

- (1) **DYFED POWYS POLICE AUTHORITY**
- (2) **THE DIRECTOR FOR RURAL AFFAIRS, WELSH ASSEMBLY GOVERNMENT**

COST RECOVERY AGREEMENT

This document is a public facing document and is subject to redactions in line with the Environmental Information Regulations 2004.

AGREEMENT dated

25 January 2009.

MADE BETWEEN:

- (1) **Dyfed Powys Police Authority** whose registered office is at Dyfed Powys Police Headquarters, PO Box 99, Carmarthen, SA31 2PF and;
- (2) Department for Rural Affairs, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

BACKGROUND

- A The Chief Constable of Dyfed Powys Police has highlighted the potential for additional policing costs arising from the impact of implementing the Intensive Action Pilot Area (IAPA) Project and a number of cost sharing principles have been established as set out in a separate 'Strategic Cost Sharing Principles' paper (see Appendix A). The agreement is aimed at seeking to minimise expenditure falling on taxpayers locally in the Dyfed Powys Police area over the period of the IAPA.
- B The 'Strategic Cost Sharing Principles' paper at Appendix A sets out the justification for costs included in Schedule A to this document.
- C This agreement is specific to the Intensive Action Pilot Area (IAPA) and in no way provides a precedent on funding for other activities within Rural Affairs Department or other Departments within the Welsh Assembly Government.
- D The Director for Rural Affairs hereby agrees to reimburse the agreed Additional Reasonable Costs incurred by Dyfed Powys Police in preparing and responding to the Intensive Action Pilot Area (IAPA) activities in support of the Welsh Assembly's TB Eradication Programme.
- E The Director for Rural Affairs has agreed to provide this reimbursement of agreed Additional Reasonable Costs incurred based on the terms and conditions set out in this Agreement.
- F All reimbursements will be paid by the Office of the Director for Rural Affairs to the Dyfed Powys Police Authority on receipt of quarterly invoices.

1. DEFINITIONS

1.1 In this Agreement unless the context requires otherwise:

Agreement	means the terms of this agreement together with the 'Strategic Cost Sharing Principles' document as set out at Appendix A within the framework of the 'Memorandum of Understanding'.
Re-imbusement	means the full repayment of the agreed additional costs reasonably incurred by Dyfed Powys Police in meeting policing requirements arising from and as an implication of the IAPA Project
Cost Sharing Principles	means the cost sharing principles as set out in the 'Strategic Cost Sharing Principles Document' at Appendix A.
MOU	means the Memorandum of Understanding agreed between the Chief Constable of Dyfed-Powys Police and the Director for Rural Affairs, Welsh Assembly Government in relation to the IAPA Project.
IAPA / Project	means the Intensive Action Pilot Area (IAPA) activities in support of the Welsh Assembly's bovine TB Eradication Programme.
Agreed Additional Reasonable Costs	means costs deemed appropriate by the Chief Constable of Dyfed Powys Police and Director for Rural Affairs based on operational requirements and assessments but does not include the costs of officers engaged in work on the IAPA project as part of their normal substantive and budgeted policing role and duties.

1.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:-

- 1.2.1 References to the singular include the plural and vice versa.
- 1.2.2 References to words denoting any gender shall include all genders.
- 1.2.3 References to persons include companies, partnerships, government departments and agencies and all other forms of body corporate or un- incorporate.
- 1.2.4 References to Clauses and Schedules are to Clauses of, and Schedules to, this Agreement.

- 1.2.5 References to laws and statutory provisions shall include reference to any subordinate legislation made pursuant thereto and shall be construed as referring to those laws, provisions and subordinate legislation as respectively amended or re-enacted from time to time.
- 1.2.6 The headings of this Agreement are for ease of reference only and are not part of this Agreement for the purposes of construction.
- 1.2.7 Any undertaking by a party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person.
- 1.2.8 References to the parties include their respective successors in title, permitted assigns and legal personal representatives.

