

## **POL/23/2009**

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### **Publication of PCSO names/photographs : UNISON advice**

**This circular contains advice for branches whose PCSO members are concerned over the publication of names/photographs in the press etc.**

Concerns have been raised by a number of branches over the practice of police forces in publicising PCSOs' names and photographs in the press, or on posters in public places. These concerns centre on the potential for named, identifiable PCSOs, or their families, to be targeted outside work.

Legal advice received by the union suggests that the publication of such photographs could be challenged on the following grounds:

#### **1 Health and Safety**

- 1.1 There is the common law duty of an employer to take reasonable care to carry on its operations in a manner which does not subject its employees to unnecessary risks.
- 1.2 One element of the employer's general duty of care is an obligation to act reasonably in dealing with matters of health and safety and complaints relating to health and safety, which are drawn to the employer's attention by employees.
- 1.3 The common law duty of care can give rise to a liability of the employer for its negligence, in circumstances where the risk of harm suffered by the employee was reasonably foreseeable. This would be a remedy available after the fact of an incident of assault or harassment.

- 1.4 Knowledge of risk to PCSOs – and the associated risk to family members of the PCSO – without taking steps to lessen this risk, increases the chances of a force being held liable should any assault or harassment occur as a result of the identification of the PCSO.
- 1.5 It is also possible to bring actions in tort for negligence as a result of stress. There is a real possibility that a PCSO who has been identified in the media, and is thereby worried about the consequent risks to family, will have an increased likelihood of stress, and a stress-based claim could result.
- 1.6 Under the HSW Act 1974, in addition to the common law duty of care, employers have a legal obligation to provide for the health and safety of their employees and reduce the risk of injury and illness ‘so far as is reasonably practicable’.

## **2 Data Protection**

- 2.1 Unless there is explicit consent of the PCSO to use images/personal details, for example via the contract of employment, there may be an ability to recover damages for distress where a “data controller” contravenes the requirements of the Data Protection Act 1988 (DPA).
- 2.2 It would be possible to argue that the image of a particular PCSO was data to be covered by the DPA for the same reasons that CCTV images have been held to be covered by the Act. It is personal information, which relates to an individual, from which a person could be identified. There is therefore the possibility to bring court action, after providing notice to the employer, to prevent the use of personal data (the photograph) which is likely to cause damage or distress. Please note: this could not be brought if consent has previously been given to use of the image in this way, i.e. under a contract of employment.

## **3 Human Rights**

Article 8 of the European Convention on Human Rights provides that:  
“Everyone has the right to respect for his private and family life, his home and his correspondence.

A public authority cannot interfere with this right except in accordance with the law and where such interference is “necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime ...”

It is arguable that the publication of the identities and images of PCSOs in the areas in which they live or work could well raise the presumption that a force is invading the Convention rights of its PCSOs, as well as those of their family members. Whether this was permissible under the Convention (and Act) would be a question of proportionality. There would need to be some

factual basis to establish the inference that the publication of a PCSO's photo and identity gives a reasonable likelihood that the PCSO's Article 8 Convention rights have been violated. Any actual harassment, or even violence, would be solid evidence in such a circumstance.

Branches wishing to investigate the potential legal remedies set out above should contact their Regional Organiser in the first instance. Legal advice would be needed in each potential case.

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