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Guidance for police witnesses in IOPC investigations

July 2022

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1. Background

- 1.1 The Independent Office for Police Conduct (IOPC) independently investigates serious and sensitive incidents and allegations involving the police. At the start of every investigation, we outline which parts of the incident or event we will investigate, and this is detailed in our terms of reference for the investigation.
- 1.2 To conduct investigations effectively, the IOPC relies on the co-operation of the police to provide the evidence we need in a timely manner. In turn, the IOPC needs to be clear about what police witnesses can expect during an investigation, and consistent in our approach, or able to explain why not.
- 1.3 The guidance should not be read as making any comment on the extent to which police witnesses currently co-operate with IOPC investigations; rather it sets out what we consider co-operation to look like in general terms, and what police witnesses can expect from us. The early provision of sufficiently detailed witness accounts is key to our completing timely and robust investigations, which is in the interests of everyone.

2. Purpose of this guidance

- 2.1 The purpose of this non statutory guidance is to provide **police witnesses** (which include officers and staff as well as others, please see footnote below)¹ with information on what they can expect when asked to provide a witness account; the information that we will provide to them to help them prepare; and how we will reach decisions on the most appropriate way of engaging with them. The guidance relates to IOPC independent investigations; however, police professional standards departments may wish to consider it also in relation to investigations conducted by them. This guidance is effective from the date of approval and publication on the IOPC website www.policeconduct.gov.uk
- 2.2 The guidance also explains the expectations that we have of a police witness who is being asked to provide an account.
- 2.3 This guidance does not apply to **subjects**². If during the course of an investigation we consider that there is an indication that a witness may have committed a criminal offence or behaved in a way that would justify the bringing of disciplinary proceedings³ the witness will become a subject of the

¹ For the purpose of this guidance, a police witness is a: police officer; • special constable under the direction and control of a chief officer; • member of police staff (which will include those with designated powers under section 38(2) of the Police Reform Act 2002: community support officers, detention officers, investigating officers and escort officers); • member of contracted out staff; • person serving with National Crime Agency.

² A police subject is an individual under investigation for alleged criminal offences and/or relevant breaches of the police professional standards.

³ 'Disciplinary proceedings' means any proceedings under the Police (Conduct) Regulations 2020 apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures.

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investigation, and they will be notified of this by way of an appropriate formal notice.

3. What a police witness can expect from the IOPC

- 3.1 We will inform police witnesses in a timely manner if they are being treated as a witness for the purposes of the investigation and are not a subject of the investigation and notify them promptly if their status changes to being a subject during the course of an investigation (subject to the harm test).
- 3.2 We will explain the scope and purpose of the investigation clearly. We will provide the police witness, where possible, with an explanation of what we are investigating, and meaningful disclosure at an appropriate stage to assist them (this will always be subject to the harm test⁴).
- 3.3 We will confirm as early as possible who the key policing witnesses⁵ are, and other policing witnesses. We will explain how the investigator anticipates the police witness can assist the investigation. Specifically, we will provide police witnesses with details of:
 - why the incident is being investigated
 - the nature of the events the police witness may have witnessed; and
 - such disclosure as the IOPC investigator considers necessary and proportionate, at an appropriate stage
- 3.4 In some cases, depending on how material the evidence is that a police witness can provide, it will be preferable for a police witness to provide an account to IOPC investigators in person.

A non-exhaustive list of examples of the types of investigations which might fall into this category is set out below. However, in each case, the investigator will

⁴ The Police (Conduct) Regulations 2020 (regulation 6) states that information in documents which are stated to be subject to the harm test under these Regulations must not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure to the officer is—

- (a)necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b)necessary in the interests of national security;
- (c)necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (d)necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
- (e)justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer;
- (f)necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
- (g)otherwise in the public interest

⁵ A key policing witness is a witness who has had a significant involvement and/or witnessed, or claims to have witnessed, visually or otherwise, all or part of a death or serious injury, or events closely connected with it. (Paragraph 9, Statutory guidance to the police force on achieving best evidence in death and serious injury Matters)

consider the nature of the evidence the witness may be able to give, and how to achieve best evidence and expedite the investigation. Where a witness's role was peripheral to the events under investigation or if they did not witness events directly the investigator may decide that a self-written statement will suffice.

