

9.19 Legal Representation at Public Expense

This policy is about the circumstances in which you may be provided with legal representation at public expense.

- You may be provided with legal support if you have civil proceedings brought against you in your role as a civil servant – Section 2
- If you bring proceedings as result of an incident that occurred during your employment, your department may provide legal support, although if you are successful you may have to repay some, or all, of the costs – Section 4
- If you are assaulted in the course of your work the normal action would be for the Police to prosecute, but in certain situations a private prosecution may be appropriate – Section 7

The following terms within this policy are defined in the glossary:

None

You may also be interested in the following policies:

3.09 Injury and assault leave

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This homepage is only a guide to the policy, not the policy itself. In the event of any discrepancy between the content of this homepage and the associated policy, the wording of the policy shall apply.

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9.19 Legal Representation at Public Expense

1 Introduction

Civil Servants serving at home or abroad who are involved in legal proceedings may be granted legal representation for some or all of their legal costs at public expense, according to the principles set out in this Chapter. In determining whether or not Civil Servants should be allowed financial assistance or legal representation Departments, in consultation with their legal advisers, will consider:

- a.
 - i. if the act in question was committed within the scope of the officer's employment; and
 - ii. if it is in the interests of the Department to grant assistance; or
- b. if the act gives rise to a civil liability to which paragraphs 3.1 and 3.2 apply.

2 Civil Proceedings Brought Against Civil Servants

2.1 If it is claimed that servants of the Crown have in the course of their employment done something that gives rise to an action for damages, in practice it is usual for the Crown to be sued in the name of the appropriate Department or in the name of the Attorney-General.

2.2 Occasionally, the Civil Servant (e.g. the driver of a Government vehicle involved in an accident) is also joined as defendant. In such a case, unless it is considered that the Civil Servant was acting outside the scope of his/her employment, the solicitor acting for the Crown will also act for the individual officer and the legal costs and any damages awarded will be borne out of public funds, provided the Civil Servant gives written instructions to the solicitor in the terms required by the solicitor.

2.3 The same applies in the rare case in which a Civil Servant only is sued in respect of the performance of his/her official duty. If the Civil Servant is considered to have been acting outside the scope of his/her duty so that the Crown has no legal responsibility, the officer will have to arrange his/her own representation, and the Crown will not accept responsibility for damages. If the officer contests the Department's view, arrangements will be made to resolve the dispute through the Courts or, if this is impracticable, by arbitration.

3 Civil Liability: Non-Executive Directorships Held By Civil Servants

3.1 Subject to paragraph 3.2, the Crown will accept responsibility for the civil liabilities (including costs) of Civil Servants incurred in connection with their performance of the functions of director (which includes any similar position, however described) or other officer of a company, provided either that:

- a. where appointment to such office was accepted after 22 February 1991 their Department has, before such acceptance, given them written confirmation that they were authorised to accept the appointment, and that the office was one to which this paragraph would apply; or
- b. where appointment to such office was accepted before 22 February 1991, their Department has subsequently given them written confirmation that the office was one to which this paragraph applies.

3.2 Paragraph 3.1 shall not have effect to the extent that:

- i. the liability arises from, or in connection with, any wilful default or bad faith on the part of the Civil Servants; or
- ii. the Civil Servants are otherwise indemnified against the liability by any other person.

4 Civil Proceedings Brought By Civil Servants

4.1 If Civil Servants are injured by the wrongful act of a third party, it is open to them to institute proceedings against that third party. If they apply to their Department for financial assistance in taking proceedings, assistance may be given to them if the Department decides, after consultation with its legal advisers, that it is in the Department's interests that proceedings should be instituted.

4.2 Where an injury occurs to an officer in the course of duty there is provision within the Civil Service Injury Benefit Scheme (Northern Ireland) (formerly under the Principal Civil Service Pensions Scheme (Northern Ireland) 1981) for benefits to be paid, subject to the conditions of the Scheme.

4.3 Acceptance of injured Civil Servants or their dependants as eligible for injury benefit under the Civil Service Injury Benefits Scheme (NI) neither prejudices nor admits any grounds for claiming damages against the Crown or a third party for personal injuries.

4.4 If satisfied that officers eligible for injury benefit have recovered or will recover damages for personal injuries for which such benefit might be made, the Department of Finance and Personnel may take those damages into account against any annual allowance or gratuity that may otherwise be payable under the Civil Service Injury Benefits Scheme (NI) and may withhold or reduce the allowance or gratuity accordingly.