2. AGREEMENT

- 2.1 The Director for Rural Affairs hereby agrees to reimburse the agreed Additional Reasonable Costs incurred by Dyfed Powys Police in preparing and responding to the IAPA activities in support of the Welsh Assembly's TB Eradication Programme based upon the terms and conditions of this Agreement.
- 2.2 For the purposes of this Agreement these Additional Reasonable Costs are categorised into two distinct elements as follows:
- Pre & Post Operation, Intelligence and Community Impact (**Phases 1 & 3**)
 - Policing the "on the ground" activities and public order implications (**Phase 2**)
- 2.3 For reimbursements in relation to **Phase 1 & 3** costs the Director for Rural Affairs agrees to reimburse the actual cost of the agreed Additional Reasonable Costs up to the maximum indicated in Schedule A subject to clause 3.1 and Principle 8 of the Strategic Cost Sharing Principles, in accordance with clause 2.5.
- 2.4 For reimbursements in relation to **Phase 2** costs Director for Rural Affairs agrees to reimburse the agreed Additional Reasonable Costs incurred in policing the on the ground operations and public order implications based upon actual costs incurred under the categories set out in Appendix A and Schedule A.
- 2.5 All reimbursements will be paid by the Director for Rural Affairs to the Dyfed Powys Police Authority quarterly in arrears upon receipt of quarterly invoices supported by appropriate and complete authorised claim forms, both of which shall be sent to the Office of the Director for Rural Affairs no later than 2 calendar months following the end of the quarter, excluding the last quarter invoice which shall be submitted within 1 month. Payment will be made within 30 days of the receipt of an agreed authorised invoice.

3. OTHER CONSIDERATIONS

- 3.1 Where it becomes apparent to the Chief Constable that the Additional Reasonable Costs involved in policing phases 1 - 3 are likely to exceed the costs included in Schedule A, the Chief Constable (or authorised person acting on his behalf) shall use his reasonable endeavours to inform the Director for Rural Affairs in writing so that appropriate negotiations can be commenced in respect of reimbursement under Principle 8 of the Strategic Cost Sharing Principles. The Director for Rural Affairs shall not unreasonably refuse such a request.
- 3.2 The Chief Constable shall ensure at all times that the cost of the policing response are **proportionate** and **reasonable** in relation to 'risk' and 'threat' and identified or anticipated 'harm' arising from the IAPA project.
- 3.3 Where the IAPA Project is discontinued or suspended, the Director for Rural Affairs shall inform the Chief Constable of Dyfed Powys Police in writing within a reasonable period of the decision to discontinue or suspend being made.
- 3.4 The Chief Constable shall endeavour to ensure that any procurement or employment agreements are aligned in timescale with the agreed Additional reasonable Costs.
- 3.5 Where the IAPA Project is discontinued or suspended, the Director for Rural Affairs shall be liable to reimburse the Dyfed Powys Police Authority for the funding of any agreed Additional Reasonable Costs, to which the Chief Constable has made a financial commitment in accordance with Schedule A Phase 1 as indicated within the Strategic Cost Sharing Principles until such time as the Chief Constable can reasonably terminate such commitments. This is to include the termination of all contracts of employment or secondment. Such reimbursement shall be invoiced in accordance with clause 2.5 above.
- 3.6 Where the IAPA Project is discontinued or suspended, the Chief Veterinary Officer is liable for the agreed Additional Reasonable Costs of policing requirements in accordance with Schedule A Phases 2 & 3 as indicated within the Strategic Cost Sharing Principles arising directly or indirectly out of the IAPA Project and shall remain so until such time as related incidents have ceased.

4. NATURE OF THE REIMBURSEMENT

- 4.1 The reimbursement shall cover the agreed Additional Reasonable Costs of policing the IAPA Project as established at Schedule A.
- 4.2 A request for reimbursement by Dyfed Powys Police Authority shall only be for activities where the Authority has incurred actual additional expenditure.
- 4.3 The reallocation of existing resources to IAPA activities shall not be reimbursed, until arrangements are in place and costs being incurred to back fill those resources with additional staff or through other mechanisms e.g. payment, overtime or paid rest days.

- 4.4 The quarterly invoices shall be supported by appropriate and complete authorised claim forms that as a minimum shall include details of the expenditure. Reimbursement is dependant on the receipt of acceptable invoices and claim forms. An appropriate audit trail will be maintained to enable this expenditure to be tracked back to individual vouchers and pay documents for the purposes of inspection in accordance with clause 5.1.
- 4.5 There shall be no variation or modification to the MoU, Cost Sharing Principles or Cost Categories included in Schedule A without written agreement / approval from both signatories.