Examples of types of cases/considerations where IOPC investigators may be more likely to take statements in person/virtually:

- Article 2/3 Human Rights Act 1998 cases (right to life and right to prevention from torture/inhumane treatment)
- Any criminal investigation
- Gross misconduct investigations
- Any case where there is deemed to be a high level of public interest
- Investigations where issues have been identified surrounding the decisions and or actions of police witnesses which do not amount to an indication of criminality or misconduct, but where the IOPC Decision Maker may consider whether learning recommendations may be made, and/or (for police officers only) whether the officer should be referred to the Reflective Practice Review process (RPRP), neither of which would constitute a disciplinary sanction. An interview may be preferable to identify whether either course of action would be appropriate.
- Where a witness has directly witnessed the material event/incident and/or played a part in decision making or used a police power.

3.5. Where a statement is taken by IOPC investigators, mirroring the expectations we have for police witnesses set out in paragraph 5.4 below, IOPC staff will attend on time (unless there is a reasonable explanation for delay), will remain for the duration of the meeting (unless otherwise agreed) and will treat police witnesses and anyone accompanying them with courtesy, and the process with respect.

3.6 Where a police witness provides a statement face-to-face or virtually (or both, if more than one meeting), the police witness may attend alone, or may choose to be accompanied to a witness interview by an accompanying person. An accompanying person may be a police friend, a lawyer, a trade union representative or any other person who is not involved in the matter. The accompanying person may not answer any questions asked of the police witness during the interview. Where IOPC investigators compile a witness statement to be used as written evidence, this will be completed in accordance with section 9 of the Criminal Justice Act 1967 (section 9 witness statement) on a MG11 form in all cases, whether the case is designated a criminal investigation or not.⁶ The Crown Prosecution Service has produced helpful best practice guidance for statements taken over the telephone, which should be followed wherever possible.⁷ Statements may be provided in English or Welsh. The IOPC will take

⁶ <https://www.cps.gov.uk/legal-guidance/admitting-evidence-under-sections-9-and-10-criminal-justice-act-1967>

⁷ <https://www.cps.gov.uk/legal-guidance/coronavirus-statements-obtained-over-telephone-best-practice-guidance>

account of any Government public health guidance operating at the time and any other relevant health and safety or operational/logistical issues.

- 3.7 Where in the opinion of the investigator the evidence sought is straightforward and/or peripheral, the investigator will consider asking the police witness to provide a self-written statement; the investigator may however request a face-to-face/virtual meeting at any stage where more detail is required. The statement must set out the evidence of the police witness, in accordance with section 9 of the Criminal Justice Act 1967 (using a MG11 form) and must provide sufficient detail (this may vary depending on the stage at which the account is provided and what disclosure has been given to the witness at that point).
- 3.8. Police witnesses will be given a reasonable amount of time in which to submit a written statement: the IOPC will normally expect to receive a written statement within 14 days of request. If the police witness cannot provide a witness account in this time (or if this is likely to be delayed), for example because they wish to seek advice, they should contact the investigator as soon as possible upon receipt of the request with an explanation of why they cannot comply and to agree a longer timescale. Requests for lengthy amounts of time to complete a statement are not likely to be reasonable without other extenuating circumstances (such as being unfit for interview for medical reasons), as significant delay may have a negative impact on the progression of the investigation. After reviewing a written statement, the investigator may request a face- to-face/virtual meeting to clarify or explore any additional points or may ask further questions in writing.

4. Co-operation with an investigation

- 4.1 As set out in Home Office Guidance,⁸ *“the duty to co-operate forms part of the Standards of Professional Behaviour under “Duties and Responsibilities”. It reinforces the responsibility that a police officer has to co-operate fully where they are a witness in an investigation, inquiry or other formal proceedings. The responsibility is to participate openly and professionally as a witness in a variety of circumstances including where the officer is a witness in an investigation into other officer’s misconduct, be that an investigation by the IOPC or the force itself.”*⁹
- 4.2 The standards of professional behaviour only apply to police witnesses that remain serving, however, the IOPC also encourages former police officers and staff to provide appropriate co-operation during investigations.

⁸ Home Office Guidance Conduct, Efficiency and effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity and Effectiveness in Policing, published 5 February 2020. The duty was revised in February 2020 and any accounts provided after this date will be covered by it regardless of when the investigation commenced.

