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By email only

Our Ref: 27102/A3/BL/D7/250319
25th March 2019

Dear Kay,

The Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010
Application by Horizon Nuclear Power for an Order Granting Development Consent for the Wylfa Newydd Nuclear Power Station (Ref: EN010007)

Submissions for Deadline 8

Further to the submissions made at Deadlines 5, 6 and 7, and in our letter dated 1st March 2019, we write on behalf of our clients, North Wales Police (NWP), to provide an update to the Examining Authority at Deadline 8.

Following our Deadline 7 submissions, there has been a significant amount of dialogue between NWP and Horizon Nuclear Power Ltd (HNP), and between NWP and Isle of Anglesey County Council (IACC). This has facilitated further discussions on matters relating to the proposed s106 agreement (its content and quantum), the proposed Deed of Covenant, and the mechanisms for, and role of, the Emergency Services Engagement Group in the approval and change management of DCO plans, strategies and schemes.

As these discussions are on-going and subject to change daily, NWP has chosen not to make a detailed submission at Deadline 8 as a final settled position of those matters that are still outstanding can be presented to the Examining Authority in advance of Deadline 9, if not before.

Whilst it is hopeful agreement on several key matters can be reached, should agreement not be reached on specific matters and the draft s106 agreement remains unacceptable, then NWP will submit a marked-up version of the draft s106 to the Examination in advance of Deadline 9. This will be accompanied by appropriate wording to secure the necessary s106 contribution through the draft



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Order. NWP maintains its position that if mitigation is not properly secured for the purposes of the project, the impact on community safety will be unacceptable and constitutes an unacceptable risk, such that NWP does not feel it will be able to properly protect the public.

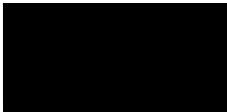
In relation to other matters, NWP notes HNP's response to NWP at Deadline 7 (contained within section 1.7 of Appendix 1-7 Horizon's Response on s.106 Agreement Matters - Doc. Ref: REP7-001). It is NWP's view that the matters raised within this section, particularly in relation to criticisms of its Police Impact Assessment (PIA) by Gore Associates, have already been addressed within NWP's own submission at Deadlines 5, 6 and 7, and its letter of 1st March 2019. Furthermore, the differences between the two assessments (Gore Associates v NWP) have been discussed at length with HNP over recent weeks as part of the on-going s106 agreement negotiations. NWP does not propose to add to its previous submissions on these matters at this stage but will provide a full response at Deadline 9 if deemed necessary. Notwithstanding this, and to provide further context to the Examining Authority, we have enclosed (in Annex 1) a copy of the National Police Chiefs' Council (NPCC) National Policing Guidelines on Charging for Police Services, which provide the baseline methodology for the full cost recovery calculations referred to in previous submissions.

Finally, NWP was expecting an updated draft CoCP (Ref: REP5-020) to be submitted by HNP at Deadline 7. We understand that this is proposed to be submitted at Deadline 8. NWP will undertake a further review of the draft CoCP that will be submitted at Deadline 8 and provide any further comments that may be necessary at Deadline 9.

We trust this update is helpful to keep the Examining Authority informed of progress.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely,



Ben Lewis
Infrastructure & Energy Director

Annex 1: National Police Chiefs' Council (NPCC) National Policing Guidelines on Charging for Police Services (April 2018)



National Policing Guidelines on Charging for Police Services

The National Police Chiefs' Council (NPCC) has agreed to these revised guidelines being circulated to, and adopted by, Police Forces in England, Wales & Northern Ireland.

It is NOT PROTECTIVELY MARKED under the Government Protective Marking Scheme and any referrals for advice and rationale in relation to Freedom of Information Act disclosure should be made to the NPCC Central Referral Unit at npcc.request@foi.pnn.police.uk.

MAJOR CHANGES ARE INCLUDED REGARDING PROVISION OF SPECIAL POLICE SERVICES ON PUBLIC LAND Document information

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These revised guidelines have been produced and approved by the NPCC Finance Coordination Committee. This document was considered and approved by the Professional Practice Gateway Group on the 15 July 2013 as reference material to Authorised Professional Practice (APP). The document has been assessed by Home Office Counsel in July 2018. The purpose of this document is to provide comprehensive advice on cost recovery. Please note [Appendix 3](#) will be updated annually and re-published as necessary.

Disclosure of any documents, images or data held by a Police Force is subject to any such disclosure being lawful, in accordance with legal professional privilege and being in compliance with the EU General Data Protection Regulation 2016/679 (GDPR) & EU Data Protection Directive 2016/680 ('Law Enforcement Directive').

Any queries relating to this document should be directed to either the author detailed above or the NPCC Business Support Office on 020 7084 8959/8958.

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FOREWORD

There are many competing demands on police resources and it is important that managers recognise that meeting those demands often has a significant cost implication. The key principle of this document is ensuring that Forces can properly balance resources to provide a level of policing that is fit for purpose by making appropriate decisions on when and what to charge for police services within the current legal framework.

For the most part policing is part of centrally and locally tax-funded services. In this way the majority of policing is provided as a public service. There are some functions that police officers perform that are provided beyond their ordinary public duty, and in some of these cases there are powers in law for a Police & Crime Commissioner to recover the costs of this additional policing under the provision of “Special Police Services.”

In other areas, there are opportunities for the service to provide goods and services which are relevant to their roles and skills.

The Association of Chief Police Officers (ACPO) first issued guidance on charging for police services in 2005. Working in consultation with the Association of Police & Crime Commissioners (APCC), this original document has now been updated to set it within the wider landscape of policing in and within communities, and to reflect necessary adjustments to the charging regime as a result of recent case law.

In March 2006 the case of *Reading Festival Limited v West Yorkshire Police Authority* was heard at the Court of Appeal. This followed a dispute between the police force and a festival organiser over the cost of policing an event.

Subsequently, in 2007 and 2008 another significant case (Greater Manchester Police vs. Wigan Athletic AFC Ltd) added to the overall set of implications that need to be taken account of in charging for police services.

In 2012 through 2014 the footprint and associated details were clarified in a case and appeal (Leeds United Football Club verses West Yorkshire Police) in the High Court.

In 2017 further clarification was issued regarding policing in public places and confirming previous footprint guidance (Appeal by Ipswich Town FC verses Suffolk Constabulary).

Following the Ipswich case, in 2018 the Home Office & NPCC advise that the provision of policing services on private land or, in some cases, land which has been closed off to the general public, is likely to be SPS which can be charged for. Whenever the requested service is to be provided on public land, legal advice should be sought before any arrangements are entered into.

This guidance is intended to offer a clear charging framework that will be of value both to police resource managers and to organisers of events, who may incur costs connected with police services requested.

Although not the focus of this document it should be remembered that forces have the legislative right under the Police Act 1996 (as amended) to accept income in other circumstances, such as Grants from Local Authorities ([Section 92](#) with or without conditions) and Sponsorship / Donations ([Section 93](#)).



GUIDELINES

1 EXECUTIVE SUMMARY

1.1 Background

The police service is generally provided out of public funds for the benefit of the public at large. However there are a limited range of activities where it is appropriate for the service to make charges to individuals or organisations to recover costs. Ensuring that charges are levied effectively in such circumstances will protect the public police provision and contribute to the overall funding of the service.

Historically, charges levied have been variable between police authorities/police & crime commissioners (PCCs) and within police forces. Some variability may be legitimate but consistency should be achieved where possible to secure credibility and confidence in the charging processes and to ensure that proper cost recovery across the service is not undermined.

The service is increasingly implementing charging policies on a delegated basis within forces. Delegation requires an agreed framework of policies and procedures to ensure that individual decisions at different points in the organisation are made on a consistent basis and in accordance with the corporate requirements of the PCC and force.

In pursuance of these objectives the original version of this guidance (*Paying the Bill*), which was published by ACPO in 2005, was aimed primarily at police service managers. This current version has been revised in association with the APCC and is addressed at Police & Crime Commissioners (PCCs) as well as police force managers.

In addition this revised version provides guidance following legal judgements affecting the charging for special police services.

1.2 Scope

The ability to charge for police services is generally determined by statutory provisions. This guidance covers four main areas:

- The provision of Special Police Services at the request of any person under [Section 25 of the Police Act 1996 \(as amended\)](#) which makes such services subject to payment of charges as determined by the PCC. Special police services generally relate to policing an event, e.g. a pop concert, or series of events, e.g. football matches. [Section 26 of the 1996 Act](#) applies similar requirements to the provision of police services overseas;
- [Section 15 of the Police Reform and Social Responsibility Act 2011](#) extends to PCCs the powers of the Local Authorities (Goods and Services) Act 1970 to supply goods and services to other bodies or persons. This may include services provided in competition with other providers, e.g. training or vehicle maintenance, where charges will reflect market rates, or services as a by-product of core police activity such as provision of collision reports;
- The provision of police services to other agencies such as the Home Office Immigration Enforcement (HOIE) or H.M Prison and Probation Service (HMPPS);

(For more detailed guidance on the provision of Mutual Aid under Section 24 of the Police Act 1996 to other forces, please refer to the dedicated ***National Policing Guidelines on Charging for Police Services: Mutual Aid Cost Recovery***)



1.3 Responsibilities

The PCC has a statutory responsibility for the overall finances of the police force. The PCC approves an annual budget and sets the local precept. The Chief Constable is responsible for the subsequent financial management of the force under delegation from the PCC. The PCC should therefore approve in consultation with the Chief Constable a framework of financial policies and regulations within which that delegated responsibility operates, including policies and processes for charging.

The Chief Constable is responsible for agreeing the services to be provided. This will normally be in accordance with a risk-based assessment. The Chief Constable will assist the PCC in determining a charging policy and is then responsible for implementation of that policy within the agreed terms of delegation. Individual force managers will have delegated responsibilities as agreed by the Chief Constable.

1.4 Costing Methodology

Charging relies on the accurate recording and appropriate allocation of costs. The sound financial systems operated by the police service provide a firm foundation in this regard. There are then two principal issues to address in establishing the cost base for charging purposes.

Firstly, it is desirable to have a standard approach across the service which means that any variations in costs, and therefore charges, reflect real cost differences between forces. The costing model set out in [Appendix 4](#) of this guidance therefore incorporates standard approaches for the following items:

- Police basic pay and allowances
- Police overtime
- Relevant ancillary costs
- General overhead recovery
- Productive hours and deployable time

Secondly, a decision has to be taken as to which elements of cost will be reflected in the charges for services delivered in different circumstances. Charges could be restricted to recovery of actual **Direct Costs** only or, at the other end of the scale, could be based on the **Full Economic Cost Recovery**. The costing model therefore allows the derivation of costs according to different definitions which can then be applied appropriately within the charging policy.

1.5 Charging Policy

Each PCC should set their own charging policy having regard to its local circumstances. However a number of key principles have been identified which should underpin the policy:

- Charging policy should have regard to the requirements for stewardship of public funds;
- The policy should be set in the context of the overall funding position of the Office of the PCC;
- Charging policy should have regard to and reflect national guidance;
- Charging policy should have regard to the PCC's overall policing objectives;
- Charging policy should reflect proper accountability and ensure that costs are met by the body responsible for the purpose for which the service is being delivered;
- Any persons/bodies should not be able to profit at the expense of the police service;
- The policy should be clear and transparent to both providers and receivers of the service, and all decision-making within the policy should be transparent;
- The charging policy should be consistent in its application, including where discretion is allowed;
- Charges should be based on a robust and sound costing methodology;



- The basis of cost calculations should be consistent, so that significant variations in charges are explained by local circumstances rather than methodology differences;
- There should be a clear understanding of how the charging policy and costing methodology are to be applied by practitioners.

1.6 Special Policing Services (Policing of Events)

The definition of Special Police Services and the conditions for charging at events have been the subject of a number of legal cases, including *Reading Festival Limited v West Yorkshire Police Authority* (the 'Mean Fiddler' case) and latterly *GMP v Wigan Athletic AFC and Ipswich Town FC v Suffolk Constabulary*.

Special police services are policing services which are carried out a) on request; and b) which are in addition to the regular duties of police forces. They include policing services provided on privately owned property or, in some cases, publicly owned property where access to the general public has been restricted (either permanently or temporarily, e.g. by requiring a ticket for entry). They may also include providing policing services which have been requested and which go above and beyond the resourcing which the Chief Constable considers necessary. Such services may be charged for.

Where SPS are requested, it is the Chief Constable's responsibility to determine the level of policing (over and above those the police are duty-bound to provide and cannot be charged) required for each event on the basis of a risk assessment. This assessment will normally cover both crime and disorder and public safety issues and when taken with the event promoter's responsibilities towards the safety of the event concerned, form the basis of the required policing deployment and any contractual arrangement between the force and the event organiser.

To ensure that the Chief Constable's view is given due weight in the event of disagreement, the PCC and the force should maintain good relations with the safety and licensing bodies in their area.

Charging policy needs to distinguish between different categories of event, in particular:

- Commercial events, intended to generate private profit;
- Non-commercial events, i.e. charitable or community events;
- Statutory events reflecting constitutional rights or processes.

PCCs are strongly recommended to charge the Full Economic Cost of Special Police Services provided for commercial events. It is essential that this approach is adopted consistently across the country to ensure that legitimate recovery of police costs is not undermined. Any departure from this principle should only be made on exceptional grounds and with the specific approval of the PCC.

It is appropriate to consider any abatement of charges for non-commercial events. The trust and confidence of local communities are fundamental to the success of modern policing, both in respect of neighbourhood policing and securing cooperation and information to address serious crime and terrorism, and this is a proper factor to take into account in considering the policing of community events and any charges.

Whilst charitable events may generally be viewed favourably, PCC needs to give careful consideration to their policy on charging for police services. Some major events may require substantial policing and can generate large sums albeit for charitable distribution. A reasonable contribution towards police costs as a necessary part of the organisation of the event is both desirable and feasible. Non recovery of costs represents a subsidy from public funds and authorities should satisfy themselves that they are supporting appropriate charitable purposes in this way.



The detailed guidance is provided in [Appendix 2](#) describes a simple model for determining levels of charge for non-commercial events. This model should be adopted by PCCs to fit their own circumstances and policies. For events where policing requirements are small then a 'de-minimis' level (often covered by existing local policing) applies so that no charge is levied. Above this level, a charge is normally set at either Direct Cost or Full Economic Cost Recovery. PCCs may choose to implement a different methodology in exceptional cases, where such an approach can be justified.

The central principle is that the police cannot charge for services which fall within their ordinary public duty i.e. those services the police are duty bound to provide. The duty is described as being a duty owed to the public at large for the prevention of violence and disorder. Whether Policing Services are chargeable as Special Police Services (SPS) depends on a number of issues in most cases, the answer can be ascertained by addressing the following questions.

1. Has there been a request for the services to be provided?
 - a. No – the services are not SPS.
 - b. Yes – continue to question 2.
2. Are the services to be provided on private land (i.e. land which is owned or leased by a private individual or body)?
 - a. Yes – it is likely the services are SPS.
 - b. No – continue to question 3.
3. Are the services to be provided on land which is ordinarily accessible to the public, but where access is restricted for the duration of the service provision (for example, areas closed off to non-ticket holders)?
 - a. Yes – it is likely the services are SPS, but legal advice should be obtained before proceeding.
 - b. No – continue to question 4.
4. Are the services to be provided on public land?
 - a. Yes - the services are unlikely to be SPS unless the services requested are in excess of that which the Chief Constable considers necessary to provide to satisfy the police's public duties. Legal advice should be obtained before proceeding.
 - b. No – the services could be SPS.

The questions set out above do not cover all circumstances. If there is any doubt about whether services provided in response to a request are SPS, legal advice should be obtained.

Other factors to be considered include consideration of the nature of the services to be provided. If they are being provided for the benefit of the general public in relation to a public event, they are unlikely to be SPS, but if they are being provided for a private purpose, then they may well be SPS.

Policing of events such as protests and marches are part of core activity and no charges should be made.

1.7 Special Police Service provision on Public Land

The Court of Appeal judgement in the *Ipswich Town Football Club Company Limited v The Chief Constable of Suffolk Constabulary* [2017] EWCA Civ 1484; [2017] 4 WLR 195 (see [Appendix 5](#)) was clear that by default, policing on Public Land is not normally chargeable and generally forms part of forces' primary duty. There could however be rare occurrences where the provision of additional policing over and above that required to meet the statutory duty would be chargeable for example:



- a) If the organiser of an event on public land requested the provision of considerable more police resources than the chief constable considered necessary for the police to adequately discharge their public duty or
- b) The event was of such a scale or type that the police did not necessarily consider any policing was required then to the extent that additional policing was ultimately provided it is likely that the provision of those additional police resources could be SPS.

Any force should take legal advice and formally assess the risk, before considering deployment of chargeable SPS on Public Land and, if undertaken, document the decision to demonstrate the assessment and subsequent reasoning behind any decision to supply.

1.8 Provision of Goods and Services to Third Parties

Potentially Police & Crime Commissioners could provide and charge for a wide range of goods and services under [Section 15 of the Police and Crime Reform Act 2011](#).

However in practice the scope is limited in a number of ways. First any service or activity has to be supported by PCC's statutory powers. In effect such a service must spin off from normal police activity or be an activity which is incidental to the provision of the police service. The level of chargeable services must also be reasonable and proportionate to the services required by the police force itself. Chargeable activity should ultimately support and not undermine the core purpose of providing a public police service.

Other services which support the police service itself have a market-competitive dimension. These include for example training in particular skills or vehicle maintenance. Where such services are provided to other bodies the charges will have to take account of market rates. The general principle should be that, as a minimum, charges should always recover the costs of supplying the service. Where market conditions permit, charges should be levied up to the full economic cost in order to contribute towards force overheads. Any such provision should be subject to a documented risk assessment, revealing any risk being created or effected by the service or product being provided.

1.9 Police Act 1996 – Section 92 Grants by local authorities.

This provides the ability of a force to receive a grant towards policing costs from a local authority above normal precept arrangements.

1.10 Charging for Services to Government Agencies

The police service increasingly provides a range of services for, and with, other government agencies. These are often part of central government such as the Home Office Immigration Enforcement, but they may also be arms-length agencies with a quasi-commercial status.

Even where the purpose of particular activity supports the responsibilities of a separate government body or service, the police force may be securing benefits towards its own objectives. Recovery of costs should be based on Direct Costs and other specific costs incurred.

In the case of quasi-commercial activity, assessment of charges should start with the Full Economic Cost Recovery.

