

### **Question from A Carter**

I am aware that, in the past, Fire personnel were specifically required to seek the Chief Fire Officer's permission before taking on any secondary employment. But I don't think that I ever thought that Police Officers were so poorly paid that they too had a need to have recourse to a secondary income. Perhaps it's a sign of the times! Does the Chief Constable have to officially sanction any secondary employment, I wonder? And how prevalent is the practice in South Yorkshire Police anyway, I wonder? (It's a worrying statistic in any event.)

### **PCC RESPONSE**

Police Officers are entitled to have a business interests and secondary employment. However, the Police Regulations 2003 (as amended in 2007 and 2012) impose restrictions on the private lives of police officers, in particularly officers who have a business interest. The objective is to ensure, not only efficiency in doing the job, but also that officers shall at all times abstain from any activity which is likely to interfere, or give the impression of interfering, with the impartial discharge of their duties.

Any member of staff who has, or proposes to have a business interest must submit a written application. The Head of Professional Standards will consider all applications forms and determine whether an application will be approved.

Where approval for a business interest is denied and the applicant wishes to appeal, they must inform the Chief Constable within 10 days of receipt of the decision explaining the reasons for the appeal. The appeal will be considered by the Chief Constable. The outcome of the appeal is final.

The Commissioner has no involvement in this process.

**Attached is a copy of the SYP Guidance Note on Business Interests and Secondary Employment.**

# **Business Interests & Secondary Employment - SYP - Guidance Note**

The Police Regulations 2003 (as amended in 2007 and 2012) impose restrictions on the private lives of police officers, in particular officers who have a business interest. The objective is to ensure, not only efficiency in doing the job, but also that officers shall at all times abstain from any activity which is likely to interfere, or give the impression of interfering, with the impartial discharge of their duties.

Although police staff and police volunteers are not covered by Police Regulations the same definition of business interest applies to police staff and police volunteers and the rationale and requirement to seek approval to undertake a business interest or additional employment applies equally.

The intention of this policy is to:-

- Give guidance on what constitutes a business interest and the process to follow if a member of staff has one.
- Enable appropriate decisions to be taken to ensure the reputation of the police service is maintained.
- Enable appropriate decisions to be taken to ensure the health, safety and wellbeing of police staff and officers.

## **Principles**

The main principle of this policy is that, unless there is good reason, business interests and secondary occupations will be approved.

This policy applies to police officers, police staff and police volunteers. It does not include special constables who are dealt with separately as detailed in NPIA Circular 10/2011.

Any person who has any doubts about whether or not they should seek approval for their business 'interests' should contact Professional Standards Department. Staff Associations may also provide advice if requested.

## **Definitions of a Business Interest**

Business Interests are defined by Regulation 7 of the Police Regulations 2003 (as amended by the Police (Amendment No 4) Regulations 2012) as:

- A member of staff carrying on any business and / or holding any office or employment for hire or gain other than their normal employment.
- The member of staff, their spouse, partner or any relative holds, or possesses a pecuniary interest in a liquor licence, public house, off licence or betting / gaming / regulated entertainment establishment within the Force area.

For the purpose of this guidance a reference to a relative shall include spouse or civil partner who is not separated from the member; a person living with the member as if they were the

member's spouse or civil partner; parent, son, daughter, brother or, sister of the member. The term member includes police officers, police staff and police volunteers.

### **Business Interest – Notifiable Association**

If a business interest (including employment) is being carried out by a spouse, partner or relative of a member of staff which:

- could be considered by a reasonable person as being likely to undermine public confidence in South Yorkshire Police; or
- that the nature of the business interest or employment could damage the reputation or compromises the integrity of the individual or Force; or
- could cause the member's judgement on police matters to be adversely affected;

this must be reported to Professional Standards as a Notifiable Association .

### **Incompatible Business Interests**

Applications for the granting of a business interest or additional occupation are decided on a case by case basis involving careful consideration of a number of factors. This includes the nature of the business interest or additional occupation and the current role and responsibilities of the applicant. Business interests will be permitted unless they are not compatible with the ethos and values of the police service and careful consideration will be given to the potential for adverse reputational damage to the service arising from any perception of any shortfall in the integrity of a member of a police service being associated with the prospective interest or additional occupation.