5. MONITORING OF THE PROJECT AND PUBLICITY

- 5.1 The Chief Constable shall:
- 5.1.1 Allow the Director for Rural Affairs and / or his representatives to inspect upon reasonable notice all transactions relating to amounts for which reimbursement is sought from time to time;
 - 5.1.2 Provide to the Director for Rural Affairs access to such information as he reasonably requests from time to time to monitor the progress of the Project;
 - 5.1.3 Retain all invoices, receipts, accounting records and other documents relating to expenditure generated in undertaking the project for at least six years after completion of the project. Such invoices, receipts, records and other documentation must be made available at any reasonable time for inspection by the Director for Rural Affairs, officials or its agents, as appropriate, including the Wales Audit Office or those acting on their behalf, to ensure monies have been properly spent. The Auditor General for Wales may also upon receipt of a reasonable request investigate the economy, efficiency and effectiveness of funds spent in accordance with this Agreement.
- 5.2 As applicable and where appropriate any publicity material, press releases, handouts etc produced as part of the Project should include an acknowledgement that the Project had received funding from the Welsh Assembly Government.
- 5.3 Any request for information received under the auspices of the FOI or EIR Act in connection with the MoU, Cost Recovery Agreement or Strategic Cost Sharing Principles documents shall be considered for release under the FOI Act or EIR . Both parties shall consult on FOI or EIR requests received in connection with these documents.

6. REPAYMENT OF REIMBURSEMENTS

- 6.1 The Director for Rural Affairs may require part, or all, of the reimbursement already paid to be repaid if any information provided by the Dyfed Powys Police Authority in its reimbursement claim, or in a claim for payment or in any subsequent or supporting documentation concerning the IAPA project is found to be incorrect or incomplete to an extent which is considered to be material.
- 6.2 The Director for Rural Affairs shall, within 56 days of the identification a potential discrepancy, supply reasons for any requirement placed on the Chief Constable to repay all or part of the reimbursement. The Dyfed Powys Police Authority must provide a response to the reasons within 56 days from the date of the request. If reimbursement is deemed appropriate the reimbursed sums must be repaid within 56 days from the date of formal notice for repayment being issued by the Director for Rural Affairs.
- 6.3 In the event that no agreement is reached between the parties in accordance with this clause 6, the matter shall be referred to Mediation in accordance with clause 9 below.

7. RESTRICTION ON THE USE OF EQUIPMENT

- 7.1.1 Any equipment purchased and reimbursed by the Office of the Director for Rural Affairs for the use of Dyfed Powys Police shall be made available by the Chief Constable to support any other IAPA projects or other aspects of the TB Eradication Programme.
- 7.1.2 The use of this equipment for other purposes and by other Police Authorities would be acceptable with prior agreement by the Welsh Assembly Government on condition that this does not jeopardise its availability to support IAPA activities.

8. TERMINATION

- 8.1 This Agreement shall remain in force until termination has been agreed in writing between the parties or that the project has been completed and will proceed in accordance with clauses 3.5 and 3.6.
- 8.2 The termination of this Agreement in accordance with clause 8.1 shall not prevent Dyfed Powys Police Authority from submitting further requests for reimbursement in accordance with clause 2.1 in relation to costs incurred, whether directly or indirectly, in relation to Phase 3 of the project. Such requests shall continue to be dealt with in accordance with clause 2.5.

9. DISPUTE RESOLUTION

- 9.1 If any dispute arises in connection with this Agreement, persons with authority to settle the dispute will, within 28 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 9.2 In the event that no agreement is reached in accordance with clause 9.1, any dispute or difference arising out of or in connection with this Agreement shall be determined by the appointment of a single Mediator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by a Mediator to be appointed by the Wales Audit Office.