1.11 Provision of Mutual Aid to other forces

Mutual Aid under Section 24 / Section 98 of the Police Act 1996 is the provision of policing assistance to another police force. It is usually provided in response to or in anticipation of a major event or incident. The general principles of direct cost recovery should apply. It is recognised that this is a



complex area, and a separate guidance document, '***National Policing Guidelines on Charging for Police Services: Mutual Aid Cost Recovery***' has been produced.

Revisions to Mutual Aid Guidance will be published annually each calendar year by the NPCC FCC. The timing of these revisions will capture the impact of the annual pay settlement, government taxes / levies and the current rate of inflation.



2 PRINCIPLES AND CHARGING METHODOLOGY

2.1 Background

- 2.1.1 Police services for which charges are raised represents a small part of overall police activity. By far and away the majority of budgeted police resource is used in the statutory duty to police the community. This is funded in the main by the national taxpayer, with a small but increasing proportion funded by local taxpayers. Businesses also contribute indirectly through redistributed business rates.
- 2.1.2 There has, though, evolved circumstances where police time and expertise can be charged to third parties. Powers exist to make charges and a summary of these are shown at [Appendix 1](#). These powers have also evolved and been interpreted over time to make a clear delineation between core policing activity and chargeable services.
- 2.1.3 The nature of the policing services has also changed over time. There is still a significant amount of direct policing of (predominantly) events charged for. These can be single events e.g. a pop concert or agricultural show, or a number of linked events such as policing football or other sporting matches. Other examples may now include policing shopping malls or entertainment complexes and, potentially, pubs/clubs. However, not all such policing services are chargeable. The police can only charge for such services if they are special police services within the meaning of section 25 of the Police Act 1996. Consideration should be given to the guidance in this document about whether the services are 'special police services'. In many cases, these events may require policing services to be provided free of charge as part of the core duties of police.
- 2.1.4 There are now a range of 'customers' for policing services. Well established users include professional football and rugby clubs. Other users include commercial promoters and non-commercial organisations including charities, and local authorities. It should be noted that the mere designation of an event being charitable does not itself negate the charging of legitimate operating costs, including the provision of special police services. Latterly, there has been an increase in forces providing policing services to other Government agencies –such as Home Office Immigration Enforcement.
- 2.1.5 There is one other area to be considered under the general heading of charging for police services. This is the charge applied for providing services by one (or more) force to another force.
- 2.1.6 In addition there is now a range of other activity relating to the use of expertise of officers and police staff that can be provided as a service to 3rd parties. This falls into the more general category of income generation and uses particular sections of the Police Act. Finally, there are some services that relate to the provision of information, say, collision reports, etc.

2.2 Responsibilities

- 2.2.1 The PCC has a statutory responsibility for the finances of the police force. The Chief Constable is responsible for the financial management of the force under a general delegation from the PCC. In general terms therefore the PCC should approve the framework of financial policies and procedures within which that delegated responsibility operates.
- 2.2.2 In the general context of the police service's overall financial arrangements, it is the PCC's responsibility to approve policies for charging for police services. In the case of Special Police Services there is also a specific statutory requirement under [Section 25 of the 1996 Police Act \(as amended\)](#) which permits the Chief Constable to provide Special Police Services at the request of any person subject to the payment to the PCC of charges on such scales as may be determined by that PCC.



2.2.3 The PCC's responsibility for setting charging policy, particularly in relation to Special Police Services but also chargeable services generally, includes the following elements:

- Establishing, in consultation with the Chief Constable, and approving the overall policy;
- Agreeing the scope of delegation to the Chief Constable;
- Determining exceptional cases;
- Monitoring implementation through annual reports;
- Reviewing the policy periodically;
- Supporting actions agreed with the Chief Constable.

2.2.4 The Chief Constable is determining whether police services can be provided in response to a request for special police services. The Chief Constable should first carry out a risk-based assessment to ascertain what level of ordinary policing is required in order to carry out the police's core duty. Only services requested by the event organiser which are above and beyond the services which the Chief Constable considers necessary to fulfil the police's public law duties may be charged for. As a general rule, if the event organiser is requesting additional policing be carried out on private property or public property which is closed to the public for that event (e.g. it is a ticketed event), those policing services will be chargeable. The level of SPS should be determined by way of an agreement with the event organiser.

2.3 Charging Policy - Key Principles

2.3.1 A number of key principles have been identified which should underpin the charging policy. These are:

- a) Charging policy should have regard for the requirements for stewardship of public funds;
- b) The policy should be set in the context of the overall funding position of the Office of the PCC;
- c) Charging policy should have regard to and reflect national guidance;
- d) Charging policy should have regard to the PCC's overall policing objectives;
- e) Charging policy should reflect proper accountability and ensure that costs are met by the body responsible for the purpose for which the service is being delivered;
- f) Private persons/bodies should not be able to profit at the expense of the police service;
- g) The policy should be clear and transparent to both providers and receivers of the service, and all decision-making within the policy should be transparent;
- h) The charging policy should be consistent in its application including where discretion is allowed;
- i) Charges should be based on a robust and sound costing methodology;
- j) The basis of cost calculations should be consistent, so that significant variations in charges are explained by local circumstances rather than methodology differences;
- k) There should be a clear understanding of how the charging policy and costing methodology are to be applied by practitioners.

2.3.2 The document uses these principles to establish guidance for charging for services for:

- The policing of events;
- The provision of goods and services to third parties;
- Charging for services to Government Agencies;
- The provision of mutual aid to other police forces.



2.4 Definition of Cost

2.4.1 The cost of a service and the charging for the service are clearly linked. But, the cost of a particular service can relate to the purpose of the usage. For the purposes of this approach, the following basic costing approaches are defined:-

- **Employable Cost.**

This represents the basic actual cost of the service providers, including on-costs but with no allowance for the recovery of overheads;

- **Direct Cost**

This is the cost of an officer including a standard overtime recovery element;

- **Operational Resource Cost.**

This represents the cost of the resource employed in the provision of the service. Here, the direct costs and the direct overheads are included;

- **Full Economic Cost.**

This calculation includes all properly attributable costs, including contributions to administrative and general overheads. However, this indirect overhead recovery must relate to the relevant overhead base.

2.4.2 Clearly, these cost bases are used for different purposes and will achieve different results. There must therefore be clarity in how they are used and how they are applied.

2.4.3 The normal application of costing policing for charging purposes should reflect full economic cost recovery. This is particularly true for commercial purposes, where a special police service is being provided using police resource. There are potentially some circumstances where the other cost bases will lead to alternative cost recovery charging.

2.4.4 The model for charging for services should reflect the cost structure involved in service delivery. Individual components of the model reflect this. There is a consistent construction of direct costs i.e. those costs required to deliver a given police service at a particular location. The costing methodology then provides a basis for the recovery of general overheads for an organisation.

2.4.5 A key principle is that whilst charges should reflect local characteristics of cost e.g. London weighting, the methodology seeks to minimise undue variations. A number of variables in the calculation of costs have that potential and, by using force averages or in some cases, national averages, these undue distortions can be minimised.

2.4.6 The costing model set out in Section 3 therefore forms the basis of calculating a productive hourly rate for police officers (and police staff) providing the service.

2.5 Charging for the Policing of Events

2.5.1 Section 25 of the 1996 Police Act (as amended) applies to the policing of events. The Chief Constable is responsible for agreeing any special services to be provided over and above the level considered necessary to discharge their duties and the PCC for determining the charges to be made.

2.5.2 The Chief Constable will determine the policing need in discussion with the event organiser and in accordance with the circumstances of each event or request. Within the agreed scope of delegation, this will usually lead to agreeing the basis of the associated charges although significant or exceptional events will be subject to consultation with the PCC in accordance with its policy.



2.5.3 The PCC will also agree annually the charges that will be set for goods and services provided under both [Section 25 of the Police Act 1996 \(as amended\)](#) and [Section 15 of the Police Reform and Social Responsibility Act 2011](#). (See [Section 2.7](#))

2.5.4 A Police force has a responsibility to assess the safety requirements in liaison with all partner agencies of an event. It often works with a local Safety Advisory Group but, in some circumstances, this may not be available. The force will review the nature of the event with the organiser in order to minimise the risk to the assessed safety requirements. The safety of the event is primarily that of the event organiser.

2.5.5 However, safety is only part of the role. There is normally an important secondary element of assessing the direct community effect of the potential impact on crime and disorder and in some cases traffic management, occurring within the community, as a result of the event. There must be an agreement between the event organiser and the police of the need for special police services, which must be requested by the event organiser and accepted by the police as over and above that which the Chief Constable considers necessary to discharge their duties. Police services would then be supplied to:-

- Increase aspects of core policing over that which would normally be required in the locality to address crime and disorder issues arising from the staging of the event;
- Provide additional policing services to increase the overall level of safety to an adequate level relative to the risk assessment and, therefore, the safety requirement.

2.5.6 Based on an adequate risk assessment, the level of police resource can be determined for each event. This will normally be achieved by direct communication with the event organiser, but may also be undertaken through a Safety Advisory Group, if required.

2.5.7 There are a limited number of events for which, although consultation with a Safety Advisory Group is not required, the event includes a range of characteristics that would imply that policing services should be supplied and charged for. The criteria for this are set out later.

2.5.8 Policing an event may involve providing special policing services to an event organiser over and above that which the Chief Constable considers necessary to discharge their duties. Although, predominantly, this involves police officer or police staff time, it can also require other elements of a specialist nature, including vehicles, consumables, specialist equipment and support functions as part of the service provision.

2.5.9 It should first be recognised that core service is that service which the Chief Constable considers necessary to discharge their duties within, and for, communities. It is, therefore, important to acknowledge that many small scale local events can be policed with a relatively low input that may represent a public reassurance role within the overall framework of risk assessment. The methodology needs to allow for this and provide some discretion on who should be charged, and under what circumstances.

2.5.10 A principle has been established within mutual aid arrangements, that a de minimis level should be agreed so that a small police input below the threshold is not chargeable. This principle can be extended into policing events.

2.5.11 A second general principle can also be established. Charges for policing services should be made to the event organiser. He/she should then be able to take these into account when planning an event. Event organisers should consult with their local force early in the planning process. Forces should then assess



the policing needs of the event so the level of resources and the likely charges that will apply can be identified well in advance of the event.

2.5.12 Cases heard in 2006 in the Court of Appeal (Reading Festival Limited v West Yorkshire Police Authority), 2007/08 (GMP vs. Wigan AFC) and 2017 (Ipswich Town FC v Suffolk Constabulary) have impacted on the approach to be taken in providing Special Police Services. The legal case is discussed in greater detail at [Appendix 5](#).

2.5.13 The judgements clarified that a PCC cannot charge for Special Police Services in the absence of an agreement between the event organiser and the police of the need for such services. Special Police Services need to be specifically requested by an event organiser, promoter or individual. This may be a clear explicit request (or in some limited cases an implied request). Both cases severely limited the circumstances in which such a request would be implied. For instance, a condition on a premises licence relating to the need for Special Police Services will not necessarily be sufficient to constitute a request for Special Police Services since there may not have been an agreement between the organiser and the police of the need for such services. Police forces are therefore advised to secure a clear basis of understanding as to the services that are to be provided for any event.

2.5.14 The cases also identified a clear issue in agreeing the size and scale of the services to be provided. The tactics in respect of police deployments in support of an event are a matter for Chief Officers. There is however a requirement for a meaningful discussion on the availability of valid alternative provision that may influence the scale of Special Police Services that will then be provided.

2.5.15 Some of the alternatives to provision of police services are relatively clear in the context of the above. The provision of stewarding or traffic management consultancy can mitigate the requirement of police involvement in the safety element of the policing role, thus reducing the consequent requirement for Special Police Services. The overall necessity for policing deployment in managing crime and disorder, and in consultation with the organiser the overall safety of the public, is a matter for Chief Officers to consider. Policing comprises a wide range of relevant activity, from visible patrol to other deployable and specialist support roles. The key issue is to ensure that an organiser or promoter is made properly aware of the nature and options that might exist in the circumstances of an event so that a transparent and mutually understood request for special police services can be made, if appropriate.

2.5.16 It is strongly suggested that police resource managers draw up a written agreement and statement of intent when planning policing of events with event organisers. This in turn will form the basis of subsequent charges, subject to the possibility that deployment requirements might be changed by mutual agreement.

2.5.17 A written agreement should resolve to respective parties understanding of the relevant Special Police Services and charges involved, over and above that which the Chief Constable considers necessary to discharge their duties. In some circumstances there may be a failure of the parties to agree. This would in turn lead to a circumstance where the organiser would not make a request for Special Police Services. Chief Officers must then review the event in the light of a clear community based risk assessment together with other statutory partners.

2.5.18 The Chief Officer's judgement must review the ability of the force to provide a suitable police response in line with their duty to the general public and contingency arrangements, including their ongoing ability to provide appropriate policing to the remainder of the police force area.



2.5.19 There are a range of measures that can be introduced to ensure that events are conducted in a responsible manner. It should be noted that there are significant variations in the approach of organisers to promoting an event in a responsible manner and accordingly, the level of intervention that is necessary. A Safety Advisory Group has influence over the planning of an event although the structure and role of the Safety Advisory Group varies with each Local Authority Area. There is no legal requirement for an event organiser to refer an event to the Safety Advisory Group but local impetus should be generated to develop such referrals as best practice amongst organisers. Assessment of the need for police attendance and action at public events will be principally based on the need to discharge their core responsibilities which legal advice indicates are as follows:

- Prevention and detection of crime;
- Preventing or stopping breaches of the peace;
- Activation of a contingency plan where there is an immediate threat to life and co-ordination of resultant emergency service activities;
- Traffic regulation within the legal powers provided by statute, a Road Closure Order (TPCA 1847) or a Traffic Regulation Order (RTA 1984). (Traffic regulation is not to be confused with the management of the road closure.)

(Responsibility for applications for Traffic Regulation Orders and Road Closure Orders and the management of the same are the responsibility of the Local Authority. Where police resources are requested to assist the Local Authority to police such road closures, they will be considered to be Special Police Services.)

2.5.20 The Licensing Act 2003 gives a range of powers to the relevant licensing authority to allow an event to proceed. The use of the term ‘Licensing’ suggests that the powers are related only to the supply of alcohol. This is far from the case and there are in fact a wide range of activities that require a Premises Licence to be granted under Section 12 of the Licensing Act 2003. Regulated Entertainment includes:

- Exhibition of plays;
- Exhibition of Films;
- Indoor Sporting Events;
- Boxing or Wrestling entertainment;
- Exhibition of live music;
- Exhibition of recorded music;
- Performance of dance.

2.5.21 Given the range of activities that fall within Regulated Entertainment, the Licensing Act 2003 is a powerful tool in ensuring the responsible conduct of an event. It is the responsibility of an event organiser to prepare an Operating Schedule when applying for the grant of a relevant Licence. The schedule must include details of how the manner of the event will promote the four licensing objectives of:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

An objection to the Operating Schedule can be made by a police force and it is strongly suggested that where necessary the grounds for such an objection be supported by a Senior Police Officer in consultation with Force Legal Advisors. Police forces (and OPCCs) should ensure that strong and



effective relations are established and maintained with licensing authorities and safety bodies so that the service's views are fully taken into account in licensing decisions.

- 2.5.22 The event locality should be defined to encompass the need to properly protect or benefit the persons organising the event or their attendees. It should not be determined on the basis of a need to protect the general public at large as a consequence of the event. Where a commercial event attracts protestors who protest outside the locality of the event, event organisers would not be expected to pay for the policing of those who attend to protest. However, organisers would still be liable to pay for the deployment of officers in areas they own, lease or control the access of the public to, for other duties associated with the event.
- 2.5.23 It should also apply to established sites where a series of events will take place – e.g. sporting events such as football, cricket, rugby etc. This is subject to the current application of [Section 25 of The Police Act 1996 \(as amended\)](#). (See [Appendix 1](#)).
- 2.5.24 The policing of all events should be costed on a Full Economic Cost basis in accordance with the methodology set out in [Section 3](#). This will form the basis of the charge in some cases (see below), and, where the charge is to be abated to Direct Cost or there is a nil charge, it will demonstrate the impact of that decision in terms of potential income foregone.

2.6 Charging for Football

- 2.6.1 Football matches can be seen as a series of planned events occurring in a Force area. In this circumstance the promoter is the Chief Executive of the football club. The general principles for the basis of providing the special police services are the same as those for commercial events, but have been sharpened by recent case law (See [Appendix 5](#)).
- 2.6.2 The provision of policing for football matches reflects both operational policing requirements and Special Police Services (SPS) provided at the request of the club.

The key criteria for the provision of SPS to clubs include:

- a) A formal agreement between the club and the force which includes a request for service;
- b) A common clear understanding of the chargeable amount that relates to the area owned, leased or controlled by the event organiser and there are restrictions to the access of the general public;
- c) Clear and transparent policing deployment at the event.;
- d) Agreed rates for police charges for different categories of matches.
- 2.6.3 A charging agreement represents the codification of the overall request for policing services across the football season. Within the agreement, provision should be made to vary the request for an individual match or to add an additional request e.g. a cup match. Such changes need to be identified to and agreed with the club prior to the provision of SPS.
- 2.6.4 The policing provision depends upon a number of roles¹, some of which are determined as core policing for the purposes of the match. These can be supplemented by further partial deployments and/or specialist roles.
- 2.6.5 The core policing component would cover all phases of the match which extends to a period before and after the match itself. The methodology in this instance sets a six hour chargeable period to reflect:

¹ See the College of Policing Authorised Professional Practice on [Policing Football](#) for further operational detail.



- a) Parading at a station
- b) Briefing and equipment allocation
- c) Transport to locality
- d) Policing “Phases 1 to 3” – a period before, during and after the match
- e) Debrief
- f) Transport to home station

2.6.6 Some of the operational police resource will be deployed in the areas owned or leased by the match organiser, or in areas where the access of the public is restricted for the duration of the match. These deployments may vary in length between the phases of the match. In order to maintain consistency, partial deployments should be charged on an average three hours deployment. Where deployment is not in the areas owned or leased by the match organiser, then that component of the deployment will generally not be chargeable. Special care should be taken to ensure that there is clarity as to the ownership of the land in which the deployment is to occur and legal advice should be sought if there is any doubt.

2.6.7 Nationally the policing requirement for football matches is set by categories that reflect an assessment of the risk and threat relating to both crime and disorder and public safety. It is important that all local assessments are structured and objective to support the policing need. Where a request for service is made by a club, the aspects of the services which are in excess of the requirements identified by the local assessment will be chargeable – including the provision of all policing on property which is privately owned or leased.

2.6.8 In common with other commercial events, full economic cost recovery should be used to recover the costs of the officers and staff for the period of their service supplied.