Once satisfied that there are no adverse reputational matters or conflicts of compatibility with the values and ethos of the police service, decision makers should start from the presumption that an application for a business interest or additional occupation will be granted unless there is sufficient justification for it to be rejected and will determine whether conditional approval may be warranted. The reasoning behind any imposition of conditions or outright rejection must be fully recorded.

It is not possible to provide a definitive list of specific occupations, interests and activities that are likely to lead to an application being rejected because of the need to consider each case on its own merits and to assess the risks involved.

Appendix A details a list of business interests that may be deemed incompatible with the police service. The list is not exhaustive.

Each business interest will be judged on a case by case basis. The following factors will be considered:

#### **Impact on the force**

Is the business interest likely to weaken the confidence of the public in South Yorkshire Police, or bring discredit on the Force?

- Does the activity involve other people within South Yorkshire Police? We will not generally permit business interests based on the concept of networking' (canvassing for business recruitment) or the encouragement of colleagues to be involved in the business interest. This is because of the pressure that invariably falls on colleagues.
- Where the activity could lead to the public losing confidence in the honesty and integrity of the member of staff or of the police service.
- Where the activity could lead to the member of staff being improperly beholden to any person or institution.
- The nature of the business interest – how reputable it is in its own right, in the eyes of the public and in association with the police service?

**Impartiality – predicted, expected or evidenced:**

- Is there likely to be a conflict of interest for the individual, between South Yorkshire Police and the proposed 'activity', particularly, in respect of Income Generation or Copyright (Intellectual property rights)
- Is it likely that the business activity will adversely influence the individual's judgement on police matters?
- Whether the fact of being a member of staff of the force is a relevant consideration. For example, where the office of constable or being an employee of the force could be used to promote the business or a product of the business or would allow other organisations to do so.

**Number of hours worked (Working Time Regulations)**

Is the individual likely to be unavailable for duty because of the business interest, or work hours in excess of those recommended under the Working Time Regulations and contrary to Health and Safety considerations? If an individual is working more than an average of 48 hours per week they must submit an **Agreement to opt out of 48 hour working week form**

**Health, safety & wellbeing**

- Is the individual likely to be exposed to unnecessary physical harm or fatigue, potentially affecting the efficient performance of his or her duty, or rendering him or her incapable of work and creating sickness absence, especially, in light of the Working Time Regulations and health and safety provisions?

**Current performance/ attendance of the individual applying**

- Is it likely that the business activity will enhance/improve the individual's skills and performance, thereby adding value to their contribution and commitment to the Force?
- Is it likely that the business interest will have a detrimental effect on the performance or attendance of the individual at work?

- Is the individual genuinely 're-qualifying' for future employment on the approach to retirement (typically within twelve months)? Or genuinely attempting to maintain particular skills, which cannot be practised within the force?

### **Proportionality in relation to Seniority and role**

Relates to the requirement to take account of the seniority, role and nature of the duties of the police officer, police staff or police support volunteer. For example, it would be sensible to reflect on the nature of work carried out by the member, the different employment status of police officers and police staff, and the public impact of their proposed business interest or additional occupation prior to making a decision.

### **Equality and Diversity**

Decisions on business interests must take into account equality and diversity considerations. Forces must ensure decisions can be justified by reference to relevant legislation and the duty on police forces under the Equality Act 2010 to actively promote equality.

### **Major Commercial Ventures**

It is recognised that any business venture has the potential to grow and where a company does grow into a major commercial venture, significant ownership or business involvement may render it incompatible with continued service with South Yorkshire Police.

### **Intellectual Property Rights (Copyright)**

It is a principle of this policy that any skills, products and innovation by South Yorkshire Police employees directly gained through their employment may remain as the intellectual property of the force. However, there needs to be some flexibility in this approach. It is not the aim of this policy to stifle innovation or prevent staff from improving themselves or the force.

In order to achieve some flexibility, three principles have been adopted:

- Projects of work initiated in the course of an officer's duty or member of police staff's employment are solely owned by South Yorkshire Police (for example: all written documents, training courses and skills acquired or produced during service).
- Projects of work initiated by staff at home, not during work time, with a police focus are owned by the individual (for example: computer software developed at home and subsequently introduced into the work place). Further development at work by the individual may restrict personal ownership to the initial portion of work.
- Projects of work completed jointly by the individual and South Yorkshire Police may be jointly owned, this will have significant relevance for the income generation on behalf of the force. Specific contractual arrangements will usually be required in such circumstances and are beyond the scope of this policy.