10. GENERAL PROVISIONS

- 10.1 Nothing in this agreement shall affect the operational independence and autonomy of the Chief Constable as laid out in the MoU on Pages 2 and 3.
- 10.2 Nothing in this Agreement creates or implies any partnership or joint venture between the parties or a relationship between them of principal and agent.
- 10.3 Neither party is authorised to make any representation or commitment or incur liability on behalf of the other and neither shall be bound by the acts or conduct of the other.
- 10.4 This Agreement shall be governed by and construed in accordance with the law of England and Wales as they apply in Wales and each party irrevocably agrees the Courts of England and Wales shall have exclusive jurisdiction in relation to any claim dispute or difference concerning this Agreement.
- 10.5 This Agreement shall not be assigned by either party.
- 10.6 Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999 ("the Act") no variation to this Agreement and no supplementary or ancillary agreement to this Agreement shall create any such rights unless expressly stated in any such agreement by the parties. This does not affect any right or remedy of the third party which exists or is available apart from that Act.
- 10.7 Any notice or other communication given or made under or in connection with this Agreement shall be in writing and addressed to the relevant party at the address stated at the beginning of this Agreement.

- 10.8 If at any time any provision of this Agreement shall if found by a court or competent authority to be void or unenforceable (whether by operation of law or by reason of uncertainty or otherwise) such provision (or part of it) shall be deemed to be deleted from this Agreement and the remainder of the Agreement which shall continue in full force and effect.
- 10.9 The failure of either party at any time to require performance of the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that or any provision and any waiver by either party of any breach of this Agreement shall not be construed as a waiver of the provision itself or a waiver of any other right under this Agreement.
- 10.10 This Agreement together with the MoU and the 'Strategic Cost Sharing Principles' document constitutes the full and complete understanding between the parties and supersedes all prior arrangements and understanding, whether written or oral.
- 10.11 In the event of any conflict between the Agreement, MoU and the Cost Sharing Principles then the following order of precedence shall apply:
- 10.11.1 The MoU;
 - 10.11.2 The Agreement; and
 - 10.11.3 The 'Strategic Cost Sharing Principles' Document"

Signed on behalf of

THE DIRECTOR FOR RURAL AFFAIRS, WELSH ASSEMBLY GOVERNMENT

Print Name and Job Title

Signed by an authorised
signatory on behalf of
DYFED POWYS POLICE AUTHORITY

Print Name

APPENDIX A - Strategic Cost Sharing Principles

1.0 Introduction

- 1.1 Dyfed Powys Police would like to highlight the potential cost implications arising from policing the impact of the above operation.
- 1.2 The exact scale of the costs incurred will of course depend upon the nature of the challenge faced, particularly in terms of public order once the operation takes on its full form and this makes giving an accurate costing projection impossible at this stage.
- 1.3 Given the difficulty in providing accurate forward costing estimates, the Force has prepared a number of **strategic cost sharing principles** it has discussed with Welsh Assembly Government Officials and the following paper summarises the position at this point.
- 1.4 The Force welcomes the opportunity to engage in joint planning and preparation for the operation and will continue to work with the Welsh Assembly Government in this with a view to making the operation a success whilst seeking to minimise expenditure falling on taxpayers locally in the Dyfed Powys area over the coming years.

2.0 Suggested Policing Approach

- 2.1 The current operational planning processes are being managed through the recognised Gold, Silver, Bronze structure. This will ensure that the operation is effectively managed at the strategic, tactical and operational levels. The intended operational policing response is based upon three distinct phases.
- 2.2 Clearly one of the key elements for successful delivery of the intended approach is to ensure that effective funding and resourcing arrangements are in place and the following sections of the report highlight strategic cost sharing principles that are suggested as a potential way forward.
- 2.3 Phase 1 – Pre Operation Planning and Intelligence gathering
 - 2.3.1 The operation is currently in a preparation and planning phase. Key personnel from the Welsh Assembly Government and Force have met to discuss in detail the plans, nature and time span of this event. In financial terms these discussions have not resulted in additional direct expenditure for the Force as officers involved have been undertaking these duties within their normal budgeted duties.

Strategic Cost Sharing Principle 1 - The Force would not look to recover the costs of attending joint meetings etc involved in planning for the event however will keep a record of such costs.

