

PETITION BY SPCB FOR REMOVAL OF UNAUTHORISED CAMP
APPLICATION FOR AWARD OF EXPENSES

Executive Summary

1. This paper seeks the SPCB's agreement to apply to the Court of Session for an award of expenses in principle following the dismissal of the camp occupiers' ("the campers") appeal to the Inner House.
2. The awarding of expenses is a matter for the Court's discretion. If an award is made in principle in the SPCB's favour then the account of expenses which may be recovered would be agreed with the Court Auditor. It would be for the court to determine the actual level of expenses which may be recovered. The campers will have the opportunity to participate in that process.
3. If an award is sought and the application is successful the SPCB's approval would be sought before steps were taken to pursue recovery of any expenses awarded.

Background

4. In December 2015 the SPCB brought a petition to the Court of Session seeking an order for removal of a group of individuals which had taken up camp within the Parliament's grounds around the end of November 2015. The campers had stated their intention to remain there until Scotland became an independent country. On 27 July 2016 Lord Turnbull granted the order sought.
5. The campers appealed Lord Turnbull's decision to the Inner House of the Court of Session. On 28 October 2016 the Court dismissed the appeal and authorised the immediate extract of their order. The SPCB instructed Messengers-at-Arms to enforce the extract and the campers were removed on 4 November 2016.
6. It is understood that some of the campers have lodged an application for leave to appeal to the Supreme Court. It is also understood that other members of the group are considering doing so. The campers have a period of 28 days from 28 October to apply for leave to appeal to the Supreme Court. Such an application is made to the Court of Session.

Resource Implications to Date

7. The total costs of the action invoiced to date (including enforcement of the decision of the Inner House) amounts to £105,889.65 excluding VAT. The VAT chargeable under the invoices (which is recoverable) is £19,122.33. The net cost attributable to the petition before Lord Turnbull is £67,150.95. The net cost attributable to the campers' unsuccessful appeal to the Inner House is

£38,738.70. These costs have been met from the SPCB's existing annual budget.

Issues and Options

Seeking an In Principle Decision

8. The issue of the expenses of the action had not yet been considered. However, now that the appeal to the Inner House has concluded it is open to the SPCB to raise this matter. In deciding whether to take the first step of seeking an in principle decision from the Court, the SPCB will wish to bear in mind the duty on it to use public funds prudently. If there is a reasonable prospect of an award of expenses from the Court then it could be argued that the SPCB has an obligation to pursue matters further in an attempt to mitigate the costs to the public purse of this action. Such action would also underline the principle that anyone occupying Parliament land unlawfully should be expected to be responsible for the consequences of their actions.

Further Steps and Prospect of Cost Recovery

9. Should the court make an in principle award to the SPCB, it would then be for the SPCB to consider whether to pursue cost recovery. In making this decision, the SPCB would want to consider the level of costs which might be awarded by the court; the likelihood of recovery and the further costs to the SPCB of this action. In Scotland the question as to how the costs of civil litigation are borne between parties is a matter for the Court's discretion. Even where the Court considers that an award is merited in principle it may mitigate the level of an award if it considers that appropriate.

10. Costs which can be recovered following an award of expenses are also limited by the general principles applied by the Courts in practice and there is a statutory table of fees which limits the rates which may be recovered. Accordingly if an award is made, even if it is not mitigated by the Court, it is not anticipated that the award would permit full recovery of the sums which have been expended.

11. Against this backdrop, the SPCB would need to consider the costs it would incur in seeking to recover this potential amount. Put simply, it is not realistic to assume that a high percentage of the costs are recoverable. The SPCB would also not wish to spend more on pursuing cost recovery than it could reasonably expect to recoup. Other factors to consider would be the ability of the campers to pay the award and the levels of their assets which is not yet known. That said, given the amount of expenses to date of around £100k (net), securing the recovery of even a proportion for the public purse could be regarded as worthwhile.

Recommendation

12. Given the clear duty on the SPCB to use of public funds prudently, it is recommended that the SPCB apply to the Court of Session for an award of expenses in principle. Should that application be successful, the SPCB will

wish to give further consideration to its next steps. Such a staged approach would enable the SPCB to ensure that its actions continue to be proportionate and reasonable.

Governance Issues

13. The SPCB has been kept fully informed throughout the course of the action and their specific instructions obtained at all key stages.

Publication Scheme

14. In light of the highly unusual circumstances of the case and in recognition of the legitimate public interest in its expenditure the SPCB has already agreed to publish the total costs of the action. This paper can accordingly be published.

Next Steps

15. If the SPCB wishes to pursue an award of expenses in principle a motion will be intimated to the campers and enrolled before the Court. If an award is made in the SPCB's favour officials will instruct the process of certifying the expenses which are recoverable in light of the Court's ruling.

16. Further instructions would be obtained from the SPCB before any action is taken to enforce any award made by the Court.

Decision

17. The SPCB is invited to confirm whether it wishes to make an application to the Court of Session seeking an award of expenses in the action to date.

Ken Hughes
14 November 2016