2.6.9 Occasionally, Mutual Aid from other forces is requested to police certain matches, as allowed for under Section 24 Police Act 1996. In this context, the host force is, in effect, contracting additional officers under [Section 25 Police Act 1996 \(as amended\)](#) to provide the service. Section 25 rates should, therefore, apply and the providing force reimbursed for the service provided at those rates.

2.6.10 Further advice is given in more detail in a separate document, '***National Policing Guidelines on Charging for Police Services: Mutual Aid Cost Recovery***'.

2.7 Provision of Goods and Services to 3rd Parties

2.7.1 The provision of goods and services will cover services such as the provision of training in particular skills, the provision of appropriate information from police databases and goods which can range from memorabilia to old equipment, etc.

2.7.2 The situation here is conceptually different in that the goods and services are provided and sold in market competitive conditions. As such, pricing policy is largely discretionary to an individual Force/PCC. Forces can be in competition with all other suppliers, including companies, non-profit organisations and other Forces.

2.7.3 Some areas of service, such as the provision of certain information, can be, de facto, a national or local monopoly in that only the police service can provide the service. As a general principle, it can be difficult to justify in the service widely varying costs for say, the provision of Road Traffic Information. At the least, it creates an overall problem for the service, in terms of credibility to sections of the business or other communities.



2.7.4 The police service has created a standard set of common service-wide goods and services. These are shown in more detail in [Appendix 3](#).

2.7.5 Under the Common Law Police Disclosure (CLPD) provisions that have superseded the Notifiable Occupations Scheme chief officers will consider making a proactive disclosure upon arrest (or exceptionally upon charge) to an employer, volunteering organisation, regulatory body and/or licensing authority with which it is evident that the detainee is associated. That disclosure will contain adequate information to allow the recipient to determine the extent of any mitigation that may need implementing in respect of the risk the detainee may consequently pose to vulnerable groups (primarily children and/or vulnerable adults). ‘Supply Push’ disclosures made under the CLPD provisions will not result in a financial charge being made to the recipient(s).

The decision to disclose information under the CLPD regime rests solely with the chief officer or his/her delegate based on consideration of the relevancy and proportionality of any proposed disclosure. Potential recipients cannot solicit or suggest that a disclosure should be made under the CLPD provisions as clearly that would indicate they are already aware of the issue that would otherwise be the subject of the disclosure.

Any ‘demand pull’ request(s) for information by the employer etc., either in response to an initial disclosure made under the CLPD, or as a result of information received from other sources (e.g. self-declaration), must be made under a statutory authority rather than common law, and will attract a financial charge in accordance the rates/methods outlined in this guidance.

2.7.6 [Appendix 3](#) shows a range of items, both “goods” and services” that evidence has shown that the majority of forces supply, with an associated charge. A review of the charges has shown that some items have little variation across the country whilst for others charges can vary significantly. Charges shown at [Appendix 3](#) will be updated each year by the NPCC FCC. The nature and level of charge will be reassessed at 5 yearly intervals to review their continuing relevance and their link to the cost base. It is recognised that some forces will incur additional costs in retrieving documents that are held in off-site commercial archives. In these situations, it is acceptable for these costs to be passed on to the body requesting the information.

2.7.7 No charges should be made to the Motor Insurers Bureau for the statutory provision of collision reports (Previously referenced in HO Circular 163/1 1953).

2.7.8 No charges should be made to Responsible Authorities (such as Local Authorities, Health Authorities, Fire and Rescue Authorities, Primary Care Trusts, NHS Trusts, Probation Committees and Registered Social Landlords) due to the requirement within the Crime and Disorder Act 1998 for such partners to work together to combat anti-social behaviour.

2.7.9 **For those areas where the service is provided in open market conditions, then a general principle should apply that charges should, at least, recover the full costs of supplying the service.** For this to be able to be achieved, Forces should be clearly able to identify the investment (start-up) and running costs of the service and then set charges accordingly. This should be based on the model for calculating direct costs. But the charges made will clearly depend on the nature of the market and local pricing decisions.

2.7.10 On some occasions, pricing policy may dictate a marginal costing approach initially being taken. Here, the employable cost identified in the costing model should be the baseline for consideration. Beyond this, Forces should then have a clear understanding of the contribution requirements to direct overheads and set up or other investment costs, in order that they can demonstrate the adequate recovery of costs.



- 2.7.11 It is clear that pricing policy and market conditions can affect the level of charges. It is important that, in those conditions, all Forces should be able to validate charges set. The costing model can provide a basis for this to be undertaken. In certain conditions, Forces are taking advantage of their spare capacity. It is important in these circumstances that Forces can demonstrate a strong "value for money" rationale to the use of the resources applied.
- 2.7.12 In other circumstances, the ability to market and benefit from an area of expertise needs pump priming or investment - often in support activities. It is expected that charges should be set that will recover all the supporting costs, including the pump priming or set up costs within a reasonable investment time period. Charges can exceed the overall level of cost recovery and therefore provide a net income stream where market conditions allow. But forces should be prepared to identify and justify pricing policies if required.

2.8 Charging for Services to Councils

- 2.8.1 Section 92 of the Police Act 1996 (as amended) allows councils² to make grants (with or without conditions) to Police & Crime Commissioners or metropolitan equivalents.
- 2.8.2 Councils may wish to consider the use of Section 92 to grant PCCs to undertake additional services, over and above that level the Chief Constable considers necessary to discharge their duties.
- 2.8.3 Any such grant would need a formal agreement establishing between the parties, identifying the constraints and processes which will underpin the grant usage and any conditions imposed.
- 2.8.4 Examples of this might include a Town Council that wants to establish additional police services over the course of a year, deploying these extra resources, up to agreed monthly and annual limits, on specific measures that the council feel are important to their residents.

2.9 Charging for Services to Government Agencies

- 2.9.1 The police service increasingly provides a range of services for, and with, other Government Agencies. Many of these are elements of Central Government, such as the Home Office Immigration Enforcement or Armed Services. Some, however, are quasi commercial activities having Agency Status.
- 2.9.2 In the first category, Police Forces are providing often core policing service as a support to the wider public sector delivery of Government objectives - e.g. addressing potential illegal immigrants. Although this can be seen to be akin to special policing services, there are other issues that need to be considered in these circumstances.
- 2.9.3 A guiding principle here is that in providing the service, a Force often gains an element of self-help towards its overall strategic plan. The cost of the resource usage needs to be recovered in that light.
- 2.9.4 Where police or support staff resource is used in providing the service, then the **employable cost of the staff used** should be recovered. **To this should be added any overtime incurred and additional specific direct costs incurred e.g. consumables, travel and expenses, accommodation etc.** This can either be actual cost, if quantifiable, or can be an average cost calculation, where it is unlikely that differences will be material.

² Councils in this case includes county, district, borough, parish or community whose area falls wholly or partly within the police area or metropolitan police district concerned.



2.9.5 In a number of cases, the provision of the service includes the use of a police provided facility e.g. custody suite, interviewing facilities, etc. A contribution to these overheads can be added to the direct costs used. This can either be by means of a calculation of the direct costs incurred – rent, utility costs etc. or, where in practice this would be difficult or onerous to obtain, by the addition of a general overhead recovery element. In this circumstance, the recovery should be in the range 5% - 15% of the direct costs incurred. The range allows some discretion in the amount of administrative support incurred in providing the service.

2.9.6 In certain circumstances, police support to a Department or Agency may be more long term or require a number of instances of service provision. Here it may be more appropriate to either agree a specific rate based on projections of anticipated costs – based on the Resource Cost model or special policing rates as an alternative.

2.9.7 In the second category – the quasi commercial activity, the service provided is much more akin to operating in market conditions. Here the same principle should apply. **The charging methodology should use the calculation for Resource Costs as the starting point for identifying the costs of the service.** To this should be added all associated specific costs incurred in the provision of the service and a contribution towards overheads. Market conditions will either provide a practical constraint or allow Full Economic Cost Recovery to be utilised.

2.9.8 It is important to understand the police role in such activities. In most cases, the skills and experience of officers and staff are being used to enhance another Government based service. Where this is outside of the normal policing role, then there should be the aim of covering all recognised costs together with the appropriate contribution to overheads.

2.9.9 The VAT element of charging for Special Police Services is a complex matter and in all cases of doubt, advice should be sought from Force VAT experts or HMRC. Secondment of Police Officers does not normally attract VAT although this is not the case with Police Staff. There are various rules governing police services overseas. It is prudent to seek expert guidance in individual cases.

Cost recovery under Grant Funding regimes

2.9.10 There is now a range of occasions where police officers (and some police staff) are supported by public grant funding or other external funding streams. The key principle in these cases is to properly identify and recover relevant costs. Where a police officer post being supported is delivering a direct policing service, then recovery should be based on Resource Costs. Where, however, the role is utilising police experience or expertise, rather than providing direct policing, then the cost recovery should use total Direct Cost less the overtime premium – equating to employable cost plus the “employers pension contribution” for an officer.

2.10 Provision of Mutual Aid to other police forces

2.10.1 Mutual aid is the provision of policing assistance to another police force. It is a formal arrangement and is similar to the provision of Special Police Services. As such aid is usually provided in response to or in anticipation of a major event.

2.10.2 Mutual aid activity ranges from small scale, inter-force support, through reacting to a significant or serious incident to, in some cases supporting a force or government department in a large pre-planned event.

2.10.3 By its very nature, mutual aid is incident based, and therefore likely to be extraordinary to the normal policing arrangements in the area.



2.10.4 The general principles of direct cost recovery should apply, but it is recognised that this is a complex area, particularly with regard to the framework of police regulations.

2.10.5 For detailed charging arrangements for mutual aid, a separate guidance document, '***National Policing Guidelines on Charging for Police Services: Mutual Aid Cost Recovery***' has been produced.



3 COSTING METHODOLOGY

3.1 Background

3.1.1 The cost of a service and the charging for the service are linked. The cost recovery model seeks to provide a consistent basis for calculating recovery charges. But, the cost of a particular service can relate to the purpose of the usage. For the purposes of our approach, the following basic costing elements are defined:-

- **Employable Cost**
This represents the basic actual cost of the service providers, with no allowance for an overtime premium or the recovery of overheads;
- **Direct Cost**
This is the cost of an officer including a standard overtime recovery element;
- **Resource/ Operational Cost**
This represents the cost of the resource employed in the provision of the service. Here, the direct costs and the direct overheads are included;
- **Full Economic Cost**
This calculation includes all properly attributable costs, including contributions to administrative and general overheads. However, this indirect overhead recovery must relate to relevant overheads.

3.1.2 The normal application of costing policing for charging purposes should reflect full economic cost recovery. This is particularly true for commercial purposes, where a special police service is being provided using police resource. There are potentially some circumstances where the other cost bases will lead to cost recovery charging.

3.1.3 The model, shown at [Appendix 4](#), builds up to the full economic costs in logical stages. These are aimed to provide stability but at the same time recognise true differences in the cost base of forces. The basic mechanics are set out below:-

- 1) Define relevant Resource Cost = Employable Cost + direct overheads;
- 2) Apply relevant contribution to administrative and general overheads;
- 3) Derive standard or average productive hours;
- 4) Calculate productive hourly rate (per rank);
- 5) Apply deployment hours for “core” and “supplementary” policing / support;
- 6) Identify and include all ancillary costs related to the provision of service e.g. consumables.

3.2 Application

3.2.1 The calculation resulting in the hourly rate of employable resource costs has been revised and updated.

3.2.2 There are a number of factors that have to be addressed in determining elements of the overall calculation and approach. The major ones are set out below:-

- Average or actual cost for officers;
- Deriving the cost of allowances within police pay;
- Pensions cost;
- Accounting for overtime working;
- Identifying relevant ancillary costs;
- Calculating general overhead recovery.



3.2.3 Variations in the approach by a Force to these issues can and have led, in the past, to the relatively wide variation in charges. This had led, in turn, to queries being raised about the relative level of those charges. The aim of the model has been to reduce these variations where possible, without undermining the need to recover costs according to those borne locally.

Average versus Actual Cost

3.2.4 There is a clear difference in deriving a cost and charging methodology. Actual costs should be charged where possible. However, there is confusion in what this means when applied to a costing regime. In practice, police officers are generally still costed as an average by rank. These are now normally also budgeted at cost centres but these vary between forces. There are also variations in the cost of individual officers, in the past from Rent / Housing Allowance and currently by the application of police pay reform elements (see below). It is, therefore, acceptable practice to identify an estimate of the average cost per rank, as the basis of both cost and charging. The model derives a force average to apply in all cases.

3.2.5 The cost of allowances has also been a significant cause of variation in police employable pay. If maximum allowances are included in the calculation as some forces have done, the resultant hourly rate is higher than other approaches.

3.2.6 The calculation for any allowances should reflect the average (budgeted) cost per rank, per force. This will provide both a transparent and realistic view of the employable cost of an officer. It should be seen in the context that the cost recovery exercise addresses other overheads separately within the overall framework.

Pension Costs

3.2.7 Police Pensions costs are now reflected by an annual force contribution to a separate pensions account. It represents an employable cost overhead for the purpose of charging out to third parties.

3.2.8 The pension overhead calculation reflects the force Employer Pension Contribution.

Accounting for Overtime

3.2.9 This remains a difficult issue and there are options to be addressed. Forces have varying approaches between including in the base calculation an estimated element of overtime working within the "standard productive hours" or, calculating a base figure, excluding overtime, and then quoting a premium hourly rate for either extended, rest day or public holiday working.

3.2.10 In the cases where charging for police services is relevant, the policing resource should be considered to be in addition to the normal duty time resource, required to police the community. With cost recovery related to special police services, an element of overtime is included in the charge to the customer, presuming a notice period of greater than 15 days. If the notice period is 15 days or less, an enhanced level of overtime will need to be charged.
 Any abstracted time from an officers' primary purpose, creates a 'vacuum' in their normal role which can only be back-filled by a suitably qualified officer on overtime. (It is important to remember that the 'back-filling' does not necessarily need to be undertaken at the same time as the abstraction, but could be at a completely unrelated time.)

3.2.11 Where short notice working becomes necessary, due to circumstances related to the event, then an additional premium is applicable - to reflect the additional direct cost involved. Similarly, policing on public holidays has an additional cost, to be recovered by the appropriate additional premium charge.



Relevant Direct Overheads

3.2.12 The direct overheads are designed to reflect the other costs attributable directly to the cost of providing the service **at the point of service**. This can involve utility costs, premises and equipment hire and, of course, the provision of catering/subsistence. In most cases, this will be a directly measurable cost, but, in certain cases, involves the apportionment of a Force provided service e.g. communications centre for the period of the service delivery. For certain specialists e.g. dog handlers, an additional overhead calculation to include the average additional costs of the dog can be added. It is expected that only separate, truly measurable additional costs should be added to the modelled overhead recovery. This should, however, be considered separately from the recovery of administration or general overheads and is capable of justification as supporting the point of service delivery.

Recovery of Administrative General Overhead

3.2.13 Full Economic Cost Recovery includes a properly attributable element of contribution towards the general overheads of administration and infrastructure.

3.2.14 There has been a significant variation in the level of general overhead recovery rates currently used. A general methodology has been created but it, too, provides significant variations. In these circumstances, a view has been taken on the need, particularly in high profile charging arrangements like policing football, to maintain consistency.

3.2.15 The previous review of this Administrative General Overhead rate identified that 30% should be used as a national average. This rate will be periodically reviewed in support of the cost model.

Productive hours

3.2.16 Research showed that there were various previously different models to determine the number of chargeable hours across the country. These depend on a local view taken of abstractions. It has been noted that a relatively small difference in this part of the calculation leads to a variation that then becomes problematic to explain in comparison with others. The methodology agreed is to use a standard determination of average abstraction, leading to a consistent number of chargeable days per rank. This is set out in [Appendix 4](#). It is recognised that this reduces the determination and inclusion of local factors but the debate in this area has to date been unhelpful for the service. This will be reviewed as part of a future update of the methodology.

Deployable Time

3.2.17 This has also been the cause of variations in application across Forces in the past. Generally, the police service provided to a third party is planned in advance. There is, therefore, a core service that is agreed to be provided. This core service can be measured in hours or productive "days", where a day is a defined number of hours. Clearly, the deployment time for the service must include all relevant components, from initial parading and briefing, travel time included to and from the service point, the actual policing service itself and de-brief.

3.3 Police Staff and Ancillary Costs

3.3.1 Most events will have a period of core policing service and a transparent approach should be taken in identifying this with the promoter/organiser. This will also give clarity to the police managers at the point of delivery.

3.3.2 At some events or occasions, the core police service will be augmented by an additional resource for a period of time. In this case, the supplementary resource should be added as additional direct cost - for a relevant number of hours. (An hour, or multiples of an hour, should be the minimum time unit used). The charging model should still be applied in the same way but for a different amount of



deployed hours, allowing a transparent approach to be taken for the use of supplementary resource at an event.

- 3.3.3 The Special Constabulary forms a resource that is capable of providing part of the policing service. They are a trained supplementary police resource, generally deployed to provide “small event” policing or to augment policing at larger events. Specials incur a range of costs in uniform/ equipment, travel and subsistence, training, and the use of police vehicles and control equipment. There are no direct employable costs.
- 3.3.4 It is important that the use of this resource is not distorted - (by the supplier or receiver) by using the charging methodology. On the one hand, specials have the powers of a constable and can therefore be deployed as a recognisable police resource. On the other, the cost base of the specials is demonstrably lower than regular officers. To reflect that it is recommended that a charge of 50% of the Police Constable rate is made for each Special Constable.

Other Police Staff

- 3.3.5 PCSOs represent a different element of the extended police family. Their role is complementary to police activity. They are capable of being deployed to augment the service and provide visibility and re-assurance (e.g. small scale events), and should be included at the police staff direct charging calculations.
- 3.3.6 There are increasingly circumstances where specialist police staff provide a front line service as part of special police services. Where police staff have relevant powers and are acting in a core role then they should be included within the direct cost of service calculation.
- 3.3.7 Care should be taken in making this assessment. This charging methodology includes the majority of a force’s support staff as part of the overhead recovery and it is therefore important to be clear and transparent in the use of specialist police staff.
- 3.3.8 However, it is often the case that police staff can and are used in the delivery of services outside of Section 25 arrangements. These staff then form part of the direct cost of service delivered and should be included as part of the direct service cost element.
- 3.3.9 [Appendix 4](#) sets out guidance on the basis for including individual cost elements in the model. It is not exhaustive and there will be some variation in how budgeted information is held by forces. It should be remembered that there is a balance to be struck between precision and materiality, whilst striving to maintain a consistent approach to the charging methodology.
- 3.3.10 Additional specific items of cost can also be calculated by use of average actual cost. Examples would include the specific use of vehicles for which an average cost of depreciation, average cost of service/repair and consumables can be calculated as appropriate.



