

Forestry Commission
Personnel Division
231 Corstorphine Rd
Edinburgh
EH12 7AT

PERSONNEL MEMORANDUM 3

LEGAL REPRESENTATION AT PUBLIC EXPENSE

Scope and Purpose: Personnel Memoranda (PM)

1. Personnel Memoranda set out personnel procedures for managers to follow or give guidance or information on personnel related or people management issues. Managers are expected to make themselves aware of the content of PMs and use them for future reference, whenever necessary. PMs will be numbered sequentially as they are issued by Personnel Division.
2. FDMs/Conservators/Heads of Branches/Business Unit Managers should ensure that their managers see new PMs.

Scope and Purpose

3. This PM sets out the circumstances under which a member of staff's entitlement to legal representation at public expense might be considered. These circumstances include traffic accidents, civil and criminal proceedings brought against or by the employee in the line of duty, and inquests or fatal accident inquiries. Personnel Memorandum 2, "Traffic Accidents and Prosecutions under the Road Traffic Acts" gives additional information to managers on dealing with road traffic accidents.

Background

4. This PM is new and brings together various pieces of information, from a variety of sources, under the general heading of Legal Representation at Public Expense. It has been produced in response to manager's requests for clear and up to date information on the subject.

Action

5. Specifically, this PM should be read by the manager of a member of staff who has become involved in legal proceedings in the course of their employment with the Forestry Commission, and where the issue of legal representation at public expense might arise. The manager should also make a copy of this PM available to the member of staff concerned. Within the text of the PM, individuals who are required to take action at specific points are **highlighted in bold italics**.

Contacts

6. Please contact either Marion Quigley (0131 314 6459) or Fiona Johnstone (0131 314 6253) if you need further advice about any aspect of this Memorandum.

W J Anderson
Director Personnel
19 October 2000

LEGAL REPRESENTATION AT PUBLIC EXPENSE

File ref: PP12/3

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Introduction

1. It is important to keep in mind that most claims for damages are brought against the Forestry Commission as employer. However, we have been reviewing the circumstances whereby the Forestry Commission might provide legal assistance for individual staff seeking compensation or defending themselves against claims for damages arising from accidents in the course of their duties. In some circumstances we MUST provide assistance but in other instances we have discretion to grant some or all legal representation or pay for some or all of the staff members legal costs. The general approach is to consider each case on its merits. It has however become apparent that we need to clarify the procedures and ensure consistency in how these are applied. We also need to remind people about the relevant responsibilities.

2. This PM sets out the circumstances under which a member of staff's entitlement to legal representation at public expense might be considered.

Traffic Accidents

3. Our policy on traffic accidents and prosecutions under the Road Traffic Acts is set out in Personnel Memorandum 2 (formerly Non-Industrial Memorandum 2). This provides detailed guidance for managers and sets out instructions for dealing with all aspects of traffic accidents involving staff in their official capacity. PM2 continues to be the main instruction framework for dealing with traffic accidents and it has been revised and updated. In addition to the general updating contained in PM2, paragraphs 26-30 set out the circumstances where legal representation might be provided to FC employees. Also included at paragraphs 8 and 9 is the requirement for line managers to comment on the question of providing legal assistance in the event of a civil action being brought AGAINST the employee. Subject to the advice of the Forestry Commission's

legal advisors the expectation will be that the Forestry Commission should provide support.

4. The issue of legal representation is of course wider than just traffic accidents and the following notes provide advice about other circumstances where support might be appropriate.

Civil Proceedings

Action Brought Against the Forestry Commission Employee

5. The Forestry Commission must provide legal representation for staff who are sued for damages as a result of actions carried out in the course of their employment. This representation will be by the Solicitor acting for the Forestry Commission. Any damages and/or liability for the other side's costs must also be met from public funds. This may be affected if:

- a. it is considered that the employee was acting outside the scope of his or her employment (eg was the individual where he/she was meant to be working), or
- b. the employee refuses to instruct the solicitor in terms required by the solicitor.

Civil Action Brought by Forestry Commission Employees

6. If an FC employee is injured during the course of his/her employment by the wrongful act of a third party it is open to him/her to institute proceedings against the third party. If the individual applies for financial assistance from the Forestry Commission this may be given if, following consultation with the FC legal advisors, it is in the FC's interests that proceedings should be instituted.

Criminal Proceedings

Prosecution of an FC Employee

7. Any pending prosecution should be reported to Personnel Services HQ. It is usually the Crown (represented by a nominated Forestry Commission employee) which is charged in the name of the appropriate department but an individual employee can be joined as defendant. The report should state details of the alleged offence(s), the Court and the date and time of hearing. The result of the hearing should also be reported

Offences Against an FC Employee

8. The Commission must provide legal advice to officers assaulted in the course of their official duty. The Commission has discretion to give assistance with any subsequent proceedings.

Inquests or Fatal Accident Inquiries

9. The Commission must permit officers involved in an inquest or fatal accident inquiry as a result of their official duty to be represented by the Commission's legal representatives provided there is no conflict of interest. Otherwise assistance with legal representation is at the discretion of the Commission.

10. Subject to the outcome of the formal enquiry, the legal advisor should be consulted to determine whether any individual concerned should be given legal representation at public expense. The TUS should be informed of the provisional decision and sympathetic consideration should be given to their views.

11. Legal representation may be provided for officers sued as a result of the findings of the enquiry for actions carried out in the course of their official duty.

Establishing the Facts

12. It is clear that before reaching a decision as to whether to provide legal assistance the facts have to be established to determine whether the relevant conditions have been satisfied. In order to establish the facts in relation to traffic accidents PM2 requires Line Managers to conduct a preliminary investigation. Similarly with any accident or incident involving a Forestry Commission employee in the course of their duties the Line Manager will be required to obtain full details and provide as full a picture as possible of the circumstances. In all cases the Line Manager will now be required to recommend whether the FC ought to provide legal assistance in the event of a civil action.

13. Officers who are refused legal representation or assistance with legal expenses can appeal to Director Personnel.

Contact

14. If you require further advice about this notice, the PM or any individual case, please contact Marion Quigley (0131 314 6459) or Fiona Johnston (1031 314 6253) in HQ, Personnel Services.

Personnel Division
19 October 2000