

## **Part 16 - Property damage incurred during searches or exercise of statutory powers**

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## Overview

### Introduction

This chapter provides guidance on the approach that should be adopted when damage is caused by Police during the execution of [search warrants or statutory powers](#), or as a consequence of [warrantless entry in emergencies](#) where Police employees' actions could give rise to a claim against Police. It includes guidance on what should be done to [make damaged premises secure](#) without incurring Police liability for additional costs.

### Background

Occasionally the Police execution of search warrants or other statutory powers results in damage to property. This is usually as a result of the need to force entry to a privately owned building or space.

Such damage may result in claims being made against Police for the cost of repairs to the building, or for loss suffered as a result of the damage, for example, if premises are left unoccupied and insecure.

It is important that decisions around such claims are made in a consistent and principled way.

### Statement of principle

The method of entry and the manner which the search is conducted must be reasonable in all the circumstances, e.g. if the door is unlocked there is no justification in breaking it down. In cases where unjustified damage is caused in the execution of a search warrant or statutory power, compensation may be available. If damage caused is unreasonable in the circumstances it cannot be justified.

Such claims will be considered by the District Commander or Director on a case by case basis.

### Application

This chapter applies to any situation where damage is caused to property or loss is suffered as a result of the execution of a search warrant or use of some other statutory power.

The chapter is intended as a guide to employees. It does not prescribe the criteria by which claims will be determined.

### Immunity

To be immune from civil liability, Police employees need to conduct searches in a reasonable manner. ([s165](#))

### Related information

Further guidance on searches and financial delegations is available in these documents:

- Cabinet Office Circular [CO\(18\)2 - Proposals with Financial Implications and Financial Authorities](#) for information about departments seeking approval of proposals with financial implications such as expenses for compensation claims and ex gratia expenses
- [Financial delegations](#) chapter for information about the framework of financial delegated authority and financial restrictions within Police
- [Insurances](#) chapter for information about general/public liability insurance
- [Search](#) chapter for information about entry, search and seizure powers.

## Execution of search warrant or other statutory power

This topic provides guidance on the approach that should generally be applied to the consideration of claims for property damage resulting from the execution of search warrants and use of other statutory powers.

### General principle

Compensation will seldom be paid where access to a property to be searched is not possible without significant force, e.g. a heavily fortified gang pad that cannot be entered, except by forcing doors in. In such a case use of force and resulting property damage is necessary and reasonable. Any claims for property damage are consequential on a case by case basis.

### Damage caused to rental properties

Landlords and homeowners who have boarders generally carry the risk of damage to their properties as a result of Police actions responding to a tenant's activities.

Generally, the landlord or homeowner should mitigate against such risks by taking a bond or deposit and with appropriate insurance cover.

Police should refer the landlord or homeowner to their insurer or the Tenancy Tribunal.

### Damage to vehicles not being used by the owner

As for damage in rental properties [above](#), a vehicle owner generally carries the risk associated with the vehicle's use. Police may damage a vehicle in order to rescue an occupant. If damage was necessary to achieve the purpose, compensation will not be paid. The vehicle owner should be referred to their insurer.

### Mistakes when search warrants or powers are executed

In cases where a mistake is made in the execution of a search warrant or statutory power, for example where a search warrant is executed at a wrong address, then the default position is that compensation will be available in respect of any claim.

Such claims will be considered by the District Commander or Director on a case by case basis.

## Warrantless entry in emergencies

### Entry to prevent offence or respond to risk to life or safety

Under section [14](#) of the Search and Surveillance Act 2012 -

If you have reasonable grounds to...	you may...
<p><b>suspect</b>, in relation to a place or vehicle:</p> <ul style="list-style-type: none"> <li>- an offence is being, or is about to be committed, that would be likely to cause injury to any person, or serious damage to or serious loss of, any property, <b>or</b></li> <li>- there is risk to the life or safety of any person that requires an emergency response</li> </ul>	<ul style="list-style-type: none"> <li>- enter the place or vehicle without a warrant, <b>and</b></li> <li>- take any action you have reasonable grounds to believe is necessary to:               <ul style="list-style-type: none"> <li>- prevent the offending from being committed or continuing, or</li> <li>- avert the emergency.</li> </ul> </li> </ul> <p><b>Note: ‘take any action’</b> means take any action that is reasonable in the circumstances.</p>

Compensation will seldom be paid for any damage incurred by a constable forcing entry under section [14](#). The responsibility for the repairs lies with the owner or occupier. This is because damage arising is necessary and reasonable in the circumstances. In many cases the repair costs will be met by insurance cover.