APPENDIX 1 - Powers for the Charging of Police Services

Police Reform and Social Responsibility Act 2011 – Section 15 Supply of Goods and Services

This section of the Police Reform and Social Responsibility 2011 Act augments the 1996 Police Act with changes to reflect the creation of the Office of the Police & Crime Commissioner:

15 Supply of goods and services

- (1) Subsections (1), (2) and (3) of section 1 of the 1970 Act (supply of goods and services by local authorities) apply, with the modification set out in subsection (2), to each elected local policing body as they apply to a local authority.
- (2) In those subsections, references to a public body (within the meaning of that section) are to be read as references to any person.
- (3) An elected local policing body may not enter into an agreement with another elected local policing body, or with the Common Council of the City of London in its capacity as a local policing body, under section 1 of the 1970 Act in respect of a matter which could be the subject of force collaboration provision in a collaboration agreement under section 22A of the Police Act 1996.
- (4) In this section “1970 Act” means the Local Authorities (Goods and Services) Act 1970.

Police Act 1996 – Section 25 Special Policing Services

This act provides the basis of the provision of Special Police Services.

25 Provision of Special Services.

- (1) The chief officer of police of a police force may provide, at the request of any person, special police services at any premises or in any locality in the police area for which the force is maintained, subject to the payment to the local policing body of charges on such scales as may be determined by that body.
- (1A) The Chief Constable of the British Transport Police Force may provide special police services at the request of any person, subject to the payment to the British Transport Police Authority of charges on such scales as may be determined by that Authority.

Police Act 1996 – Section 26 Provision of advice and assistance to international organisations

Subject to the provisions of this section, a PCC may:-

26 Provision of advice and assistance to international organisations etc.

- (1) Subject to the provisions of this section, a local policing body may provide advice and assistance—
 - (a) to an international organisation or institution, or
 - (b) to any other person or body which is engaged outside the United Kingdom in the carrying on of activities similar to any carried on by the body or the chief officer of police for its area.
- (2) The power conferred on a local policing body by subsection (1) includes a power to make arrangements under which a member of the police force maintained by the body is engaged for a period of temporary service with a person or body within paragraph (a) or (b) of that subsection.
- (3) The power conferred by subsection (1) shall not be exercised except with the consent of the Secretary of State or in accordance with a general authorisation given by him.



- (4) A consent or authorisation under subsection (3) may be given subject to such conditions as appear to the Secretary of State to be appropriate.
- (5) Nothing in this section authorises a local policing body to provide any financial assistance by—
 - (a) making a grant or loan,
 - (b) giving a guarantee or indemnity, or
 - (c) investing by acquiring share or loan capital.
- (6) A local policing body may make charges for advice or assistance provided by it under this section.
- (7) (Removed)
- (8) The provisions of this section are without prejudice to the Police (Overseas Service) Act 1945

Police Act 1996 – Section 92 Grants by local authorities.

This provides the ability of a force to receive a grant towards policing costs from a local authority above normal precept arrangements.

92 Grants by local authorities.

- (1) The council of a county, district, county borough, London borough, parish or community may make grants to any police and crime commissioner whose police area falls wholly or partly within the council's area.
- (2) The council of a London borough, county, district or parish which falls wholly or partly within the metropolitan police district may make grants for police purposes to the Mayor's Office for Policing and Crime.
- (3) Grants under this section may be made unconditionally or, with the agreement of the chief officer of police for the police area concerned, subject to conditions.
- (4) This section applies to the Council of the Isles of Scilly as it applies to a county council.

Police Act 1996 – Section 93 Acceptance of gifts and loans

This provides the ability of a force to receive gifts of money and gifts or loans of other property. (Forces should take great care in undertaking 'due diligence' in reviewing the source of any such gift or loan and any taxation liabilities thus created.)

93 Acceptance of gifts and loans.

- (1) A local policing body may, in connection with the discharge of any of its functions, accept gifts of money, and gifts or loans of other property, on such terms as appear to the authority to be appropriate.
- (2) The terms on which gifts or loans are accepted under subsection (1) may include terms providing for the commercial sponsorship of any activity of the local policing body or of the police force maintained by it.

Police (Northern Ireland) Act 2000 – Section 11 Charging for Special Services.

This act provides the basis of the provision of Special Police Services in Northern Ireland.

11 Charging for Special Services.

The Chief Constable may, at the request of any person, provide special police services subject to the payment to the Board of such charges, or charges on such scales, as may be determined by the Board.



APPENDIX 2 - Charging for Events and Abatements

By default, charging for events is always at **Full Economic Cost** Recovery (see [Appendix 4](#) for calculation formula). For some events, Forces may to make reductions, based upon the type of event and reflect a charitable or community benefit.

For Statutory events, such as Remembrance Day parades, Jubilee or constitutional events, police attendance is often part of the normal police annual duties and **Not Chargeable**.

For non-commercial events, such as local authority events, religious parades and wholly charitable events, forces often charge the **Direct Cost** (see [Appendix 4](#) for calculation formula) of policing the event (Employee Cost + Overtime Premium).

Some forces have historically applied an abatement formula, to guide senior officers as to a 'sliding scale' percentage abatement. It is recommended that the simpler **Not Chargeable / Full Economic Cost / Direct Cost** rates are applied to all events. This makes any charging assessment simpler, more transparent and more easily understood by both customers and forces.



APPENDIX 3 - Charge Rates for Common Items³

NPCC Recommended Minimum Rates⁴

Revised 2017/18		Revised 2018/19
£	Accident Reports	£
93.20	Copy of Accident Report (full extract up to 30pages)	96.50
4.10	Additional pages for same incident (per page)	4.20
33.10	Limited particulars (RT Act details)	34.30
33.10	Copy of self-reporting / minor accident form	34.30
400.00	Fatals - Accident Investigation report	414.00
79.80	Fatals - Reconstruction video	82.60
26.60	Rough Data (per page)	27.50
40.00	Copy of Scale plan -other than in collision report	41.40
66.50	Copy of Police vehicle examination report (unless provided as full extract)	68.80
66.50	Copy of Collision Reconstruction Report (unless provided as full extract)	68.80
4.10	Copy of Collision Reconstruction Report (unless provided as full extract) per page (max £50)	4.20
Copies of Photographs		
19.60	from Digital camera (per disc)	20.30
19.60	A4 Index sheet (digital)	20.30
26.60	Photographs (first photo)	27.50
2.90	Each subsequent photograph	3.00
Copies of statements - other than in booklets		
34.20	Copy of existing Statement (per statement – up to 3 pages)	35.40
4.10	Additional pages of existing Statement (per page)	4.20
40.00	Copy of existing witness statement (witness agrees to disclosure of personal details)	41.40
53.20	Copy of existing witness statement (witness not agreeing to disclosure of personal details)	55.10
134.20	Interview with Police Officer (per Officer)	138.90
134.20	Request for a statement to be written by Police Officer	138.90
26.60	Copy of PIC Sheets (2nd copy)	27.50
53.20	Copy of interview record (only where prepared during investigative process)	55.10
79.80	Copies of VHS videotapes (provision for CJS)	82.60
79.80	Copies of audio tapes	82.60
33.10	(provision for CJS)	34.30
19.30	Copies of CDs/DVDs	20.00
Fingerprinting Fees⁵		
75.10	One set	77.70
37.50	Additional sets thereafter (each)	38.80

³Cancellation of requests may incur a charge, if received after work has started on any service. If received before any work has commenced, no charge should be made. If received immediately prior to despatch of requested items(s), full charge should be made. Cancellation requests received where the request is part complete, should be charged proportionately.

⁴ Individual Force charges may exceed these guidelines, were demonstrable to recoup higher local costs.

⁵ Fingerprint fees are subject to VAT, except certain HMRC exemptions e.g. Japan, UAE/Qatar, Canada, Jamaica, Abu Dhabi, Zimbabwe, Nigeria, Zambia and St. Vincent & Grenadines.

Previous 2017/18		Revised 2018/19
	Requests for Disclosure of Information	
84.40	Request for information (up to 2 hours work)	87.40
28.20	Hourly rate for work above 2 hours (including redaction)	29.20
	<u>ABI/Lloyds Disclosure of Information (ABI/Lloyds MOU)</u>	
28.20	Request (crime/lost property number, etc.) – MOU App D(a)	29.20
120.20	Request (In response to specific questions) – MOU App D(b)	124.40
134.20	Interview with Police Officer (per Officer) – MOU Para 4.5	138.90
	<u>Other common items</u>	
84.50	Crime Report	87.50
33.70	MG5	34.90
33.70	MG3	34.90
34.40	Incident Log	35.60
33.70	PNC Convictions	34.90
22.10	Caution Certificate	22.90
50.80	Domestic Violence Report	52.60
17.00	Occurrence Summary	17.60
17.00	Custody Record	17.60
	<u>Alarm URN Fees (set by Secured by Design)</u>	
Set by Secured by Design	Alarm Registration (Intruder)	Set by Secured by Design
	Alarm Registration (Panic Alarm)	
	Lone Worker Devices up to 10,000	
	Lone Workers Devices 10,001 – 50,000	
	Lone Workers Devices 50,001 and over	

Disclosure of any documents, images or data held by a Police Force is subject to any such disclosure being lawful, in accordance with legal professional privilege and being in compliance with the Data Protection Act 1998 (as amended).

Section 15 services are generally subject to VAT at the then current rate, except where a service is required by statute or authority direction.



Statutory Charge Rates for Common Items

	Statutory Charges £
Data Protection Act 1998 Fees (SI 2000/191)	
DPA 1998 – Section 7 Subject Access Request	10.00
DPA 1998 – Section 68 Health Records (Copy)	50.00
DPA 1998 – Section 68 Health Records (View)	10.00
DPA 1998 – Section 68 Health Records (View & then Copy)	50.00
Firearms Licensing Fees	
Firearms Certificate grant	88.00
Firearms Certificate renewal	62.00
Firearms Certificate replacement	4.00
Shotgun Certificate grant	79.50
Shotgun Certificate renewal	49.00
Shotgun Certificate replacement	4.00
Shotgun Certificate grant (co-terminus/including Firearms Certificate)	90.00
Shotgun Certificate renewal (co-terminus/including Firearms Certificate)	65.00
Visitors Permit (Individual)	20.00
Visitors Permit (Group)	100.00
Home Office Club approval	84.00
Registered Firearms Dealer registration	200.00
Registered Firearms Dealer renewal	200.00
Game Fairs	13.00
Variation (not like for like)	20.00
Firearms Museum License	200.00
Other Licensing Fees	
Aliens Certificates	34.00
Peddler Certificates	12.25

It should be noted that these charges are set by reference to Statutory Instruments.



APPENDIX 4 - Costing / Charging model

	Key Data	Calculation
A	Direct Costs	
1	Basic Salary	Average salary per rank
2	Rent / Housing allowance	Average Rent/Housing Allowance per rank
3	Police reform payments	Average CRTP, unsociable hours and Bonus payment per rank
4	Subsistence	Total force budget / no. of staff
5	Non-Pensionable Pay	Average Non-Pensionable Pay per rank
6	Other allowances / benefits	Average allowances / benefits per rank
7	National Insurance	Total of 1-6 , calculated as per NI model
7a	National Government Levies	Government levies such as Apprentice Levy
8	Superannuation / Pension cost	Calculated cost reflecting force contribution
=	Total employable cost	
9	Overtime premium	Overtime uplift, depending on pay cost to force.
=	Total Direct Cost	
B	Direct Overheads	
10	Uniforms / equipment	Total Budget /no. of officers
11	Insurance	Total Budget /no. of officers
12	Transport	Total Budget /no. of officers
13	Training	Dept. budget + devolved budgets / no. of staff
14	Call Handling	Call answering, crime recording, incident handling / no. of officers
15	Communications infrastructure	IT infrastructure, voice services & operational applications / no. of officers
=	Total Operational Resource Cost	
C	Indirect Overheads	
16	General overhead recovery	Average indirect overhead recovery @ 30% (estimated national average) applied to Employable Cost + Direct Overheads
=	Full Economic Cost	



Example Police Officer Calculation from September 2017 award

Direct Costs & Direct Overheads Calculation

	PC £	Sgt £	Insp £	C Insp £	Supt £	C/Supt £
Basic Salary	34,300	42,400	52,400	56,000	73,200	84,700
Unsociable Hours	1,200	1,500	1,900	2,100	0	0
Bonus Payments	0	0	0	0	0	0
Subsistence	0	0	0	0	0	0
Non-Pensionable Allowance	343	424	524	560	732	847
Rent/Housing Allowance	1,400	1,800	1,900	1,900	2,700	2,300
	37,243	46,124	56,724	60,560	76,632	87,847
National Insurance	4,000	5,200	6,700	7,200	9,400	10,900
In Year Pension Cost Net	8,300	10,300	12,700	13,600	17,700	20,500
Apprentice Levy (0.5%)	248	308	381	407	519	596
Employable Cost	49,791	61,932	76,505	81,767	104,251	119,843
Overtime Premium (inc. App Levy)	13,006	16,077				
Total Direct Cost	62,797	78,009	76,505	81,767	104,251	119,843
Direct Overheads						
Uniforms	369	369	369	369	369	369
Insurance	358	358	358	358	358	358
Transport	2,300	2,300	2,300	2,300	2,300	2,300
Training	1,104	1,104	1,104	1,104	1,104	1,104
Call Handling	3,981	3,981	3,981	3,981	3,981	3,981
Communications	524	524	524	524	524	524
Comms Infrastructure						
Total Direct Overheads	8,637	8,637	8,637	8,637	8,637	8,637
Resource Cost	71,433	86,646	85,141	90,403	112,887	128,480

Each Force is required to update the above calculation to reflect their Force position for the current financial year. The special policing services guidance describes a standard method for the calculation the charges and their application. The actual rates charged will differ for each force, based upon costs within that specific force.

Please note numbers are subject to rounding.



Productive Hours and Hourly Rate Calculation

	PC £	Sgt £	Insp £	C Insp £	Supt £	C/Supt £
Employable Cost	49,791	61,932	76,505	81,767	104,251	119,843
Overtime Premium (inc. App Levy)	13,006	16,077				
Total Direct Cost	62,797	78,009	76,505	81,767	104,251	119,843
Direct Overheads	8,637	8,637	8,637	8,637	8,637	8,637
Resource Cost	71,433	86,646	85,141	90,403	112,887	128,480
Indirect Overheads	17,528	21,171	25,542	27,121	33,866	38,544
Full Economic Cost	88,961	107,817	110,683	117,524	146,753	167,024

Available Productive Hours

Std Calculation used throughout

	PC	Sgt	Insp.	Ch. Insp.	Supt	C Supt
Total Days	365	365	365	365	365	365
less :						
Rest Days & Weekends	104	104	104	104	104	104
Annual Leave	26	27	29	29	31	31
Average Sickness	11	10	9	9	8	8
Training Days	8	8	7	7	6	6
Bank Holidays	8	8	8	8	8	8
Net Days	208	208	208	208	208	208
Productive hours per shift	7.25	7.25	7.25	7.25	7.25	7.25
Total Hours	1,508	1,508	1,508	1,508	1,508	1,508
Net Days	208	208	208	208	208	208

	PC £/hr	Sgt £/hr	Insp. £/hr	Ch. Insp. £/hr	Supt £/hr	C Supt £/hr
Employable Costs	33.02	41.07	50.73	54.22	69.13	79.47
Overtime Premium	8.62	10.66				
Total Direct Cost	41.64	51.73	50.73	54.22	69.13	79.47
Direct Overheads	5.73	5.73	5.73	5.73	5.73	5.73
Resource/Operational Cost	47.37	57.46	56.46	59.95	74.86	85.20
Indirect Overheads	11.62	14.04	16.94	17.98	22.46	25.56
Full Economic Costs	58.99	71.50	73.40	77.93	97.32	110.76

Charges may include an additional Short Notice/Public Holiday premium, if the deployment is on a Public Holiday or if the deploying force is unable to provide Officers with more than 15 days' notice to perform the requested duties.

Please note numbers are subject to rounding.



Example Police Staff Calculation from September 2017 award

Productive Hours and Hourly Rate Calculation

	Band A-C SCP 13	Band D-E SCP 32	Mgmt SCP 45	PCSO SCP 18	SOCO SCP 29
	£	£	£	£	£
Employable Cost	24,371	43,677	60,814	34,061	40,336
Overtime Premium (inc. App Levy)	12,891	20,950	304	14,858	20,934
Total Direct Cost	37,262	64,627	61,118	48,919	61,270
Direct Overheads	785	785	785	8,056	785
Resource Cost	38,046	65,412	61,903	56,975	61,903
Indirect Overheads	7,547	13,338	18,480	12,635	12,336
Full Economic Cost	45,593	78,750	80,383	69,610	74,391

Available Productive Hours

Std Calculation used throughout

	SCP 13	SCP 32	SCP 45	SCP 18	SCP 29
Total Days	365	365	365	365	365
less :					
Rest Days & Weekends	104	104	104	104	104
Annual Leave	26	27	29	26	27
Average Sickness	11	10	9	9	8
Training Days	8	8	7	7	6
Bank Holidays	8	8	8	8	8
Net Days	208	208	208	208	208

Productive hours per shift

Total Hours	7.25	7.25	7.25	7.25	7.25
Net Days	1,543	1,543	1,543	1,543	1,543
	208	208	208	208	208

	SCP 13 £/hr	SCP 32 £/hr	SCP 45 £/hr	SCP 18 £/hr	SCP 29 £/hr
Employable Costs	15.80	28.32	39.43	22.02	26.14
Overtime Premium (inc. App Levy)	8.36	13.58	0.19	9.60	13.57
Total Direct Cost	24.16	41.90	39.62	31.62	39.71
Direct Overheads	0.51	0.51	0.73	5.21	0.51
Resource/Operational Cost	24.67	42.41	40.13	36.83	40.22
Indirect Overheads	4.89	8.64	11.98	8.17	7.99
Full Economic Costs	29.56	51.05	52.11	45.00	48.21

Please note numbers are subject to rounding.



