Police Federation
Of England and Wales

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FROM THE DEPUTY GENERAL SECRETARY'S OFFICE

AW/sjr

24th September 2015

To: All Branch Board Chairs & Secretaries
Cc: Members of the Interim National Board

JBB CIRCULAR: 29-2015

RE: AWAY FROM HOME OVERNIGHT ALLOWANCE

The purpose of this circular is to update Branch Boards on the current position in relation to the away from home overnight allowance.

As you may already be aware, the allowance is currently being discussed at the Police Consultative Forum (PCF). At the last PCF meeting it was noted that the NPCC were looking to produce guidance on the allowance.

Swallow v Chief Constable of West Yorkshire

Summary of the case

Mr Swallow was a sergeant in the North East Counter Terrorism Unit who claimed payment of the allowance on 24 occasions. His claim was based on the first published determination on the away from home overnight allowance, before it was amended. This determination took effect from 1 April 2012 and was published under Home Office Circular 10/2012. The claim was successful.

On the facts:

- Mr Swallow accepted that about 10 per cent of the work would be out of region and that the operations for which he claimed the allowance fitted within his job description.

- Mr Swallow accepted that he had not been told he could not drink alcohol or go for a meal.

- The Force's policy stated that officers who needed to stay away from home but who were free to undertake their own leisure or personal activities when not on duty would not be paid the allowance.

- The Home Office indicated in an e-mail before the court that their view and that of chief officers was "held in reserve" required "an expectation or a requirement to remain contactable with necessary equipment and ready for immediate deployment".

In reaching his decision the judge found:

- Mr Swallow was required on each occasion to stay in a specific location (whether a hotel or otherwise). Even though he could go out, he could not go far from the specified location.

- As a fact the reality was he was required to be ready to deploy if necessary when he was staying away from home.

- The fact that the relevant duties were the sort of work for which the Claimant was trained and frequently undertook did not equate with that work being "routine enquiries". The judge accepted that routine enquiries "are matters for which you could plan for and indeed would equate for example to going on a planned training course or going to take a statement as part of routine enquiries in another part of the country"

- The fact that a deployment is urgent does not necessarily prevent it being a routine enquiry, but "the fact of the urgency and exigency of duty changing otherwise planned deployments within region does then require an investigation into the individual circumstances of the deployment for which the allowance is claimed."

<u>Implications of the case</u>

The case is <u>not</u> binding. It may not be followed by other courts. The decision does not contain a clear interpretation of the determination and the judge made various findings on the facts of the particular case which may not apply in other cases (including in particular that Mr Swallow was required to be ready to deploy if necessary when he was staying away from home). All this means that it does not amount to a resolution of the issues with the pre-amendment determination.

However the case is useful as:

1. It shows that a court was prepared to order that the allowance be paid in circumstances which were plainly outside the limits argued for by the Home Office.

2. The facts that Mr Swallow stayed in a hotel, was allowed to leave it and had not been told he could not drink alcohol show that in themselves these factors should not prevent payment of the allowance.

3. The fact that Mr Swallow knew that about 10 per cent of his work would be out of region and that the operations for which he claimed the allowance fitted within his job description did not mean that the circumstances amounted to “routine enquiries”.

These points may help with resolving some claims which relate to the pre-amendment determination. If forces are relying on reasons similar to those dealt with at points 2 and 3 to refuse such claims then the Swallow case should be drawn to their attention**.**

The determination has subsequently been revised in February this year. An amended version was published under Home Office Circular 4/2015 and took effect from 1 March 2015. The revised determination amended the definition of held in reserve so that a member must now be unable to return home “by reason of the need to be ready for immediate deployment”. It also provides for the chief officer to determine whether or not an officer is on a routine enquiry.

Further litigation has not been discounted at this time. We are aware that, due to the wording of the determination, it has been, and continues to be, problematic. As noted at the beginning of this circular, we are continuing to discuss the matter at the PCF and we are in the process of gathering examples of where the allowance has not been paid in order to assist with these discussions.

ANDY WARD
Deputy General Secretary