## Claims for compensation

### Employees should not incur expenditure or commit to compensation

Police employees must not agree to expenditure on behalf of Police to rectify damage caused to any property in the execution of a search warrant or statutory power, as this may pre-empt the relevant District Commander's or Director's decision as to the payment of compensation.

Police employees should not give any indication or undertaking on behalf of Police to an owner or occupier as to the payment of compensation for costs incurred or loss suffered. Any such statement by a Police employee may provide a basis for a successful future legal claim by the owner or occupier. The decision whether to pay such compensation is for the District Commander or Director.

### If practicable photograph scene before and after search

Unless it is impracticable, all search scenes should be photographed before the search is undertaken and afterwards. This will assist with settling many disputes when Police claim the damage or mess was there beforehand and the complainant says otherwise. Should damage occur, then document the damage for future reference.

### Procedure when claims arise

Where a claim arises, it should be directed by the officer in charge of the incident concerned to the District Commander or Director for consideration.

All claims forwarded to the District Commander or Director should be accompanied by documentation from the officer in charge detailing:

- the circumstances in which the search warrant or statutory power was executed
- background information
- the grounds for Police action
- the damage caused
- the outcome of the search warrant or statutory power being executed
- the owner of the property and the occupier or user of the property at the relevant time
- the nature and basis of the claim as stated by the owner of the property
- costs incurred in rectifying the damage together with evidence of the same, and
- any steps taken by Police or the owner to prevent further loss or damage.

### Assisting owners to claim compensation

Whilst it is not anticipated that employees will solicit claims for compensation from property owners, officers in charge should assist owners in putting their claim forward for consideration if they lack the ability to do so and in the circumstances the damage caused is unreasonable. (See [Execution of search warrant or other statutory power](#) and [Warrantless entry in emergencies](#) in this chapter).

## Payment of claims for compensation

### Payment is made at District Commander's/Director's discretion

Reimbursement of costs and the payment of claims are made at the discretion of the relevant District Commander or Director in accordance with financial delegations and other guidelines and requirements.

The payment of claims must be made where applicable in accordance with:

- national policy, for example Police Manual chapters:
  - [Financial delegations](#) for information about the framework of financial delegated authority and financial restrictions within Police
  - [Insurance](#) for information about general/public liability insurance
- any Police legal advice
- any Police public liability insurance policy.

Refer to Cabinet Office Circular CO(18)2 - Proposals with Financial Implications and Financial Authorities for information about departments seeking approval of proposals with financial implications:

- expenses for compensation or damages for settlement of claims
- ex gratia expenses made in respect of claims that are not actionable at law, but for which there exists a moral obligation and payment should be made.

## **Making damaged premises secure**

### **Actions to avoid incurring liability for damages**

Premises should not be left unoccupied and insecure after a forced entry, as liability for further loss may arise, e.g. if the contents are stolen from the address. Officers in charge should make every attempt to prevent such loss by ensuring the property is made secure without incurring a liability for costs on behalf of Police. This will mean:

- liaising with the owner or occupier to secure their own property. If necessary and practicable, offer to wait for a specified time for the owner or occupier, or an agent, to arrive to do this, or
- at the occupier's or owner's request, engaging a contractor to make the premises secure on the understanding that the occupier or owner will bear the cost, or
- attending staff effecting a temporary repair where feasible, e.g. by boarding up a window.

### **When police engage contractors to do repair work**

Employees should be aware that if Police engage contractors to make repairs, then Police should expect to pay the cost of repairs.

If you facilitate making premises secure for property owners, it must be established directly with the owner that they agree to pay for the cost of repairs before engaging a contractor. The contractor must be made aware that the owner is responsible for paying the invoice for repairs to secure the property.

### **Circumstances when it may be necessary for Police to incur expenditure**

In rare cases where there is a significant risk associated with leaving premises unoccupied and insecure, all reasonable efforts to contact the owner or occupier should be made to obtain their agreement to cover costs of repairs. If no other solution can be found, then it may be necessary for Police to incur liability for the cost of the repair by calling a tradesperson such as a glazier or locksmith. In this situation, the minimum work necessary to secure the premises should be carried out, in consultation with your supervisor.

Where practicable, you should obtain verbal authorisation from the District Commander through the Area Commander, or the relevant Director before any liability is incurred.

However, such an approach should not be followed where the owner or occupier who stands to suffer further loss has refused to make the premises secure themselves.

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