APPENDIX 5 - Case Law – Charging for Special Police Services

Case law offers helpful material and the key cases are listed below:

- Glasbrook Brothers Limited v Glamorgan County Council [1925] AC 270.
- Reading Festival Ltd v West Yorkshire Police Authority 2006 [2006] EWCA Civ 524
- Harris v Sheffield United Football Club Ltd [1988] 1QB 77.
- Chief Constable of Greater Manchester Police vs. Wigan Athletic AFC LTD [2007] EWHC 3095 (Ch)
- Chief Constable of Greater Manchester v Wigan Athletic AFC LTD [2008] EWCA Civ 1449
- Leeds United Football Club Ltd v Chief Constable of West Yorkshire Police [2012] EWHC 2113 (QB)
- Leeds United Football Club Ltd v Chief Constable of West Yorkshire Police [2014] EWHC 2738 (QB)
- Ipswich Town Football Club Company Limited v The Chief Constable of Suffolk Constabulary [2016] EWHC 1682 (QB)

In addition to this, the appeal *Ipswich Town Football Club Company Limited v The Chief Constable of Suffolk Constabulary* [2017] EWCA Civ 1484; [2017] 4 WLR 195, is reproduced below, as it contains many references of note, especially in summarising previous case law:

Ipswich Town Football Club Company Limited and The English Football League v The Chief Constable of Suffolk Constabulary [2017] EWCA 1484; [2017] 4 WLR 195

Introduction

1. This is an appeal by the appellant, Ipswich Town Football Club Company Limited (“the Club”), from the decision of Green J, sitting in the High Court (Queen’s Bench Division), dated 8 July 2016 (“the judgment”)⁶. It concerns the scope of section 25 of the Police Act 1996 (“the 1996 Act”), which provides:

“25 – Provision of special police services

(1) The chief officer of police of a police force may provide, at the request of any person, special police services at any premises or in any locality in the police area for which the force is maintained, subject to the payment to the local policing body of charges on such scales as may be determined by that body.”
2. The dispute between the parties concerns whether section 25 of the 1996 Act entitles the police to charge the Club for special police services (“SPS”) provided on land immediately adjacent to, and outside, Ipswich football stadium. The disputed area essentially consists of land comprising the public highway, in respect of which the Club has no proprietary interest, but over which it exercises a degree of de facto control.
3. The Club submits that the respondent, the Chief Constable of Suffolk Constabulary⁷, with responsibility for the direction and control of that Constabulary, (“the respondent” or “the Chief Constable”) has no such power, section 25 being effectively confined to private premises such as, paradigmatically, the inside of the stadium. The Chief Constable submits that the judge was correct to find that the statutory power to charge for the provision of policing services extends to land of the type in question, and that, in any event, the judge’s finding was within the bounds of his permissible fact finding remit.
4. The Honourable Michael Beloff QC together with Mr Nick De Marco appeared on behalf of the Club; Mr Dijen Basu QC together with Miss Catriona Hodge appeared on behalf of the Chief Constable.
5. Permission to appeal was granted by Green J on 3 August 2016.

⁶ [2016] EWHC 1682 (QB)

⁷ It appears that any payment for SPS should technically be made to the Police and Crime Commissioner for Suffolk. However, it was agreed at first instance that no point would be taken as to the correctness of the identification of the Chief Constable as the appropriate Defendant in these proceedings (see judgment of Green J at [21], footnote 1).



Factual background

6. The Club holds a long lease over the Club's stadium, the Portman Road Football Club Stadium and Practice Pitch, Portman Road, Ipswich, IP1 2DA ("the stadium"), the freehold reversion of which is owned by the local authority. The stadium has a maximum capacity of around 29,000 spectators, although typically around 20,000 spectators attend each match. It is primarily accessed via two streets which directly adjoin two sides of the stadium, namely Portman Road and Sir Alf Ramsey Way. Both are public highways. It is on these two streets that the majority of the stadium's turnstiles and exit gates are situated. Accordingly, on match days, very large numbers of people congregate on these streets on their way into the stadium. This creates obvious safety risks. The entry and exit gates and turnstiles for fans are accentuated pinch points and require very careful control. Tens of thousands of fans coalesce at these points before and after a match.
7. The Club employs stewards who carry out a number of functions, both on Portman Road and Sir Alf Ramsey Way, and within the stadium itself, with a view to ensuring that fans enter and exit the stadium in a secure and peaceful manner.
8. As a designated sports ground, section 1(1) of the Safety of Sports Grounds Act 1975 ("SSGA 1975") requires that the stadium has a safety certificate which, under section 2(1) of the SSGA 1975, must contain such terms and conditions as the local authority considers necessary to secure reasonable safety at the stadium. On match days, policing is sometimes necessary within the stadium to prevent crime and keep the peace. However, most of the Club's matches are not policed. The Club's Safety Certificate granted by Ipswich Borough Council ("the Council") is contingent upon the Club having a police presence within the stadium during certain matches. Without that police presence, the Club is in breach of its Safety Certificate and may be subject to criminal sanctions. In practice, this means that those matches cannot be played. The Safety Certificate does not require the Club to secure a police presence outside the stadium.
9. In order to facilitate matches at the stadium, on 18 July 2000, and following the Club's application, the Council issued a Traffic Regulation Order (or traffic control order) entitled Ipswich Borough Council (Portman Road / Sir Alf Ramsey Way) (Prohibition of Entry) Order 2000 ("the Order"). The Order came into operation on 1 August 2000 and has the effect of closing the roads in an area surrounding the stadium ("the TCO area") during certain matches. Schedule 1 of the Order sets out an Operational Plan which provides for: i) the closure of Portman Road and Sir Alf Ramsey Way on match days from 90 minutes prior to kick-off to 30 minutes after the final whistle; ii) all vehicles to be prohibited from entering the TCO area during that time, save with the permission of a police officer or traffic warden or in relation to certain exempt vehicles including emergency vehicles; iii) the placement of barriers and bollards on the boundaries of the TCO area 90 minutes prior to kick-off, and; iv) the use of various "road closed" signs and "no waiting" cones in a number of strategic locations prior to kick-off.
10. It is the Club's stewards and employees (and not the police) who insert the physical barriers that close the roads and who then regulate traffic in the TCO area. No police officers are involved in the road closures. The stewards put crowd control barriers in the roads in the TCO area in order to control fans as they approach the turnstiles.
11. On 23 July 2008, the parties agreed a Memorandum of Understanding ("MOU"), intended to govern the provision of police services by the Respondent to the Appellant during the period 1 July 2008-30 June 2011. Pursuant to that MOU, the Chief Constable was required to provide policing services to the Club "sufficient to facilitate the safety of both home and away spectators and to prevent crime, violence and disorder". The level and type of policing services provided for any particular match depended on which 'risk grade' the parties assigned to that match, each grade corresponding to a sum chargeable by the Chief Constable for providing the services. Grade A represented a low risk of disorder, and was charged at £5,926, Grade B denoted a medium risk of disorder and was charged at £10,928, and Grade C, which was charged at £25,242, was reserved for matches carrying the highest risk of disorder. The MOU covered all policing operations, and drew no geographical distinction between policing provided: i) inside the stadium; ii) on Portman Road and Sir Alf Ramsey Way, and/or; iii) elsewhere in Ipswich.
12. In January 2011, the parties agreed a Statement of Intent, which was stated not to be legally binding, but rather simply to define the respective duties of the Club and the Chief Constable. Paragraph 1.1 of the Statement



provided that the sole responsibility for the safe management of crowds entering and leaving the stadium rested with the Club. Paragraph 3 provided that “external areas” were the responsibility of the Chief Constable. The TCO area was excluded from the definition of “external areas”.

13. Upon the expiry of the 2008 MOU in June 2011, the parties agreed a document entitled “Terms for the request and supply of special police services under section 25 Police Act 1996” (“the 2011 Terms”). This document was signed on 5 August 2011, and related to matches played during the 2011-2012 season. It made provision for the supply of SPS within and around the stadium, including within the TCO area. These services were to be chargeable on essentially the same basis as under the 2008 MOU, save that the basis of charging was geographically limited to policing services provided within the stadium and the TCO area, thereby excluding policing services provided in other areas of Ipswich.
14. On 24 July 2012, judgment was delivered in the case of *Leeds United Football Club Limited v Chief Constable of West Yorkshire Police* [2012] EWHC 2113 (QB) (“Leeds”), in which the High Court held that the police were not entitled to charge for policing services provided on the public highway and in car parks immediately surrounding the stadium. The police subsequently appealed.
15. On 1 August 2012, upon expiry of the 2011 Terms, the Club and the Chief Constable agreed a second set of “Terms for the request and supply of special police services under section 25 Police Act 1996” (“the 2012 Terms”). As with the 2011 Terms, the 2012 Terms provided for the Chief Constable to charge the Club for the provision of SPS within the TCO area. However, under clause 23 of the 2012 Terms the Club reserved the right to renegotiate the contract once the legal effect of the Leeds case was finally determined.
16. On 17 December 2012, the Club wrote to the Chief Constable explaining that, as a result of the High Court judgment in the Leeds case, the Club believed that it had been overcharged by the Chief Constable in the sum of £99,000 during the 2011-2012 football season. The Club did not dispute the Chief Constable’s right to charge the Club for the provision of SPS within the Stadium. On 22 January 2013, the Chief Constable replied stating that, pending the determination of the appeal in Leeds, any claim by the Club to recoup the costs of such charges would be premature. The Club thereafter refused to pay any further invoices.
17. In March 2013, the Court of Appeal upheld the High Court’s judgment in Leeds and dismissed the Chief Constable’s appeal; see [2014] QB 168, [2013] EWCA Civ 115. On 21 June 2013, the Club wrote a letter before claim to the Chief Constable seeking, among other matters, recovery of overpaid charges under the MOU and the 2011 and 2012 Terms. As no agreement as to charges could be reached between the Chief Constable and the Club, the Club issued these proceedings on 29 April seeking recovery of allegedly ultra vires charges made by the Chief Constable for services that the Club claimed were not provided in accordance with section 25 the 1996 Act, but rather in discharge of the police’s ordinary public duty to prevent crime and protect life and property⁸.
18. The matter came before Green J in June 2016. By his judgment dated 8 July 2016, the judge: i) found that the Chief Constable was entitled to charge for the policing services provided in the TCO area but not in the areas beyond the TCO area that had been charged for under the MOU, and ii) gave directions for the hearing of issues relating to quantum and recovery. On 3 August 2016, Green J granted the Club’s application for permission to appeal. By Appellant’s Notice dated 24 August 2016, the Club asks the Court of Appeal to make a declaration that the Chief Constable is not entitled to impose charges for the provision of police services within the TCO area.
19. On 23 January 2017, the Football League Limited (“the FL”) made an application to intervene in the proceedings. On 31 January 2017, I gave permission for the FL to intervene by way of written submissions, and ordered that the FL should bear its own costs of the intervention, without prejudice to the right of any other party to seek its costs of the intervention against the FL. The FL subsequently provided written submissions settled by Mr Shane Sibbel, and, although I had not given permission to do so, additionally a witness statement

⁸ In addition to this central issue, there arose a number of issues as to quantum and the basis upon which, if entitled to do so, the Club could recover the monies wrongly paid. These issues arose primarily out of the counter-claim, set-off and limitation defence raised by the Chief Constable in respect of certain elements of the Club’s claim. They are set out in full by Green J in his judgment and are not materially relevant to the subject matter of this appeal, which is confined to liability.



by Nicholas Craig, the governance and legal director of the FL. However, neither party objected to the service of that witness statement.

The judgment

20. The judge delivered a judgment of some 157 paragraphs. In summary:

- i) He made the following findings of fact:

“I now set out my principal findings of fact in relation to the TCO area:

- i) Primary responsibility for ensuring safety and public order in the stadium lies with the Club.
- ii) Predominantly the persons present in the TCO area at the relevant time are football fans and not general members of the public.
- iii) Primary responsibility for safety and public order in the TCO area lies with the Club. The Club exercises exclusive control over the TCO area in the majority of cases (see statistics at paragraph [23] above). The Club has a high degree of de facto control over the TCO area. This is not absolute and they have no legal power to eject persons from the area. But they control traffic into the area; they erect crowd control barriers; they conduct searches of persons entering the stadium; they eject drunks and aggressive spectators; and they shepherd and control flows of fans coming into and out of the stadium.
- iv) Primary responsibility for traffic control within the TCO area lies with the Club.
- v) The activities of the stewards in the TCO area represent the corollary or counterpart of the crowd control activities they also perform within the stadium both before and after the match to ensure order and safety.
- vi) The Club also uses the TCO area as a site for commercial activity by deploying kiosks and sales staff to sell match programmes etc. The Club does not have an exclusive right to use the TCO area for commercial activity and obtains permission from the local authority to exploit the TCO in this way.
- vii) All of the activities of the Club in the TCO area are performed with the agreement of the local authority and the Police and Safety Advisory Group.
- viii) The services provided by the Police in the TCO area are in response to a request issued by the Club. They are overwhelmingly preventative and supportive of the Club's stewarding activities. They are analogous to the services provided by the Police inside the stadium and are a natural extension of those services.
- ix) Not every service provided by the Police in the TCO area is preventative or secondary. Where serious public order issues arise or crime is witnessed or anticipated the Police might react in their usual operational manner. However, the need for reactive policing in the TCO area is rare.
- x) The Club has an excellent record for ensuring safe and orderly matches and it benefits materially from a Police presence in the TCO area which instils a calming atmosphere both in that area and inside the stadium. This is good for the Club's reputation as a safe venue.”

- ii) Having reviewed certain of the relevant cases he summarised what he regarded as the most important principles as follows:

“(3) Summary of relevant principles

115. I set out below a summary of the most important principles which arise from the case law.

- (i) The distinction between the operational duty and SPS

116. For the purposes of section 25 the services provided by the Police can be divided into operational (for which no charge may be levied) and SPS (for which a charge may be levied). There are no hard and fast rules governing whether a policing service is operational or an SPS. The issue is fact and context specific.



(ii) The scope of the operational duty: reactive and preventative policing

117. The core operational service embraces both reactive policing and preventative policing. Reactive policing is Police intervention in response to actual or imminent crime or disorder; preventative policing is policing designed to prevent or deter the emergence of crime or disorder. The securing of safety and preservation of property may be an inherent aspect of both reactive and preventative policing.

(iii) Preventative policing as SPS

118. Preventative policing can be both an operational activity and SPS.

(iv) Reactive policing as SPS

119. There is no authority suggesting that the provision of reactive policing services can amount to SPS and Harris (at page [91F]) suggests that reactive policing may never be SPS.

(v) Factors relevant to determining whether a requested preventative service is SPS

120. Assessment is fact specific: In determining whether a service is operational or capable of amounting to SPS there are no hard and fast, black and white rules. Nonetheless there are guidelines arising out of case law which create indicators and some are of much greater weight and importance than others. I identify below some of the main indicators and the weight which has been attributed to them in case law.

121. Preventative policing on private land or land the recipient controls: Preventive policing performed on private premises or land controlled by the recipient is *prima facie* SPS. This might indicate that the service is SPS because, but for the permission of the service recipient granted to the Police to enter the land, the Police would have no *prima facie* right to enter and because the degree of control exercised by the recipient is indicative of the commercial nature of the use of the land and the relationship of the service provided by the Police to the recipient. The relationship in law of the recipient of the Police service to the land in question is not in itself dispositive but it is an important factor which can shed light on the broader question which is as to the essential nature of the service provided by the Police to that recipient.

122. Preventative policing on public land or on the public highway: Preventative policing on public land or on the public highway will, *prima facie*, be part of the operational duty. But, it is still capable of being an SPS in appropriate circumstances (such as the provision of a Police escort service on the public highway).

123. Reactive policing on private land: Reactive policing on private premises will still be operational. There is no case law indicating that the performance of normal reactive policing, for example arresting a person intent on assault or drug dealing in a stadium, is anything other than an activity within the operational duty.

124. The relevance of the discretion of the Police: The Police have a discretion as to how resources are allocated. The operational duty may arise only after the exercise of discretion. If the unilateral decision is taken not to allocate (say) preventative resources a private person may request those services for consideration as SPS.

125. The nature of the benefit provided: The identity and nature of the recipient who benefits from the service is a relevant but not conclusive consideration. This may involve a consideration of the predominant purpose of the service. If the beneficiary is the public at large this is an indication that the service is operational. But if it is directed towards a private person for a private gain and/or to a limited category or sub-set of persons that may have some significance. The mere fact that the beneficiary is a sub-set of the public does not without more mean that the service is SPS: See



paragraph [111] above in relation to the example given of the apprehension of the burglar, though the illustration given in Leeds seems to be of reactive policing.

126. No "but for" test: A Police service is not an SPS simply because it would not have been provided "but for" the existence of the event in question."

- iii) In paragraph 127 of his judgment, the judge said that, in the light of the case law, he had identified "the following issues and questions as relevant to the facts". In effect, these were nine factors which he went on to consider. These factors were as follows:
 - i) Preventative policing as both a core duty and SPS;
 - ii) Policing within a stadium on private land and the analysis of the TCO area;
 - iii) Control of the TCO area as a relevant factor;
 - iv) The relevance of the assessment of the risk of disorder and violence in relation to the TCO area;
 - v) Preventative policing on the TCO area as public land;
 - vi) Whom the service provided by the Police in the TCO area is directed at (its predominant purpose / benefit);
 - vii) The nature of the "request" for services;
 - viii) The relevance of the strain on Police resources;
 - ix) The relevance of a "but for" test."
- iv) He summarised his conclusions as follows:

"F. Conclusion

153. In my judgment, and taking all of the relevant facts in the round and attributing due weight to each factor, the provision of policing services in the TCO area amounts to SPS. This is because:

- i) Principal responsibility for safety and order in the stadium: The principal responsibility for crowd safety and order in the stadium lies with the Club.
- ii) Principal responsibility for traffic, safety and order in the TCO area: The principal responsibility for traffic, safety and order in the TCO area lies with the Club.
- iii) The Club has significant control over the TCO area: The Club has a substantial measure of control over the TCO area during the relevant periods and it exercises this control with the consent and approval of the local authority and the Police.
- iv) The nexus between the TCO area and land under the legal control of the Club: The TCO area is contiguous to land (the stadium) over which the Club exercises a proprietary (leasehold) interest.
- v) Use made by the Club in the TCO area: The use made of the TCO area by the Club is necessary to enable it to perform its normal stewarding functions. The work of the stewards in the TCO area outside the stadium in controlling entry and exit is a logical and natural corollary to the work of the Club and its stewards inside the stadium. They are part and parcel of the same core Club function.
- vi) The parties do not categorise the TCO areas as a public highway: The Police and the Club agree (cf paragraph [47] above) that the TCO area is not to be treated as the "Public Highway" for the purpose of traffic control or public order.
- vii) The essentially preventative, peace keeping, role played by the Police in the TCO area: The service provided by the Police in the TCO area is preventative and intended to instil a calming influence on spectators and is designed to support and supplement the work of the stewards both in that area and also inside the stadium.
- viii) Nexus between Police service inside and outside the stadium in the TCO area: In the stadium policing services provided by the Police amount to SPS. By parity of reasoning when the Police perform an equivalent role and service outside in the TCO area those equivalent services should equally be classified as SPS.



