstances in which Counsel may be instructed include the following:

- where the proceedings have been, or are likely to be, raised in the Court of Session, High Court of Justiciary or the Supreme Court;
- where the proceedings have been, or are likely to be, raised in the Sheriff Court, and where Counsel has been instructed to act for the opposing side;
- where the value of the action or claim is substantial;
- where the circumstances of the case are complex, controversial, or have public interest implications.

7.6 Before instructing Counsel, the solicitor should ascertain Counsel's hourly rate and obtain an estimate of their fees for the work to be undertaken.

7.7 Any instruction of Counsel must be approved in advance by the person providing instructions in the case, who should be made aware of Counsel's hourly rate and fee estimate. The solicitor will insert a note in the file recording the instructions to engage Counsel.

8. Provisions

8.1 At as early a stage as possible, the solicitor dealing with a case should consider whether a provision in the SPA's accounts is required for the proceedings or claim. Finance staff can advise on this (our main contact within Police Scotland is caroline.stepney@scotland.police.uk).

8.2 Any provisions should be recorded in the Litigation, Awards and Settlements spread sheet and in the SPA Litigation Table.

9. Settlements

9.1 All proposed settlement of litigation or claims handled by the SPA's Legal team must be approved by the Legal Committee and the Chief Executive (as Accountable Officer).

9.2 The report seeking the Committee's approval of the proposed settlement should contain the following:

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- (1) a summary of the circumstances of the case;
- (2) details of the enquiries undertaken in relation to liability and quantum;
- (3) the rationale for seeking to settle the case, supported by internal and/or external legal advice;
- (4) the proposed settlement terms;
- (5) an assessment of how settlement would satisfy the SPA's "best value" obligations under sections 37 and 38 of the Police and Fire Reform (Scotland) Act 2012; and
- (6) details of any learning from the case which might prevent similar litigation or claims arising in future (in some cases it may not be possible to report such details to the Committee until after the proceedings have settled).

9.3 Where the proposed settlement (regardless of its value) would involve novel or contentious expenditure, consultation with the Scottish Government will be required before settlement terms are finalised by the Committee or Board. Guidance on what may constitute novel or contentious expenditure is provided in the Scottish Public Finance Manual. "Novel" would include proposed expenditure of a sort not previously undertaken by the SPA or which could not reasonably be considered standard practice. "Contentious" would include proposed expenditure where there is doubt as to its regularity (i.e. compliance with relevant legislation and guidance) or propriety (i.e. compliance with the standards expected of public bodies or officials). Proposed expenditure that might be considered politically sensitive would also be regarded as contentious.

9.4 Consultation on proposed novel or contentious settlements involves the submission of a business case to the Scottish Government. The business case should contain details of the action/claim; an assessment of the merits and quantum; an assessment of the risks and benefits of settlement; and a proposed course of action.

9.5 Any decision on whether a proposed settlement would entail novel or contentious expenditure will be made by the Legal Committee, in consultation with the Chief Executive (as Accountable Officer).

9.6 The SPA's Financial Regulations provide that where PSLSD acts on the SPA's behalf in litigation or claims raised against the SPA by a constable or member of police staff, it has standing authority to settle these up to the value of £75,000. However, any proposed settlement which may be considered novel

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or contentious, include ethical or substantial reputational implications, or is of significant public interest must be referred to the SPA's Legal Committee for decision, in consultation with the Chief Executive. Proposed settlements considered by the Committee to be novel or contentious will require consultation with the Scottish Government in accordance with paragraph 9.4 above.

10. Payment of awards, expenses and settlement sums

10.1 In the event that settlement terms are approved by the Legal Committee and Chief Executive, or an award has been made by the court or tribunal, the solicitor will make arrangements for payment of the sum to the opposing side. The following steps should be taken.

- (1) The solicitor completes a Payment Request Form and sends this to the Chief Executive for approval.
- (2) The completed form is then emailed, either by the solicitor or the Chief Executive's office, to the Payment Requests mailbox:

paymentrequests@spa.police.uk

The covering email should include details of the relevant Cost Centre and Account Code.

10.2 Once these steps have been taken, the Finance Department will make payment and confirm when this has been done.

11. Learning

11.1 Once the litigation or claim has finally been resolved, the solicitor will identify what, if anything, can be learned from the case. This might include possible changes to policy, procedure or practice, or proposals for legislative change.

11.2 Any learning must be communicated to the person who provided instructions in the case, or other relevant staff.

11.3 Any learning identified from the litigation or claim will be recorded by the solicitor in the Litigation, Awards and Settlements spread sheet, along with confirmation that it has been communicated to relevant staff.

12. File closure procedure

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- 12.1 Files should be closed only once the action or claim has finally been resolved, and any learning from the case has been communicated.
- 12.2 The Law Society of Scotland suggests that files in respect of civil proceedings are retained for 10 years from completion. This is consistent with the timescale specified in the Data Retention Schedule used by the SPA. The 10-year timescale will be adhered to unless there are sound reasons for retaining the file for a longer period.
- 12.3 Before closing the electronic file, the solicitor should ensure that it contains all key correspondence and other documents.
- 12.4 The solicitor will then move the file to the “Data Disposal and Retention” folder, using the sub-folder for the appropriate year. For example, if the case was finally resolved in 2021, the file would be transferred to the sub-folder marked “2031”.
- 12.5 The solicitor should then re-name the file to include the date of its future disposal. This will generally be the date 10 years from that on which the proceedings or claim were finally resolved e.g.
- “[Pursuer’s surname] v SPA **DISPOSAL 1 APRIL 2032**”
- 12.6 The solicitor will also enter the date of disposal in the SPA Legal calendar.
- 12.7 Where the solicitor considers it necessary to retain the file for longer than the suggested 10 year period, this should be discussed with Information Management staff. Any decision to extend the retention period should be noted in the file along with the reasons for this. The extended date of disposal should be marked clearly on the file name, and the file transferred to the appropriate disposal sub-folder. The solicitor will also enter the date of disposal in the SPA Legal calendar.
- 12.8 Where hard copy items exist, the solicitor will mark the date of disposal on the lever-arch file, which will remain in a secure cabinet until the date of disposal. A note will be placed in the electronic file making clear that hard copy items exist for the case.
- 12.9 It is important to note that the destruction of personal data amounts to “processing”, and therefore must be consistent with Data Protection legislation. Accordingly, before any litigation file containing personal data is destroyed the solicitor must complete the Data Disposal form held on the shared drive.

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