## **Voluntary Work**

Anyone who wishes to undertake voluntary work in their off duty time must ensure that the nature, extent and timing of such voluntary work does not effect their fitness and ability to carry out their primary duties for South Yorkshire Police. Individuals should consider any potential conflicts between the role with South Yorkshire Police and the voluntary activity.

Additionally individuals should take whatever measures are appropriate to ensure their own safety and wellbeing in connection with any voluntary work.

Individuals should consider the impact any expenses paid in relation to voluntary work have in so much as anything above and beyond reasonable expenses could be considered to be recompense and this would make the activity paid employment.

Whilst voluntary work does not require any permission from South Yorkshire Police it is accepted that some individuals may be less than clear on whether permission is required or otherwise. Further advice can be sought from HR Shared Service, PSD or the Federation/Staff Associations and Trade Unions.

## **Application Process**

A member of staff who has, or proposes to have, a business interest must make written application using a **Secondary Employment and Business Interest application form** . This form should then be completed electronically and the submission directions contained within the form should be followed.

Head of Professional Standards will consider the need for referral of the application for effect on level of vetting clearance considering the following :

- If it is a business interest which must be reported
- whether it is compatible with being a member of the police service
- if any conditions or restrictions should be imposed before approval.

If an individual is working more than an average of 48 hours per week they must submit a **HR 41**

In determining whether an application will be approved, separate and detailed consideration will be given to:

- The nature of the business interest (e.g. category, nature of work, product, customers, advertising, time commitment, turnover, employees and associates and position in company etc.),
- The individual's skills and justification for application (nearing retirement, maintaining skills etc.)
- The individual's role within the Force.
- The performance of the individual's duties takes primacy over any business interest.
- This primacy may be breached amongst other things where a business interest generates an income which is in excess of the individual's salary.

- The public expect total commitment from the police service. When relevant, non-availability for call outs or overtime working may be an indication of a conflicting business interest.

PSD will notify the applicant in writing of the decision within 28 days of his/her receipt of the application form and update/ retain HR and PSD records.

### **Conditions of authorisation**

In all cases the following conditions will apply to any approved business interest / secondary occupation:

- South Yorkshire Police premises, property or logo cannot be used in connection with a business interest
- In advertising a business interest the individual cannot make any reference to the fact that they work for South Yorkshire Police
- That this business interest does not involve any type of 'pyramid selling'

Further specific conditions may be imposed by the Head of PSD to satisfy themselves that sufficient safeguards are in place to minimise any risk to the applicant or the organisation and thus enable an application to be approved. The details of any conditions and rationale for their imposition will be detailed in the application response which will form the basis of a contract.

### **Appeal**

Where approval for a business interest is denied and the applicant wishes to appeal, they must inform the Chief Constable within 10 days of receipt of the decision explaining the reasons for the appeal. Appeals received outside of this period will only be accepted at the discretion of the Chief Constable.

The appeal can be made on the grounds of process and / or be a substantive appeal against the decision.

The appeal will be considered by the Chief Constable who must consider all the information made available to him or her. An appellant has the right to make written and / or oral representations to the Chief Constable.

The decision will be given at the conclusion of the meeting with the individual and within 28 days of receipt of the notice of appeal. It is good practice to provide written reasons for the decision within 7 days of the meeting.

The Chief Constable may, if they deem it appropriate, remit the matter back to the head of PSD for reconsideration.

The outcome of the appeal is final.

At all stages of this process the appellant may be represented by a police friend or representative of a trade union.

In extreme instances, where a Business Interest is not approved, and the member of staff is not prepared to give up his/her interest in the business the following action will be taken:

Where the Head of PSD has deemed the business interest to be incompatible, and this decision is either:

- not appealed or
- appealed and not upheld by the Chief Constable,

the decision of the Head of PSD shall be regarded as a lawful order or reasonable instruction for Police Staff. Any subsequent refusal by an officer or staff member to abide by the decision will be regarded as a breach of the standards of professional behaviour amounting to gross misconduct or breach of contract and the relevant misconduct procedures will commence.