- ix) There is a logical cut off between the boundary of the TCO and public land outside the TCO area: The TCO area bounds the entry/exit gates and turnstiles. The position inside the TCO area is qualitatively different to areas beyond the TCO area. Services provided in the TCO area are inward facing (i.e. stewarding spectators into the stadium and then (after the match) dispersing them from inside the stadium out into the TCO area and away) and based on large scale crowd control. They therefore have a strong nexus to Police services provided inside the stadium. However, that nexus substantially weakens or disappears outside the TCO area. Hence there is a logical analytical cut off at the boundary of the TCO area.
- x) Value of the policing service to the Club: The service provided by the Police in the TCO area is predominately directed at the Club and its supporters and not to the general public. It is valuable and beneficial in commercial terms to the Club since it (a) enables the Club to meet essential regulatory requirements and (b) reduces tension around the entrances and exits and turnstiles and it therefore materially assists to engender the wider reputation of the Club as a safe venue for spectators to visit.

154. It follows from the facts of the case that the services provided by the Police within the TCO area constitute SPS and the Police are entitled to impose charges for the provision of such services. I will grant a declaration in appropriate terms to this effect."

The Club's grounds of appeal

21. The Club appeals on three grounds, namely:

- i) the judge failed to apply the correct legal test (which was clearly set out by the Court of Appeal in Leeds in determining whether police services are special police services); and/or
- ii) the judge instead applied a test that: i) failed to take into account the factors identified by the Court of Appeal in Leeds; ii) accorded weight, or too much weight, to factors not considered significant in Leeds; iii) gave insufficient weight to the most important factors identified in Leeds, and/or; iv) elevated the less significant factors; and/or
- iii) the judge made a number of factual errors when applying the facts of this matter to the law.

The Chief Constable's response

22. In response, the Chief Constable seeks to support the decision of the judge. He contends that the judge's self-directions of law were impeccable, that he made permissible findings of fact and correctly applied the facts and context to the law, giving each of the applicable factors a weight which was open to him. The Chief Constable further contends that the appeal is largely a perversity challenge and that the Club must cross a very high threshold in order to make good such a challenge.

The FL's intervention

23. The FL supports the position of the Club. It contends that the judge made two key errors of law in the judgment:

- i) first, the judge did not give sufficient weight to what was submitted to be the most important factor, namely whether police officers were required to attend on private premises or in a public place; the judge, it was said, failed to recognise the importance of this factor when addressing the scenario of services provided on public land and wrongly relegated the factor; and
- ii) second, the judge wrongly elevated as a key factor the extent to which the relevant club enjoys some relevant degree of non-proprietary control over the land in question, notwithstanding that it is public land; there was no support for such an analysis in the relevant authorities.

24. In addition, the FL submitted by reference to its evidence, that, if upheld, the approach developed in the judgment would have serious and widespread ramifications for the members of the FL.



Discussion and determination

Approach by reference to relevant authority

25. I start by making the perhaps obvious point the outcome of this case does not depend on what individual judges, the public, or the media, think is the "right" answer to the question as to whether the police should be entitled to recover for providing the additional cost of policing a sporting event which is intended to be run for profit. The answer depends on what the law is. And that is contained in section 25 of the 1996 Act as interpreted by subsequent case law, by which this court is bound. Subject to any ruling by the Supreme Court (which has not to date considered the issue of policing football matches), it is for Parliament to change the law if it considers it appropriate to do so. As Scott Baker LJ said in *West Yorkshire Police Authority v Reading Festival Limited* [2006] 1 WLR 2005 at [72]:

"There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit. That however is not the law."

Analysis of existing case law

26. As Mr Beloff submitted, an analysis of the existing case law is necessary. However, since this was done by Lord Dyson MR in the Leeds case, I gratefully adopt his analysis of the cases until 2013.

27. The starting principle is contained in *Glasbrook Bros Ltd v Glamorgan County Council* [1925] AC 270. That was a case where, on the occasion of a colliery strike, a colliery manager applied for police protection for his colliery and insisted that it could only be efficiently protected by billeting a police force on the colliery premises. The police superintendent was prepared to provide what he considered to be adequate protection, but only if the manager agreed to pay for it. By a majority, the House of Lords decided that there was nothing illegal in the agreement. Although the House was split on the question whether the particular agreement was lawful, there was no disagreement as to the relevant principles. It is sufficient to refer to the speech of Viscount Cave LC. He said, at page 277, that the practice by which police authorities charge for "special services" outside the scope of their obligations had been established for upwards of 60 years. It was an absolute and unconditional obligation binding on police authorities

"to take all steps which appear to them to be necessary for keeping the peace, for preventing crime, or for protecting property from criminal injury; and the public, who pay for this protection through the rates and taxes, cannot lawfully be called upon to make further payment for that which is their right" (p 277)."

He continued at p 278:

"But it has always been recognised that, where individuals desire that services of a special kind which though not within the obligations of a police authority can most effectively be rendered by them, should be performed by members of the police force, the police authorities may (to use an expression which is found in the Police Pensions Act, 1890) "lend" the services of constables for that purpose in consideration of payment. Instances are the lending of constables on the occasions of large gatherings in and outside private premises, as on the occasions of weddings, athletic or boxing contests or race meetings, and the provision of constables at large railway stations. Of course no such lending could possibly take place if the constables were required elsewhere for the preservation of order; but (as Lord Justice Bankes pointed out) an effective police force requires a margin of reserve strength in order to deal with emergencies, and to employ that margin of reserve, when not otherwise required, on special police service for payment is to the advantage both of the persons utilising their services and of the public who are thereby relieved from some part of the police charges."

At p 281, he said that if in the judgment of the police authorities the garrison was "necessary for the protection of life and property", then they were not entitled to make a charge for it. But if they thought that the garrison was a "superfluity" and they "only acceded to Mr James' request with a view to meeting his wishes, then in my opinion they were entitled to treat the garrison duty as a special duty and to charge for it."



28. Thus, as Lord Dyson said in Leeds at [6], in Glasbrook:

"a distinction was clearly drawn between the police (i) performing their duty of doing what is necessary to prevent crime and provide protection (for which they cannot make a charge) and (ii) doing something else at the request of an individual (for which they can charge). That was the position at common law. It was later reflected in legislation. It is common ground that the legislation (including section 25 of the 1996 Act) did not change the law."

29. The next case is *Harris v Sheffield United Football Club* ("Harris") [1988] 1 QB 77. That was a case where the judge at first instance (Boreham J) had decided that the attendance of the police within the club's football ground was indeed the provision of "special police services" and accordingly that the police authority was entitled to make a charge. The Court of Appeal upheld that decision. Again, I adopt the description of the case given by Lord Dyson MR in Leeds at [7 to 14]:

"7..... The chief constable arranged for police to attend at matches both inside and outside the club's ground in order to fulfil his duty to maintain law and order and to protect life and property. The issue was whether the club was obliged to pay for services inside the ground as being SPS within the meaning of section 15(1) of the Police Act 1964 ("the 1964 Act"). The Court of Appeal held that these were SPS and the club was therefore obliged to pay. Section 15(1) of the 1964 Act was in the same terms as section 25(1) of the 1996 Act."

8. It was submitted by Mr John Griffiths QC on behalf of the club that the predominant role of the police inside the ground was to maintain law and order and that there was no difference between the performance of "ordinary police duty" on private and on public premises. The operation was planned as a whole and it was impossible to make a satisfactory distinction between the duties which the officers carried out outside the ground and those which they carried out within it."

9. It was also submitted that there was a finding of fact that, unless the police were present at matches in numbers, serious breaches of the peace were probable. Moreover, it was accepted by the police that their predominant role inside the club's ground was to maintain law and order and to prevent riot and consequent injury to law-abiding persons and property. In short, it was submitted that, where a chief constable accepts that there is a necessity for a police presence in order to keep the peace, the officers who attend are performing "ordinary police duty", provided that the predominant purpose of their presence is to fulfil that necessity; and there is no difference between the performance of "ordinary police duty" on private or on public premises. These submissions were based on Glasbrook.

10. Neill LJ gave the lead judgment. He said (p 83G) that SPS were not defined in the 1964 Act, but it was clear that section 15(1) provided statutory authority "for a long-established practice whereby police officers have been made available to carry out functions at private premises in return for payment to the relevant police authority". At p 89D he said that, if the words of Viscount Cave in Glasbrook were applied as if they were the words of a statute, the case for the club would be very strong if not overwhelming. That was because it was not in dispute that the chief constable had been of the opinion that the attendance of police officers at the ground was necessary for the maintenance of law and order and the protection of life and property. But he said that the question before the House in Glasbrook was whether a charge could be made where the precautions taken were more extensive than those which the police authorities considered to be necessary. More importantly, the emergency which required the presence of police officers in Glasbrook arose in the context of an industrial dispute and not because the colliery had chosen to invite a large number of people to watch a football match or other spectacle.

11. At p 91D, Neill LJ addressed the question whether, having regard to the chief constable's general duty to enforce the law, the provision of the officers could properly be considered as the provision of SPS. As to this, he said:

"In answering this question I do not propose to attempt to lay down any general rules as to what are or are not "special police services," because in my judgment it is necessary to look



at all the circumstances of the individual case. I would, however, venture to suggest that the following matters require to be taken into account (1) Are the police officers required to attend on private premises or in a public place? Though in *Glasbrook Brothers Ltd. V. Glamorgan County Council* [1925] AC 270 the fact that the garrison was to be stationed on private premises was not treated as conclusive, the fact that the police will not as a general rule have access to private premises suggests that *prima facie* their presence on private premises would constitute special police services. (2) Has some violence or other emergency already occurred or is it immediately imminent? I can at present see no basis for an argument that the attendance of police officers to deal with an outbreak of violence which has actually occurred or is immediately imminent could constitute the provision of special police services, even though officers who would otherwise be off duty had to be deployed. (3) What is the nature of the event or occasion at which the officers are required to attend? It is to be noted that in *Wathen v. Sandys* (1811) 2 Camp. 640, which was referred to in the course of argument in the *Glasbrook* case in the Court of Appeal [1924] 1 K.B. 879, 882, the sheriff was not entitled to charge the candidates for the provision of constables at the polling booth because he was under a duty to procure the peace of the county. But a distinction can be drawn between public events such as elections which perhaps lie at one end of a spectrum, and private events such as weddings which lie at the other end. At various points in the middle may lie events such as football matches to which the public are invited and which large numbers of the public are likely to attend. It may also be relevant to inquire whether the event or occasion forms part of a series or whether it is a single occasion or event. Someone who stages events which require the regular attendance of police officers will be placing an exceptional strain on the resources of the police, particularly if the events take place at weekends or on public holidays. (4) Can the provision of the necessary amount of police protection be met from the resources available to the chief constable without the assistance of officers who would otherwise be engaged either in other duties or would be off duty? It was argued on behalf of the club that though it was relevant to take account of the total number of men available it was not permissible to take into consideration the fact that the use of "off-duty" officers might increase the payment of overtime. I am unable to accept this argument. The chief constable when deciding how to deploy his forces is subject not only to the constraints imposed by the number of men available, but also to financial constraints. The payment of overtime on particular occasions may mean that on other occasions reductions have to be made in the ordinary services provided by the police or sacrifices have to be made in the provision of equipment."

12. Taking these factors into account, he concluded that the regular attendance of police officers at the ground constituted the provision of SPS. In particular, he mentioned the fact that the club was not under any duty to hold matches; the charges related solely to the officers on duty inside the ground and not those in the street or other public places; and the chief constable would be unable to provide the necessary amount of protection within the ground without making extensive use of officers who would otherwise have been off duty.

13. Balcombe LJ said that, in deciding how to exercise his public duty of enforcing the law, a chief constable had a discretion and was required to consider what resources were available to him. In answering the question whether the attendance of police within the ground was the provision of SPS, the first instance judge in that case had said:

"The numbers considered necessary to carry out these services could only be provided by calling on officers who, at the material times, would otherwise have been off duty. The scope and extent of those services and their impact on the chief constable's manpower resources put them beyond what the club, in the circumstances, was entitled to have provided in pursuance of the chief constable's public duty. He was entitled to provide those services because he was able to do so without depriving other people of police protection. In other words, the services provided were within his powers; they were not within the scope of his public duty. I am satisfied that they were special services as I understand that expression to have been used in the *Glasbrook* case and within the meaning of section 15(1) of the Police



Act 1964. It follows that he was entitled to provide them on condition that they were paid for."

14. Balcombe LJ said that this was a correct statement of the legal position which could not be faulted. He made no explicit reference to the four factors identified by Neill LJ. But in substance he expressed agreement with Neill LJ's fourth factor, since he considered that the fact that the chief constable would be unable to provide policing services within the ground without calling on officers who would otherwise have been off duty pointed to the policing being SPS. Kerr LJ agreed with both judgments."

30. The next case chronologically in this line of authority is *West Yorkshire Police Authority v Reading Festival Ltd* [2006] EWCA Civ 524, [2006] 1 WLR 2005. The issue concerned the policing at a music festival which took place every August bank holiday weekend at an outdoor site in Leeds and whether the police authority was entitled to charge for the police services as SPS under section 25(1) of the 1996 Act. The Court of Appeal held that, since there had been no request, the authority was not entitled to charge. That is the ratio of the decision (see [58] in the judgment of Scott Baker LJ). Nevertheless, Scott Baker LJ went on to express an opinion (obiter) on the question of whether SPS had been provided. He said:

"63. Police operations conducted on the public highway or in villages will not ordinarily be conducted for the benefit or protection of particular persons such as those organising occasions like sporting events or music festivals and their attendees. Rather, their purpose will be for the protection of the public at large. That, in my judgment, was their predominant purpose in this case albeit this was occasioned by the existence of the festival.

64. The distinction in the Harris case [1988] QB 77 between policing outside the football ground and within the football ground has been picked up in a number of Home Office circulars and documents, for example Home Office Circulars 36/1991 and 34/2000. While these documents cannot determine the law, they are a useful guide to how it has been pragmatically applied.

65. In my judgment it is not apposite to consider the request and "special police services" as completely separate entities when considering the application of the section; the two things are related.

66. I agree that it is impossible to lay down a comprehensive definition of "special police services" and that the particular circumstances are likely to be critical. I have, with respect found the guidance in the Harris case helpful. It does however, seem to me that one of two key features is ordinarily likely to be present. Either the services will have been asked for but will be beyond what the police consider necessary to meet their public duty obligations, or they are services which, if the police do not provide them, the asker will have to provide them from his own or other resources. Essentially, however, "special police services" will be something that someone wants, hence the importance of the link in the section with a request.

67.

68. I turn to consider, as did the judge, the factors mentioned by Neill LJ in the Harris case [1988] QB77 in relation to the facts of the present case. Section 25(1) refers to services at any premises or in any locality in the police area. As the judge pointed out, where the services, as here, are deployed off site it is more difficult to establish "special police services". It is true that the police were ready at short notice to go onto the festival site but it seems to me that in that event it would be in order to perform their public duty of keeping law and order rather than to provide any special service to Mean Fiddler.

69. As to the second consideration, no violence or other emergency had occurred or was imminent although all were aware of what had occurred the previous year.

70. As to the third and fourth considerations, certainly the festival put an exceptional strain on police resources and the amount of police protection provided could not be met by the chief constable without calling on officers who were on leave or on rest days.



71. I agree with Mr Englehart's submission that the fact that the services were not on private property in this case is an important factor. In many, perhaps most, cases whether the services are provided on private property or in a public place is likely to be a very strong factor in determining whether they are "special police services".

72. There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit. That however is not the law.

73. On balance I have come to the conclusion that the police did not provide "special police services" in this case."

31. In the Leeds case Lord Dyson MR (at [18]) rejected the suggestion that at [63] Scott Baker LJ had introduced an additional factor to the four stated by Neill LJ, namely whether the services are (predominantly) for the benefit of the person requesting the services. However Lord Dyson accepted a submission made by Mr Beloff in that case that:

"the focus on who benefits from the service may be a relevant part of the analysis of whether the service provided falls within the scope of the constable's ordinary public duties."

32. The next relevant and highly important case is the Leeds case itself. In that case the issue was whether the West Yorkshire Police ("WYP") were entitled to charge Leeds United Football Club the cost of public order policing and crowd control outside the immediate environs of the club premises at Elland Road (on land neither owned nor controlled by the club), both before and after football matches. It was not in dispute for the purposes of the appeal that the club had requested and WYP had provided police services (i) within the club's stadium, (ii) in the areas immediately outside the stadium that were owned or controlled by the club and (iii) in certain identified streets and public areas beyond the stadium and the areas owned or controlled by the club. The club had always accepted that the police services provided in (i) and (ii) were SPS within the meaning of section 25 of the 1996 Act. The issue was whether the police services provided in (iii) (which the court referred to as "the extended footprint") were also SPS. The extended footprint included public highways, a number of residential streets as well as other public areas such as car parks and open spaces. At first instance Eady J had held that the services provided in the extended footprint were not SPS, but were police services provided in discharge of WYP's ordinary public duty to prevent crime and protect life and property for which they were not entitled to charge the Club. WYP appealed from that decision.

33. Having conducted an analysis of the relevant cases, which I have largely reproduced above, Lord Dyson MR then analysed the relevant factors which the court has to take into account in deciding whether the provision of police services on private land constitutes the "discharge of [the police's] public duty of preventing crime and disorder and protecting life and property, or, alternatively the provision of some other service which, in their discretion, they may or may not decide to provide". Lord Dyson concluded that the factors identified by Neill LJ in Harris were "in varying degrees useful pointers to the application of the Glasbrook principles and as to whether police services provided in any given case are or are not special police services." whilst questioning the utility of factors 3 and 4. Because of the importance of certain of Lord Dyson's statements, and the reliance placed by counsel upon them, I set out the relevant paragraphs of his judgment in full, emphasising those passages of particular importance, notwithstanding that they relate to the provision of police services on private land:

"The provision of policing services on private land

25. I shall start with policing on private land, since the cases to which I have referred all involved such policing. There is no doubt that Glasbrook remains good law. The police are under a duty to prevent crime and disorder and to protect life and property. They cannot charge anyone for the cost of discharging this duty. But they may charge for the provision of other services which they choose to provide at the request of any person. These other services are SPS. None of these principles is controversial. But the cases show that difficulties can arise in relation to their application. The policing of large sporting events and, in particular, football matches, raises particular difficulties of application. When, pursuant to a request by the club, police attend an important football match, are they



discharging their public duty of preventing crime and disorder and protecting life and property or are they providing some other service which, in their discretion, they may or may not decide to provide?