4.5 In instances where Civil Servants have received payments made under the Civil Service Injury Benefits Scheme (NI) and subsequently also receive compensation resulting from a successful civil action, the Department of Finance and Personnel has the right, by virtue of the terms of the Civil Service Injury Benefits Scheme (NI), to recover those payments that were made initially under the aforementioned Injury Benefits Scheme. The amount recoverable depends upon the amount of damages paid. If the damages are equal to or greater than the benefit, the Department of Finance and Personnel may recover all of the benefit. If the damages are less than the benefit, the Department of

Finance and Personnel may recover a proportion of the benefit equal to the amount of damages paid.

4.5 Officers injured in the course of their employment in circumstances which give rise to a claim under the pension scheme, may be requested by their Department to pursue an action for damages against a third party. In such cases, arrangements will be made for the proceedings to be conducted by the Crown Solicitor for Northern Ireland.

4.6 In cases where Civil Servants are represented by the Crown Solicitor and they incur legal expenses greater than those considered justifiable (e.g. by briefing an expensive lawyer) they will be liable for any expenditure additional to that recommended by the Crown Solicitor.

5 Road Traffic Offences: Prosecutions Brought Against Civil Servants

5.1 Civil Servants who are prosecuted for road traffic offences alleged to have been committed in the course of their employment may be provided with legal representation or assistance if:

- a. the proceedings arise out of a fault in the maintenance or equipment of an official vehicle which it is the responsibility of the Department concerned to adequately maintain and equip for use on the road; or
- b. the Department has a substantial financial interest in the outcome of subsequent proceedings connected with the accident that caused the criminal proceedings (eg if it is expected that a civil action for damages will be brought against the Department and the Department will accept liability for the amount of any damages awarded against it, or against the Civil Servant if the Civil Servant is made a party to those proceedings); or
- c. the Department is satisfied that the circumstances are such that it ought to accept responsibility for providing representation at public expense. Representation or assistance will not usually be given if the Civil Servant is granted legal aid.

6 Prosecution of Civil Servants for Other Offences

6.1 If other criminal proceedings are instituted or have been completed against Civil Servants for an act or default alleged to have occurred within the scope of their employment, Departments will consider each case in consultation with their legal advisers before accepting responsibility for the defence or deciding whether to contribute to the costs of the defence.

6.2 As a successful prosecution often depends on the speed with which criminal proceedings are brought, Civil Servants must report immediately to their Head of Department any incident affecting them, such as an assault which has arisen out of their employment under the Crown, and which may constitute a criminal offence. In cases

involving assault, the Department should offer advice and may also, after consultation with its legal advisers, give assistance with proceedings, whether criminal or civil, brought against assailants.

7 Assault

7.1 The police will usually prefer charges in the more serious cases. The Criminal Injuries Compensation Board provides compensation from public funds to victims of violent crimes and it is possible for a Civil Servant, who has sustained personal injury directly attributable to a criminal offence, to obtain compensation regardless of the ability of the assailant to pay. If an officer decides also to pursue a civil action, proceedings must be instituted within 3 years of the assault.

7.2 In cases where the police decide not to prefer charges against the assailant(s), it is open to a Civil Servant to take out a summons for common assault. There will, however, be cases where careful consideration will need to be given to whether or not proceedings, either civil or criminal, are desirable, e.g. where the assault was technical or trivial or if it appears that the assault may have been provoked. In such cases, it is particularly important that advice is sought from the Department's legal advisers with minimum delay.

7.3 Although the decision must be a personal one for the officer concerned, criminal proceedings will generally be preferable to civil proceedings. The former are quicker and simpler than the latter and, if a conviction results, will provide a more effective deterrent than civil proceedings. Normally, criminal proceedings will not preclude the later taking of civil proceedings arising out of the same incident. However, the effect of Section 45 of the Offences Against the Persons Act 1861 is that a person who has brought criminal proceedings for common assault in the Magistrate's Court may be precluded from taking subsequent civil proceedings.

8 Formal Enquiries

8.1 Formal enquiries may occasionally place an individual Civil Servant in a situation where he/she could be at risk of appearing to be held blameworthy. If this appears to be the case, Departments will consider, in consultation with their legal advisers, whether the officer concerned should be allowed special legal representation at public expense.

8.2 The Civil Servant should be aware that separate representation does not imply that his/her actions are disclaimed by the Crown. Should a civil action subsequently be brought against the Crown and a Civil Servant who has been held to blame as a result of the findings of a Court of Enquiry, his/her defence would be undertaken by the Crown, provided the officer had acted within the scope of his/her employment, whether or not he/she had been separately represented at the enquiry.

8.3 Departments will not undertake to pay for the legal representation of a Civil Servant who appears to have been guilty of wilful or gross negligence.

9 Inquests and Fatal Accident Enquiries

9.1 A Department will be represented at these enquiries if its interests appear to be affected. A Civil Servant who is involved in an inquest or fatal accident enquiry will be represented by the legal representative appearing for the Department, if there is no conflict of interest between the two. Otherwise, legal representation at public expense will be granted at Departmental discretion.