For Police Officers the Police (Conduct) Regulations 2012 shall apply as though the appropriate authority had determined under regulation 19 (4) that the officer had a case to answer for gross misconduct.

For Police Staff the South Yorkshire Police Staff Misconduct procedures shall apply as though the appropriate authority had determined that the police staff member had a case to answer for gross misconduct or breach of contract.

## **Reviews**

All approved business interests are subject to review and the Head of PSD reserves the right to revoke the authority should a business interest become incompatible with working for South Yorkshire Police.

Staff must inform the Head of PSD of all changes in circumstances of the business interest (except those of a very minor nature). Significant changes, will be regarded as if they are a new application and details must be supplied to PSD on the application form and normal process followed. If in any doubt individuals should seek advice from PSD.

Business Interests will be updated annually and this will be managed by PSD. The purpose of this process is to identify any changes in the nature or scope of the business interest, and to assess the impact the activity may have on the individual's performance. Any unsatisfactory performance will then be managed through a combination of the PDR process, review of the business interest approval and if necessary, the Police (Efficiency) Regulations or the Police Staff Unsatisfactory Performance and Attendance Policy following consultation with Head of PSD and local HR Operational Partner.

**It is the personal responsibility of the individual to ensure their line manager and in particular when they have a new line manager, that they are aware they hold a**



**Business Interest and any changes in circumstances. As part of the annual PDR process, individuals will need to confirm whether they have a business interest and it will then be the Line Manager's responsibility to discuss this with the individual accordingly.**

Staff must also inform the Head of PSD in writing when they are ceasing a business interest or secondary occupation.

Head of PSD in conjunction with local HR Operational Partners will review business interests when a member of staff has been absent through sickness for over 28 days or is on restricted and recuperative duties. HR will provide monthly updates to the Head of PSD detailing all staff holding business interests who are over this absence threshold.

Head of PSD will review business interests when a member of staff is absent through suspension.

### **Health and Safety / Working Time Regulations**

The Working Time Regulations 1998 lay down maximum working hours and minimum, daily and weekly, rest periods between work. The restrictions on working hours are a Health and Safety measure and are intended to protect workers from working excessive hours and thereby becoming a danger to themselves and/or others.

Any business interests which will result in working over 48 hours per week must attach a Working Time Regulations "Opt Out" form with their Business Interest application form.

If a business interest is approved PSD will inform HR Services so that the staff members Oracle/Origin record can be amended/updated accordingly and this will include hours to be worked if appropriate. An individual can choose to opt out of the Working Time Regulations requirement on maximum weekly working time. However, even where a person has signed an individual agreement to be excluded from the maximum weekly working time, line managers must still honour their duty of care by ensuring that staff are not exposed to unacceptable risk through the working of excessive hours.

If evidence emerges that activity which involves excessive hours or is particularly arduous is being carried out causing a risk to the health and safety of the individual or affecting their work through tiredness or excessive hours then this must be referred to the Head of PSD who will give serious consideration to withdrawing approval.

### **Withdrawal of authorities**

In cases where approval for a business interest is withdrawn, the member of staff will be provided, where possible, with adequate notice to cease his or her involvement. Notice period will be a maximum of three months.

If withdrawal of authority is proposed, the individual may make changes to his or her involvement in a business interest, in such cases a fresh application for approval will be considered in the normal manner.

The withdrawal of the authority can be appealed in the same manner as a refusal to approve a business interest.

A review of the business interest will be conducted by HR Services in any instance where the applicants sickness becomes an issue for the Organisation.

### **New Starters to the Police Force**

Anyone wishing to become a member of the Police Force must disclose any business interest at the time of application. This will either be approved or rejected. There is no appeal against this refusal.

### **Individual's responsibilities**

The Force advises individuals whose business interests are approved to take out private insurance cover and to indemnify South Yorkshire Police from any claim for loss or absence from work as a result of any activities associated with those business interests. Any failure to follow this advice may leave the individual personally responsible for any claim made against them and could result in action being taken by the Force against individuals to recover any financial loss to the Force.

The individual must inform Her Majesty's Revenue and Customs of any secondary income or occupation.

The individual must notify the Head of Professional Standards of:

- any change in the nature or scope of the business interest
- any change in police role
- any change in role location