26. In answering this question, two points should be borne in mind. First, although professional football is usually played on private land owned or controlled by football clubs, it is unrealistic in the 21st century to regard football matches attended by many thousands of spectators as in any way analogous to weddings. One only needs to look at the newspapers and other organs of the media to see how important a part professional football plays in public life. Secondly, as is well known, professional football matches often attract violence and disorder. As the judge stated, the Club's home matches have one of the worst records for football-related violence in the country. The Home Office statistics consistently show the Club's supporters at or near the top of the league when it comes to arrests and football banning orders. I hasten to say, however, that the problem of football-related violence is by no means confined to the Club.

27. It might be thought that these two factors should lead to the conclusion that the provision of policing services even inside football grounds is not SPS, but a service which the police are obliged to perform as part of their public obligation to maintain law and order. That was what was unsuccessfully argued by Mr Griffiths on behalf of Sheffield United FC in the Harris case. The Court of Appeal did not accept that the fact that the services were to be provided on private land determined conclusively that they were SPS. Nor did they consider that the fact that the police thought the services were necessary to prevent a breakdown of law and order determined conclusively that they were not SPS. Instead, Neill LJ propounded a nuanced approach suggesting a number of factors which are required to be taken into account in deciding whether the services are to be classified as SPS. Of these, the most important is whether officers are being required to attend on private premises. That is because, since the police do not as a general rule have access to private premises, their presence there would suggest that *prima facie* policing on private premises amounts to the provision of SPS.

28. Mr Beloff makes a number of detailed criticisms of Neill LJ's four factors and indeed Scott Baker LJ's "benefit" factor. He submits that the Court of Appeal in Harris failed to apply the principles stated by the House of Lords in Glasbrook. Had they done so, they would have focused on the simple question whether the services were considered by the police to be necessary in order to maintain law and order and would have accepted the submissions of Mr Griffiths.

29. I proceed on the basis that what Neill LJ said in Harris formed part of his reasoning and that, whether or not Balcombe LJ agreed with this reasoning, Kerr LJ certainly did. In my view, for that reason alone it should be followed by this court. There is the further point that Harris has been treated as good law for some 25 years. It was said (*obiter*) to be "helpful" guidance by Scott Baker LJ in Reading Festival and seems to have been applied by Mann J in Wigan. In any event, I regard the four factors suggested by Neill LJ as in varying degrees useful pointers to the application of the Glasbrook principles and as to whether police services provided in any given case are or are not SPS.

30. His first factor is clear enough. In my judgment, it is the most important factor in the context of policing to maintain law and order. *Prima facie*, the police are obliged to maintain law and order in public places. They are not usually obliged to do so on private premises, at any rate unless violence has actually occurred or is immediately imminent. The police may, of course, be asked to provide other services on public land. The provision of a road escort is an obvious example. But the question whether the services are provided on public or private land is plainly of central importance to whether they are SPS where those services are provided in order to promote the maintenance of law and order. The second factor is closely related to the first. I would accept that the fact that there is actual or imminent violence at private premises may well indicate that the provision of police services at those premises for law and order purposes is in performance of the general police duty and not SPS. But attendance at private premises just in case there is an outbreak of violence is likely to be SPS. On the other hand, policing provided in a public place in order to protect persons and property, even where there is no actual or imminent threat of violence, will usually be in discharge by the police of their ordinary public duty.

31. As regards the third factor, I have already made the point that professional football matches attended by many thousands of members of the public are essentially public events. Indeed, they almost



certainly require a greater police presence than elections which Neill LJ placed at the opposite end of a spectrum from private weddings. I would also respectfully question the relevance of whether events place an exceptional strain on the resources of the police. This leads to the fourth factor, which also concerns resources. I suggest that the question whether the provision of police services places a particular strain on their resources is unlikely to shed much light on whether those services are SPS. The police sometimes provide law and order services which they are undoubtedly obliged to provide despite the very considerable strains that this places on their resources. A good example is the policing of a large protest march which the police authority believes may give rise to violence and which therefore requires the deployment of off-duty officers paid on overtime and the deployment of substantial additional resources.

32. As regards Scott Baker LJ's fifth factor, I have already said that the focus on who benefits from the police service may be a relevant part of the analysis of whether the service provided falls within the scope of a police officer's ordinary duties. I do not believe that Scott Baker LJ was saying anything more than this at para 63 of his judgment. In other words, if the police operation is conducted solely or predominantly for the protection of the public at large, this is a factor which points strongly against the services being SPS. This is the point that Eady J was making at para 41 of his judgment. I do not consider that a benefit test should be regarded as determinative or even necessarily of great weight in all cases. For example, take the apprehension by the police of a criminal who is engaged in robbing a jeweller's shop. This police service clearly benefits the jeweller. But it would be absurd to regard the services provided by the police as SPS so that the jeweller would have to pay for the cost of the police operation (on the assumption that he had summoned the police and asked for their help). The short answer to the suggestion that the jeweller would be the sole or even principal beneficiary of the police service is that the entire community benefits from the detection and prevention of crime.

33. As I have earlier noted, having identified at para 63 of his judgment the predominant purpose of the police services, Scott Baker LJ went on at paras 66 to 71 of his judgment to refer to and apply Neill LJ's four factors. At para 29 of his judgment, Eady J said that there was not a simple "benefit" test in the sense that the question should turn on an ex post facto analysis as to whether the services provided by the police primarily benefited the general public or particular groups or individuals. He said that this was "not a practical or sufficiently certain approach". I agree, but would add that it is also too narrow an approach, since it overlooks the fact that there is a real public interest in the police maintaining law and order.

34. To summarise, the provision of policing services at football matches on private land at the request of a football club will usually be SPS except where the police are summoned to deal with actual or imminent violence."

34. Lord Dyson then went on to consider the provision of policing on public land -which was the specific issue to which the dispute in Leeds related. Again, because of its importance to the present case, I set out the relevant paragraphs in full, again with the critical passages emphasised:

"The provision of policing on public land

35. It was the provision of law and order services by the police on private land that was in issue in the authorities to which I have referred. The Club accepts that it is obliged to pay WYP for the provision of such police services inside its stadium at Elland Road and in the land immediately outside the stadium that it owns and controls. The present case concerns the question whether the Club is also required to pay for the services provided in the extended footprint, that is on land which the Club does not own or control which is public land. Although we have been shown no authority in which this issue has arisen, it seems to me that it should be resolved by applying the principles that are to be derived from the authorities to which I have referred.

36. Neill LJ's first factor, namely the fact that the land on which these services are to be provided is public land and not owned or controlled by the party requesting them, is a strong indicator that the services are not SPS. Although not conclusive, it is common ground that it militates in favour of treating the



services as being performed by the police in discharge of their duty to maintain law and order. That duty is most obviously to be performed in places to which members of the public have recourse.

37. Mr Beggs submits that Neill LJ's second factor supports his submission that the services provided in the extended footprint are SPS. He says that the officers who are required to police the extended footprint attend as part of a pre-planned operation to prevent or control disorder. They are not required to attend in response to an emergency that has already occurred or is imminent. For this reason, Mr Beggs submits that the routine provision of policing services in the extended footprint is SPS. On the other hand, if disorder breaks out or becomes imminent and additional officers are required, it is accepted by WYP that the provision of these additional resources would not amount to SPS. As I have already said, I regard this as closely connected to the first factor. In a public setting away from any relevant private premises, the question whether the police provide services in response to an emergency that has already occurred or is imminent (as opposed to responding to the need to provide protection against the possibility of disorder) is unlikely to shed light on whether the provision of the services is part of the police obligation to maintain law and order or the provision of SPS. *Prima facie*, in a public location the provision of police services in both situations is likely to be in discharge of the duty to maintain law and order. As I have explained at para 30 above, the position is likely to be different in private premises.
38. As regards the third factor, Mr Beggs submits that with respect to policing in the extended footprint, the situation is closer to a wedding than an election. Most weddings are private affairs. He submits that the Club's matches are also private affairs in that they can only be attended by paying ticket holders. The vast majority of members of the public who are in the extended footprint on match days are ticket holders who are there solely because they wish to enter or leave the ground. The extended footprint is not accessed by the general public on match days. Conversely, when matches are not being played, the extended footprint is almost deserted. Mr Beggs submits further that the Club's games form part of a series of events throughout the football season; and the events place an exceptional strain on police resources. I have already made the point that football matches attended by large numbers of people are essentially public events. Although the Club can exclude those it wishes to exclude, in reality almost anybody who is willing to pay and applies for a ticket in time will be admitted to a match, unless he or she is subject to a football banning order. Football matches are a far cry from a private wedding. I have also said why I do not regard the fact that policing the Club's matches places an exceptional strain on police resources is a factor of much weight.
39. As regards Mr Beggs' criticism of the judge for failing to address Scott Baker LJ's "benefit" point, I refer to what I have said at para 32 above.
40. Before I express my conclusion, I should make two further points. First, it is perhaps tempting to say that the Club should pay for all the services that the police consider are required for the maintenance of law and order by reason of the holding of a football match. After all, the Club profits from football matches at Elland Road. Why should it not pay for all the costs of the provision of such police services as it requests and which the police decide that it is necessary or desirable to provide in order to maintain law and order? This is the point that Scott Baker LJ made at para 72 in Reading Festival. But as he said, that is not the law. WYP (rightly) recognises that there is no room for a "but for" test here. On match days, WYP responsibly provide additional policing at Leeds City railway station which is approximately two miles from the Elland Road ground. They do so in order to protect supporters and members of the general public who are in the vicinity of the station and to protect property in that area from the risk of criminal damage. It is not suggested that the provision of these services is SPS. It is rightly acknowledged by WYP that, in providing these services, the police are discharging their public duty of maintaining law and order and protecting life and property.
41. Secondly, WYP say that, from an operational point of view, there is no difference between policing within the land owned and controlled by the Club immediately outside the stadium and policing within the extended footprint, which is contiguous to that land. Mr Beggs submits that there is no good or practical reason for drawing the line at the boundary of land controlled by the Club for the purposes of deciding what are SPS. The line should be drawn not on the basis of the ownership or control of land, but on the basis of where significant numbers of police are required to be deployed exclusively



(or nearly exclusively) for the benefit of the Club and for the protection of the Club's customers. The difficulty with this argument is that it treats Scott Baker LJ's benefit factor as if it were conclusive. But as the authorities show, that is not the law.

Conclusion

42. The essential question that arises on this appeal is whether the law and order services provided by WYP in the extended footprint are in discharge of their public duty to maintain law and order and protect life and property or are SPS requested by the Club. That is the question mandated by Glasbrook. In Harris, Neill LJ suggested four factors which, for the reasons I have given, have varying degrees of utility in pointing to the answer to the essential question. In Reading Festival, Scott Baker LJ suggested that the so-called "benefit" test may also be useful.
43. It should be borne in mind that in this case we are concerned with the provision of police services to maintain law and order at and in the vicinity of a football stadium owned by a club whose supporters have a poor record for football-related violence. No doubt most of their supporters and other visitors to matches are law abiding. As the judge said, they do not lose their status as members of the public when they come to a match. They are entitled to police protection when they come to a match. The police have a duty to maintain law and order and to protect them and their property when they approach and leave the stadium. In Harris, this court held that, on the facts of that case, the duty did not extend to providing police protection within the land owned and controlled by the club. But it does not follow from that decision that the public duty imposed on the police does not extend to providing protection in public land in the vicinity of the land owned and controlled by the Club. Their most important duty is to prevent crime and maintain law and order and protect life and property. If the police consider that the discharge of that duty requires the provision of policing in a public place, it is difficult to see why that is not the end of the enquiry. The provision of other policing services in public places raises different considerations.
44. It is pertinent to ask why WYP accepts that police protection at Leeds City station on football match days is provided in discharge of their public duty, but the provision of such services in the extended footprint is not. It seems to me that the answer must be that the provision of police protection in the extended footprint is predominantly for the benefit of the Club and its customers, whereas the provision of protection at the station benefits not only the Club and its customers, but many other members of the public as well. But for the reasons already given, the benefit test has limited value. Perhaps more importantly, it has never been suggested in the authorities that the benefit test is conclusive.
45. The policing of the extended footprint on match days is provided in order to maintain law and order and protect life and property in a public place. None of the arguments advanced on behalf of WYP persuades me that the law and order services provided by them in the extended footprint are different in principle from the law and order services that they provide in any other public place. I would dismiss this appeal."

Analysis of the judge's judgment

35. In my judgment, I would allow this appeal for the broad reason that it is not possible to distinguish the present case on its facts from the situation in Leeds and the same legal principles should apply. Whilst I accept that each case will turn on its own facts, certainty and predictability of outcome is key in an area such as this. The disputed area in Leeds, namely the public highways and residential streets surrounding the stadium, in which the Court of Appeal found the police could not charge SPS, was remarkably similar to the disputed area in the present case. The fact that, in Leeds, there does not appear to have been a TCO or that the history of violence amongst home and away fans at Leeds' matches was historically much greater than that at Ipswich, cannot to my mind be regarded as distinguishing factors. My detailed reasons for this conclusion follow.
36. At the outset, I should say that, contrary to the submissions of Mr Basu, the Club's appeal is not a perversity challenge. I do not accept that the judge had a "discretion" as to whether to conclude that the services provided by the police in this case were SPS or not, and that, provided such conclusion was properly within the ambit of his discretion, his decision could not be challenged. The correct approach is that the judge was either right or wrong, as a matter of law, in the conclusion which he reached.



37. My reasons for disagreeing with the conclusion reached by the judge, which largely reflect the oral and written submissions of Mr Beloff and Mr De Marco, may be summarised as follows.

38. First, the first and most important factor in the relevant determination is whether the place where police provide public order services is private or public land; see per Lord Dyson MR in Leeds at [30] and per Neill LJ in Harris at page 91E. Although not dispositive, this factor is clearly of critical importance - indeed the most important factor. There are good reasons for giving special importance to this factor, as Mr Sibbel, counsel for the intervener, pointed out in his written submissions. In particular:

- i) the access of the police to private premises is restricted in law; see Harris at page 91E; the powers of the police to enter private premises without a search warrant are restricted to the circumstances set out in section 17 of the Police and Criminal Evidence Act 1984; no such restrictions apply to public land;
- ii) this has an obvious impact upon the responsibility that the police can, under their public duty, be expected to assume for the protection of life and property and preservation of order; as Lord Dyson recognised in Leeds at [37], both preventative and reactive policing can *prima facie* be expected to fall within the public duty on public land, whereas again *prima facie* only reactive policing can be expected on private land;
- iii) whilst the owner or occupier of private land has power at law, pursuant to their proprietary interest, to control access to that land, and the uses to which such land is put, which imposes a greater degree of responsibility on them in relation to measures designed to protect life and property, private individuals have no such legal powers or duties in relation to public land;
- iv) public land which is the subject of a TCO is no exception; such power as a club will exercise within a TCO area is exercised on authority or delegation from the local authority or police and only in relation to those subsidiary matters which the police, in the exercise of their discretion, have determined not to be required under their public law duties; and
- v) there is an inherent unlikelihood that police would be providing SPS on public land.

39. However, although the judge referred (at [113]) to the fact that the provision of police services in a public place (whether preventative or reactive) was *prima facie* part of the operational duty of the police he did not state, or approach the problem on the basis that, the most important consideration, as explained in Leeds, was whether the police were being required to attend on public land or private land; see for example [113, 121, 122 and 130 to 135] of his judgment. Although the judge recognised the importance of the legal status of the land when addressing the scenario of services provided on private land (supporting a finding of SPS), he did not address the factor in the converse scenario of services provided on public land (which would support a finding of operational services). Rather, the fact that the TCO is public land is treated as the fifth of nine "relevant questions" which the judge considers at [130] to [153]. And even where the judge does deal with the factor "preventative policing on the TCO area as public land", as he has defined it, namely at [146] and [147], he does not address or recognise the central importance of the public land factor in the determination of the relevant question, or explain why he has paid no regard to it. All he essentially says in these paragraphs is that the fact that the relevant land is public land is not dispositive, but merely gives rise to a rebuttable presumption. But he does not go on to explain what circumstances justify him disregarding this critically important factor and why, in this case, the presumption fell to be rebutted. Moreover, in his "conclusion" paragraph [153], where he summarises his reasons for his decision, he does not explain why he is able wholly to disregard the "most important" factor that the policing takes place on public land and, in particular, on two public highways.

40. Second, there is no mention in the judge's conclusions, or reasoning, of the second, connected, factor, which is addressed by Lord Dyson at [37] in Leeds. That is the point that the very fact that the police are not required to attend in response to an emergency that has already occurred or is imminent, but rather are required to attend as part of a pre-planned operation to prevent or control disorder, in a public location "is likely to be in discharge of the duty to maintain law and order" rather than SPS. In the present case, the police only attended to police certain matches at the stadium where there was a perceived risk of public disorder. That is wholly consistent with the discharge of a public duty and not SPS.



41. Third, the judge appears to have paid no, or no sufficient regard, to the third factor, identified in Harris (at pages 91 – 92) and referred to in Leeds (at [26] and [31]), namely that football matches, where there was a police presence and many thousands of attendees, were essentially public events, which again points to the conclusion that the police were exercising a public function in so far as they exercised their functions on public land.
42. Fourth, and in my view most importantly, the judge gave too much emphasis to what he (wrongly) characterised as the “control” exercised by the Club over the TCO area. In my judgment, the judge made a number of errors of both law and fact in this context.
43. For example, at [136 to 138] the judge considered that, even in circumstances where such control is not derived from any proprietary interest in the land, but takes the form of a permission and can only be classed as control “to some relevant degree”, that can nonetheless lead to a finding of SPS where the control is exercised for commercial purposes and the services provided are preventative. He concluded that such a conclusion becomes “even stronger” where the area is physically contiguous to private land over which is exercised a “fuller” proprietary interest; and where there is a “strong nexus” between the policing activities performed in the controlled land and the policing services performed on the private land.
44. I do not agree with this analysis. There is no suggestion in Leeds, or indeed in any other authority, that a relevant or determining factor as to whether police attendance should be characterised as SPS, is the amount of so-called “control” which a club exercises over public land pursuant to the authority conferred by a TCO which entitles it to shut off a highway by bollards, prior to and during a match, and allows it and other vendors licensed by the relevant council to sell merchandise in the restricted TCO area. The only authority to which the judge referred to support his argument (see [137]) is the first instance decision in Leeds, in which the arguments referred to were dismissed at [44 and 45] as “contorted and artificial”. In every other relevant authority, where “control” is mentioned, it is clear from the context that what is being referred to is the control resulting from a proprietary interest in the land; see for example Leeds (CA) at [35] where the reference is to “the question whether the club is also required to pay for the services provided in the extended footprint that is on land which the club does not own or control which is public land”; and per Mann J in Chief Constable of Greater Manchester v Wigan Athletic AFC Ltd [2007] EWHC 2095 at [89 to 93] where the control referred to is the control consequent upon the club leasing the land in question. Although the judge states that:

“Case law recognises that the provisions of preventative policing to a person who controls a piece of public land may, in appropriate circumstances, amount to SPS” [147],

he cites no authority for that proposition and this court has not been referred to any such case.

