

20. The current legal requirements on officers to co-operate with IOPC investigations were set out in the IOPC's note 22 June 2021 and attached in Appendix B. Officers subject to criminal investigation have the same rights as any other suspect and officers who have been served with a notice of investigation have a similar "right to silence" subject to the availability of inferences. These further submissions concern only officers whose status is that of a witness in the investigation.

21. At the time of the investigation, an IOPC investigator could require a serving officer who was a witness to attend at a date, time and place specified in a notice²⁹. However, neither the regulations nor the "*Duties and Responsibilities*" standard of professional behaviour³⁰ included an express duty or responsibility to answer questions in a dynamic witness interview. The standard was amended in 2020³¹ to add the words in the second paragraph below:

Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.

22. The Inquiry have a copy of the Police Federation's letter dated 26 May 2021³² which concerns whether its members may be able to "defeat" a requirement to answer questions in a face to face interview:

*Despite concerns about the applicability of APP as a complete description of what is required [by the duty to cooperate], legal advice suggests that the relevant APP can still inform the last of these considerations and should certainly be used in argument should such an argument arise. **In addition, the fact that it is the usual practice of officers to write their own statements when witnesses in cases may be deployed to help defeat a requirement to answer orally face-to-face.***

23. It acknowledges that it was (and remains) untested whether officer witnesses who, as in this case, attend face to face appointments, refuse to answer questions but then provide a written account, would be in breach of the amended standard.

It cannot be ruled out that offering to comply by way of writing their own statement could result in a successful duty to cooperate allegation. In theory and principle, the duty to cooperate can require face to face question/answering. However, the facts of such a case are difficult to conceive. In addition, if an officer's written statement answered the questions and topics raised in a timely fashion then it is unlikely that such an allegation would succeed on the basis that it could be argued an officer had given appropriate cooperation in a timely fashion and acted in line with the expectations of a police officer when they are identified as a witness.

Therefore, for the reasons above, the advice set out in JBB circulars 026/2013, 07/2013, 008/2010 and 007/2014 is no longer sustainable as there could be a case where the duty to cooperate requires officers to answer

²⁹ The Police (Complaints and Conduct) Regulations 2013

³⁰ Schedule 2 Police (Conduct) Regulations 2012

³¹ Schedule 2 Police (Conduct) Regulations 2020

³² POL0000001

questions in a face to face meeting. However, legal advice suggests that in almost every conceivable individual case the approach that officers will write their own statements soon after could properly be taken and that it should be done that way where there is any prospect of self-incrimination or an officer evolving from a witness to a suspect. #concludes:

24. The investigators in this case remain of the opinion set out at paragraph 20 IPCC report³³ that the completion of the investigation was delayed due to MPS police officers and staff not agreeing to provide the IPCC with witness accounts in person and instead requesting lists of questions to answer. More importantly that it prevented obtaining best evidence as there were inevitably still issues remaining that a conversation could have clarified, which may undermine confidence in the police³⁴.

25. The IOPC has a current working group with terms of reference including to consider what constitutes appropriate co-operation by witnesses with its investigations and to propose a standard approach where co-operation is not forthcoming. The IOPC welcomes any consideration given by the Chairman to this issue.

Retirement

26. Concerns have been expressed during the hearing about DCI Williams being able to retire whilst still subject to misconduct investigation and that retirement prevented misconduct proceedings, even though the IOPC considered he had a case to answer for misconduct³⁵.

27. As explained in the IOPC's note dated 22 June 2021, it remains the case that an officer who retires whilst subject to investigation for *misconduct* (in contrast to *gross misconduct*) cannot be subject to disciplinary proceedings and there is no list or register which would reveal that they had retired which under investigation; it could only come to the attention of a potential employer through pre-employment checks (which would usually require consent) and/or security vetting procedures.

Post-Mortem photographs

28. Questions were asked of Ms Hall³⁶ concerning the propriety of showing W80 photographs from the post-mortem during his interviews on 4 February 2016. This was raised again following the evidence of former Superintendent Jane Gyford (now Deputy Chief Constable of Cambridgeshire)³⁷. This issue was addressed in the IOPC's note of 22 June 2021 and in Ms Hall's statement dated 30 July 2021³⁸.

29. As explained in Ms Hall's statement, steps were taken to try and minimise any impact on W80's welfare and the intention to show the photographs was made clear to W80's solicitor prior to the day of the interview. W80's solicitor is and was then, highly experienced in representing firearms officers, including in homicide investigations and took no objection. The interviewers flagged when they were about

³³ IPC0001145_0009

³⁴ IPC0001145_0009 paragraph 20

³⁵ Transcript 17 June 2021 P94 lines 11-17

³⁶ Transcript 17 June 2021 P69 line 5 to 71 line 18

³⁷ IPC0001028

³⁸ IPC0001321