- 2.3.8 Policing performance for all Forces is measured in terms of community satisfaction and confidence and the Authority would be keen to ensure that the operation does not negatively impact the Force in terms of this performance measure.
- 2.3.9 Given the absolute importance of retaining community confidence through engagement and reassurance activity throughout the IAPA period (all phases of the operation).

2.4 Phase 2 - Policing on the ground operations

- 2.4.1 This element is dependent upon the nature of the challenges faced in terms of public order and disruption to legitimate lawful operations on the ground.

Strategic Cost Sharing Principle 6 – The Force would seek agreement that it would be able to recover the costs incurred in respect to providing operational policing response on the ground.

2.5 Phase 3 - Sustaining Public Confidence

- 2.5.1 Clearly the impact of this operation on the identified communities is potentially long term and significant therefore Dyfed Powys Police would welcome the opportunity to discuss with the Welsh Assembly Government how best to sustain public confidence in the Force and Authority post this operation.

3.0 **Other alternative arrangements and Conclusion**

- 3.1 There is a remote risk that the costs of the operation could escalate considerably and place a significant additional financial burden on the Authority. In the absence of agreement on the above cost sharing principles, the following limited options would be available.
- 3.2 Under such circumstances in the case of responding to emergencies the Assembly's Emergency Financial Assistance Scheme would apply and the Authority would be able to recover 85% of expenditure above a threshold of 0.2% of expenditure (£180,353). Should this figure exceed 2% of net revenue expenditure then the Force would be able to recover 100% of eligible expenditure.
- 3.3 The Emergency Financial Assistance Scheme is however a discretionary scheme and advice received suggests that expenditure incurred in this manner is unlikely to qualify for inclusion under this scheme as it would fall outside the definition of an emergency.
- 3.4 The Home Office also operates a Special Grant Scheme under which Authorities can apply for reimbursement of costs incurred in policing an incident should they exceed 1% of net revenue budget. Any reimbursements under this scheme are also discretionary and determined by Home Office Ministers. Home Office officials have indicated that the first port of call in relation to reimbursements in this case should be the Assembly.

Strategic Cost Sharing Principle 8 - The Force would welcome assurances that in the event that the costs of the operation escalate beyond the agreed Additional Reasonable Costs, that the Authority would have recourse to the Welsh Assembly Government for a further contribution. The Director for Rural Affairs shall not unreasonably refuse such a request.

4.0 **Financial Estimates**

- 4.1 In order to provide a ball park indication of possible cost consequences resulting from the operation a financial model has been produced. and this is included in Schedule A. It has to be emphasised strongly that the costs included here are purely for illustrative purposes only and are based upon only one of a range of possible scenarios.
- 4.2 The model splits cost consequences between Phases 1 - 3 of the operation as discussed with Assembly Officials. The cost consequences from Phase 1 are fairly

easy to quantify and these are based upon existing plans which will need to be discussed further with officials. It has to be stressed however that the Force is already incurring some of the costs under this heading

4.3 The costs included in Phase 2 are illustrative only

5.0 **Summary**

5.1 A summary of the strategic cost sharing principles is shown in schedule 'C'.

5.2 It is recognised that all resource requirements outlined in this document will be kept under regular review with the key trigger points being immediately preceding and post each IAPA activation.

5.3 In order to progress the Force would welcome a written agreement to these strategic cost sharing principles at the earliest opportunity to enable Authority Members to be briefed accordingly.

5.4 Clearly the strategic principles are sought on the basis that the Authority is keen to ensure that local taxpayers are not left to meet a disproportionate share of the costs of this operation over a prolonged period.

Schedule C. – Strategic Cost Sharing Principles

Strategic Cost Sharing Principle 1 - The Force would not look to recover the costs of attending joint meetings etc involved in planning for the event however will keep a record of such costs.

Strategic Cost Sharing Principle 6 – The Force would seek agreement that it would be able to recover the costs incurred in respect to providing operational policing response on the ground.

Strategic Cost Sharing Principle 8 - The Force would welcome assurances that in the event that the costs of the operation escalate beyond the agreed Additional Reasonable Costs, that the Authority would have recourse to the Welsh Assembly Government for a further contribution. The Director for Rural Affairs shall not unreasonably refuse such a request.