45. In my judgment there is no justification for concluding from the undisputed facts that, pursuant to the authority granted by the Council under the terms of the TCO, the Club was entitled to shut off the highway by means of bollards, and to shepherd fans in that area, in order to ensure their swift and safe entry to and exit from the stadium, or from the fact that the TCO area was contiguous to the stadium, that the functions discharged by the police during the course of the policed matches in the TCO area were SPS.
46. Even if it were to be the case (which I doubt) that the extent of so-called “control” which a person exercised over public land was a relevant factor in determining whether police services were SPS or not, the judge afforded too much weight to this factor and wrongly elevated it over the public/private land test. On the facts of this case, such de facto control as the Club exercised over the TCO land could not, in my judgment, rebut the assumption that the police were discharging their normal public duties of maintaining law and order in the TCO. The fact that the Club stewards’ shepherding role may have assisted the maintenance of public order in the TCO area, does mean that the services provided by the police at policed matches were SPS. Absent actual, or imminent crime, the stewards could exercise no coercive powers akin to those preventative powers exercisable by a police constable.
47. The judge was, in my judgment, wrong to find on the evidence before him - and this was an evaluative finding of secondary fact – that the Club had “responsibility” for public order in the TCO. Such responsibility as the Club had, could not, in any event, have justified a conclusion that the functions discharged by the police in the



TCO areas were SPS. He was also wrong to find - and again this was a finding of secondary fact – that the Club exercised “a high degree of control” over the TCO area. Again, such degree of control exercised by the Club could not, in any event, have justified a conclusion that the functions discharged by the police in the TCO areas were SPS.

48. First, the evidence before the judge in my view could not justify his finding that the Club had “responsibility” for public order in the TCO. For example, the authority which the Club had to place or install bollards or other barriers in the TCO area, and remove them after the match was over, derived exclusively from the authority conferred by the Council pursuant to the TCO. But if there was any question of vehicular entry to the TCO area during the period of prohibition that could only be conferred by a police constable or traffic warden, not by the Club; see paragraph 2 of the TCO. Likewise, the evidence clearly demonstrated - as indeed was the law - that only the police had power to remove or eject a drunken or badly behaved fan from the TCO area, as opposed to from the stadium itself, where the Club’s proprietary rights entitled it to do so. Nor did the 2011 or the 2012 terms suggest that the Club, as opposed to the police, had responsibility for public order or public safety in the TCO areas; on the contrary, both sets of terms contained the statement that the Club was

“solely responsible for public safety at the Stadium and that they should take all appropriate steps to ensure public safety and compliance with the Safety Certificate for the Stadium.” (My emphasis.)

49. The mere fact that the Club, pursuant to the authority conferred by the TCO, carried out the function of “shepherding” fans in the TCO areas and ensuring that they queued for the turnstiles in an efficient and orderly fashion, and likewise left the stadium in such a manner, could not amount to “responsibility for public order” in the TCO areas. These stewards’ shepherding function was to ensure safe and swift access and exit to and from the stadium. The fact that the Club’s efficient management of queues and crowds in the TCO area might have contributed to the maintenance of public order did not detract from the fact that, when the police were present in the TCO area, on policed match days, their job was to maintain law and order on the public highway. Absent actual or imminent crime, the Club stewards could exercise no coercive powers akin to those preventative powers exercisable by the police. Thus, it was clear from the evidence that it was for the police to apprehend aggressive, or otherwise badly-behaved fans, or fans who were threatening to cause trouble, in the TCO area and that this was carried out as part of their functions of maintaining law and order and preventing crime. Mr Basu tried to suggest that the fact that the stewards would have the normal powers of citizen’s arrest or detention as articulated in *Albert v Lavin [1982] AC 546* meant that the club stewards could indeed be regarded as having the right to exercise such control in the TCO area, but that in my judgment is unreal - their position was no different from any other citizen on the public highway.

50. Moreover, the judge was wrong when he said at [69]:

“It is apparent from the Club Stewards Handbook and from the Statement of Intent that the Club assumes responsibility for: ... the initial responsibility for public order within the site and in the TCO area”.

The Statement of Intent states that the Club is responsible “initially for matters of public order within the Event site”, not within the TCO area. Likewise, the judge’s reliance in [47 and 153v)] on what is said at paragraphs 3.1 and 3.2 of the Statement of Intent to justify his conclusion that “The parties do not categorise the TCO areas as a public highway” is also misplaced. First of all, those paragraphs related solely to traffic management, not to maintenance of public order; second, the Statement of Intent was based on pre-Leeds law; and third, what the parties said in a non-binding contractual statement cannot alter the legal reality that the TCO area was a public highway, in which any functions discharged by the Club (whether excluding traffic, traffic control, or otherwise shepherding fans) were discharged pursuant to authority or delegation conferred by the Council or the police. The public highways remained public highways despite the provisions of the Order. The Order only had the effect of limiting vehicular access (and not, for example, access of the public other than in vehicles). The roads in the TCO area did not become “private” roads during the matches. Furthermore, the Stewards Handbook (which is, in any event, not a legal document agreed between the parties) does not state or suggest that the Club has responsibility for public order in the TCO area. In fact, it makes clear that the stewards have no power to control spectators outside the stadium.

51. Likewise, the judge paints an exaggerated, picture when he says at [87(iii)]:



"Primary responsibility for safety and public order in the TCO area lies with the Club. The Club exercises exclusive control over the TCO area in the majority of cases (see statistics at paragraph [23] above). The Club has a high degree of de facto control over the TCO area. This is not absolute and they have no legal power to eject persons from the area. But they control traffic into the area; they erect crowd control barriers; they conduct searches of persons entering the stadium; they eject drunks and aggressive spectators; and they shepherd and control flows of fans coming into and out of the stadium."

52. First, the only thing that the statistics at paragraph 23 show is that of the total number of matches in each of the seasons from 2011/12 to 2015/16 the majority were not attended by the police. The statistics do not show any figures for arrests or ejections at un-policed matches or demonstrate any control by the Club, whether at policed or un-policed matches. Second, as I have already mentioned, the Club has no, and certainly no primary, responsibility for public order in the TCO area. Moreover, as Mr Beloff submitted, the degree of control is exaggerated and contrary to the evidence before the court: the Club does not "control traffic" - only a police constable in uniform or a traffic warden is entitled to control traffic pursuant to the terms of the TCO. The fact that Club stewards may have done so at unpoliced matches, would have been pursuant to the delegated authority of the Police. Moreover, as the judge himself seems to accept, the Club only has the power to eject drunks from the stadium not from the TCO area, so ejection as such from the stadium demonstrates no "control" by the Club in the TCO area, merely the right of a landowner to eject a person from, or not permit entry to, its premises. Furthermore, as the witness statement of a Mr Ian Rowland, one of the Chief Constable's witnesses, makes clear, dealing with public order issues in the TCO area, that is to say escorting drunken or disruptive supporters, or those who have been denied entry, away from the turnstiles, and out of the TCO area, is always the job of the police;

"the police always end up dealing with those supporters. The stewards tend to refuse entry and then revert to the police to engage with the supporters and asked them to leave the area there are occasions where arrest may be made for the offences of being drunk while entering a designated sports ground."

However those that are intoxicated present a threat to the safe running of the event. Identifying monitoring and dealing with them is an important part of what police officers do at policed matches."

The fact that the deployment of police in the closed TCO area is also to prevent any potential incidents of crushing and safe crowd dispersal is no reason to conclude that are not discharging their primary function of maintaining public order and preventing crime in the TCO area.

53. So far as unpoliced matches are concerned, I also agree with Mr Beloff that the fact that the stewards may, on unpoliced matches, be operating in the TCO area without police assistance, does not suggest or predicate that Club stewards have the primary responsibility for maintenance of public order and the public peace. Again, as Mr Rowland's witness statement made clear, in the event that a public order issue arises, for example aggressive or assaultive behaviour on the part of supporters, police officers will be called to deal with such conduct in the TCO area, in the same way as they would at any other public highway:

"24. At Club Security matches [i.e. unpoliced], stewards may refuse entry to the stadium but they often have problems with encouraging supporters who have been refused entry to leave the area outside the turnstiles. That situation is significantly more difficult after an ejection where emotions are running high and aggressive and assaultive behaviour can be the response from the ejected supporter.

25. It is a regular occurrence at Club Security matches for uniformed police to have to be called to move on or arrest ejected supporters. In the event that there is any confrontation between rival supporters in the closed road area stewards will intervene at Club Security matches, but at the same time there will be an almost immediate request from the Club Safety Officer via the Dedicated Football Officer, for uniformed police to be called."

54. Nor did the judge identify any legal basis upon which the stewards had either the power or the responsibility to conduct public order operations outside of the stadium; and, as I have already said, the principle of *Albert v Lavin* does not assist in this context.



55. The judge attempted to distinguish the Club's so-called "control" from that found by the High Court in Leeds. But although the activities in Leeds could be said to have been "control" of a much lesser degree (clearing snow from a bus park and employing a person to open a car park during matches and make charges for parking on behalf of the council), both activities derived from permission given by others. The evidence in this case demonstrated that only the Council had power to decide whether or not to close the roads and whether and on what terms licenses should be granted to traders (whether employed by the Club or in competition with it) to erect stands to sell programmes or food, etc. in the TCO area. Accordingly, such control, if any, that the Club had over the TCO area, was in my judgment insignificant since it derived exclusively from the authority conferred by, or delegated from, the Council and the police, and only to the extent that policing for public order was not required.

56. Another factor upon which the judge wrongly relied in finding that the services in that area were SPS, was what he referred to as:

"The nexus between the TCO area and land under the legal control of the Club: The TCO area is contiguous to land (the stadium) over which the Club exercises a proprietary (leasehold) interest" [153(iv)].

It is not clear to me from [137] of the judgment whether the judge was under the mistaken impression that, in the Leeds case, none of the disputed land was adjacent to the stadium. The fact that the TCO area is directly contiguous to the Club's land in the present case is not, in my view, a relevant factor to the determination of the question as to whether the police are providing SPS. In Leeds the "extended footprint" (the area with regard to which it was disputed the SPS was payable) also appears to have included land contiguous to, or within 200 m of, the stadium, being private land in respect of which the club had a proprietary interest. Both Eady J and the Court of Appeal in Leeds held that policing on that contiguous "extended footprint" did not amount to SPS.

57. Nor do I consider that any of the other reasons summarised by the judge at subparagraphs 153 vii)-x) of the judgment provide good grounds for concluding that the services provided by the police should be regarded as SPS. In summary:

- i) The importance which he gave to his finding at subparagraphs 153 vii) that the policing was an "essentially preventative, peace keeping, role played by the Police in the TCO area" appears to have been regarded by the judge as a ground for distinguishing the situation at Ipswich from that in Leeds, where the supporters were historically prone to violence. But, in my view, this cannot be a relevant factor. To the extent that the policing was preventative, it was still normal policing, - that is to say, the discharge of one of the police's statutory duties to deploy officers sufficient in their estimation to prevent and deter crime and maintain public order. The evidence demonstrated that there was no distinction between the "preventative policing" deployed by the police within the TCO area and that outside for which it did not charge SPS. If a match was a high-risk category C match, for example, police would be deployed outside the railway station and certain public houses, as well as in the TCO area, and their function would be the same, i.e. "intended to instil a calming influence on spectators".
- ii) Likewise, I do not consider that the factor which the judge described at [153(viii)] as "Nexus between Police service inside and outside the stadium in the TCO area" was a relevant factor. There was a similar, if not closer nexus, between the police inside the TCO area and those outside it, as the evidence relating to crowd segregation and dispersal showed. But even if this were not the case, there was inevitably going to be some sort of "nexus" - or connection - between what the police were doing in each of the relevant areas.
- iii) Again, I do not agree with the judge's conclusion at [153(ix)], that "[t]here is a logical cut off between the boundary of the TCO and public land outside the TCO area" and that "[t]he position inside the TCO area is qualitatively different to areas beyond the TCO area." As Mr Beloff submitted, the logical cut off point was the turnstiles and entrances to the stadium. Within the stadium, spectators are customers of the Club and hence its responsibility. When they leave it, they revert to being members of the public and as such are entitled to such protection from the police as is necessary in the circumstances; see Leeds at [43].
- iv) Finally, I do not agree with the judge that weight fell to be attached to the fact that "policing outside the stadium was of value to the Club", as he held at [153(x)]. As Lord Dyson MR stated in Leeds (at [32]), a benefit test is not to be regarded "as determinative or even necessarily of great weight in all cases." The Club's legal responsibilities end when the spectators leave the stadium. The primary benefit of policing outside of the stadium enures to the members of the public leaving the stadium, who are entitled to the



protection of the police if there is a risk of public disorder. I am not persuaded that the so-called "value" of policing to the Club in the TCO area can be regarded as a significant factor in determining whether the services are SPS or not.

58. For the above reasons, I see no basis for distinguishing the TCO area in the present case from the extended footprint in the Leeds case. An outcome dependent on the simple, but critical, factor whether the land, where the police discharge what are clearly public order functions, is public land or privately owned land has the advantage of simplicity and predictability of outcome in football cases such as the present one. It obviates the need for irrelevant enquiries as to, for example, the level of violence amongst club supporters, the precise geographical configurations of the closed areas and the functions carried out respectively by club stewards and the police in such areas, or other variables such as the financial profitability or size of the club concerned. It is for Parliament to change the law, if it considers it appropriate to make football clubs pay for police attendance at football matches on the highway, outside the stadium or other privately owned land.

Disposition

59. Accordingly, I would allow this appeal and grant the declaration sought by the Club.

Lord Justice Gross:

60. I agree with Gloster LJ that the appeal should be allowed and add only a few words of my own, essentially to highlight two considerations. In doing so, I gratefully adopt Gloster LJ's summary of the facts, the history and the case law.

61. The two considerations are these:

- i) First, certainty and predictability in the law;
- ii) Secondly, the distinction between the roles of the courts and the legislature.

Certainty and predictability

62. The test articulated by Viscount Cave in *Glasbrook* (supra), at p. 277 was whether the police services were necessary for keeping the peace, preventing crime or protecting property from criminal damage; if so, they fell within the basic public duty of the police and could not have been SPS, regardless of whether they were provided on private or public land: see, the argument advanced by Mr Beloff QC in *Leeds United* (supra), recorded in the judgment of Lord Dyson MR, at [15].

63. At least in the football context, however, that test has been refined, so that the question of "central importance" (*Leeds United*, at [30]) – if not itself dispositive – is whether they are provided on public or on private land. If the former, they will usually involve performance of the general police duty and will not comprise SPS; if the latter, the converse is likely to be the case (at least absent actual or imminent violence on the private land).

64. In the *Leeds United* case, this Court held that the provision of police services in the "extended footprint" on match days formed part of the general police duty and were not SPS: see, at [42] – [45]. The "extended footprint" comprised streets, public areas and open spaces in the vicinity of but beyond those areas owned and controlled by the Club.

65. For the reasons already given by Gloster LJ, I am persuaded that the TCO area in the present case cannot properly be distinguished from the "extended footprint" in *Leeds United*. For my part and though cases are inevitably fact specific, I would deprecate the drawing of fine factual distinctions between one case (or area in the vicinity of a stadium) and another, with inevitable attendant uncertainty. Instead, the application of the principle in *Leeds United*, leads to a simple and usable approach here; as Mr Beloff put it, the "Rubicon" in terms of where SPS end and public duty services begin, on the facts of the present case, is the boundary between the stadium (private land) and elsewhere (public land).

66. On this footing, I would allow the appeal.



The courts and the legislature

67. Notwithstanding my conclusion on the law as it stands, I confess to some sympathy with the policy ramifications flowing from the conclusion reached by the Judge, especially having regard to straitened police resources. As expressed by Scott Baker LJ in *Reading* (supra), at [72]:

"There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit....."

Unfortunately for the respondent here, Scott Baker LJ immediately went on to say "That however is not the law". See too, *Leeds United*, at [40] – [41].

68. In my judgment, if the law is to be changed to accord with such a "benefit" test, it should be a matter for Parliament not the courts (at least below the level of the Supreme Court). Sympathetic though one might be to the argument in the case of football matches, what of other sporting events, charitable functions, concerts and, for that matter, political demonstrations (see, the observations of Balcombe LJ, in *Harris*, supra, at p.96)? The question, it must be accepted, is complex and a public consensus as to the underlying issues of social policy cannot be assumed: see further, Lord Bingham, *The Judge as Lawmaker*, in *The Business of Judging* (2000), at pp. 31-32. Accordingly, any change in the law falls more appropriately to Parliament than to judicial development by way of case law.

Lord Briggs of Westbourne:

69. I agree that this appeal should be allowed, for the reasons given by Gloster LJ. I also agree with Gross LJ's judgment.

70. I have not myself been persuaded, as has Gloster LJ, that the judge's findings about the significant level of de facto control of the TCO area by the Club during match days were wrong. But they are not sufficient to make this case distinguishable from the Leeds case, for the reasons which she explains.

71. I was for some time powerfully affected by a perception that there was something a little less than logical in drawing a sharp distinction between police operations within, and just outside, the stadium when, in all probability, they would be planned, directed and executed as a composite whole. But the same could be said about the Leeds case, and the same could also probably be true of police activities in a much wider area, including the streets between the stadium and the railway station, and within the station itself, where it is common ground that police activity is not SPS.

72. For as long as it remains the law that police operations connected with football matches are in part SPS and in part normal police operations, so that a line has to be drawn somewhere, the drawing of that line along the boundary between the private land of the host club and the public highway outside it seems to me to be the best normal (although not invariable or automatic) means of identifying SPS. This is what this court has already decided, and it would be destructive of the certainty of this part of the law to do otherwise than to follow and apply that decision.