⁹ Police staff are employed under contractual terms and conditions. The standards of behaviour for staff in many instances mirror the standards of professional behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2020. Further information is contained in the Police Staff Council Handbook: <https://www.local.gov.uk/our-support/workforce-and-hr-support/police/police-staff/police-staff-council-handbook>

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- 4.3 Although the duty of co-operation is not a duty of candour (such as applies in judicial review proceedings) it is helpful to review judicial comment in relation to candour when considering how police witnesses should conduct themselves to demonstrate that they are participating *openly and professionally*. A key requirement is that witness statements must not either deliberately or unintentionally obscure areas of central relevance, and those drafting them should look carefully at the wording used to ensure that it does not contain any ambiguity and is not economical with the truth. [*Citizens UK v SSHD [2018] EWCA Civ 1812, [2018] 4 WLR 123 at §106*].
- 4.4 Examples of what we might consider to be non-cooperation include failure to attend for interview, or providing a written statement that is not in the required format and/or does not provide sufficient detail. Future examples are set out in section 6.
- 4.5 Under the Police (Complaints and Conduct) Regulations 2013, the IOPC has the power to compel serving police witnesses to attend an interview. Where this power is invoked and the police witness is unable to attend an interview on the date requested, the witness must propose a reasonable date and time within five working days of the date specified by the investigator.

5. The IOPC expects

- 5.1 That police witnesses will provide an account in a timely manner: we expect that the witness will provide an account in person/virtually or in writing as requested by the IOPC.
- 5.2 Key police witnesses¹⁰ will comply with the IOPC statutory guidance on post incident procedures¹¹, including non-conferring with others present at the incident both before and after they have provided accounts, and the duty to preserve evidence, or explain why they could not comply.
- 5.3 Where accounts are provided as part of post incident procedures, these should be in accordance with section 9 of the Criminal Justice Act 1967 (using an MG11 form). The Post Incident Manager will decide in consultation with IOPC what evidential material a police witness may have access to before providing their account. Subsequent to this in IOPC investigations the IOPC investigator will determine this.
- 5.4 That the police witness will attend meetings in person/virtually if requested, unless otherwise agreed by the IOPC. That the police witness will attend on time (unless reasonable explanation given for delay), and they remain for the duration of the meeting (unless otherwise excused). That they treat IOPC staff with

¹⁰ A key policing witness is a witness who has had a significant involvement and/or witnessed, or claims to have witnessed, visually or otherwise, all or part of a death or serious injury, or events closely connected with it. (Paragraph 9, Statutory guidance to the police force on achieving best evidence in death and serious injury Matters)

¹¹ <https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/statutory-guidance-section-22-guidance.pdf>

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courtesy, and the process with respect. An equivalent expectation is placed on IOPC staff in section 3.5.

- 5.5 That police witnesses' accounts will be full and frank: we understand that police witnesses can only provide an account of events that they have witnessed and would expect them to answer any questions fully with the information known to the police witness at that time. We do however expect that where decisions have been made by a police witness, the witness will provide their rationale for making those decisions.
- 5.6 That any difficulties encountered in providing a full and frank account are identified and communicated promptly. These should be in exceptional circumstances only, for example if a witness requires more specific information to identify what they are being asked to provide an account about, or there are medical reasons why a witness is not able to provide an account at the time of request (supported by medical evidence if required).
- 5.7 That police witnesses will respond promptly to follow up questions or requests for clarification; we expect the police witness to respond positively to any reasonable and necessary supplementary questions from an investigator relating to an earlier response or statement, in person, or in writing.
- 5.8 Police witnesses may receive legal advice from their lawyers in relation to their statements however police witnesses are ultimately responsible for the content of their statement, and we expect them to ensure that they are content that their statement is suitably open and professional, as set out in paragraph 4.3 above.

6. Non-co-operation

6.1 Non-co-operation of a police witness may include, but is not limited to:

- Failure to answer reasonable questions in a timely manner and in sufficient detail (to include where relevant details of their honestly held belief and the reasons for that belief¹²) and/or;
- Not submitting a statement on an MG11 form within an agreed timescale, and/or
- Failure to attend a meeting with investigators without good reason.

6.2 If lack of co-operation is alleged, a police witness can expect:

- To have any interpreted lack of co-operation evidenced: if the IOPC investigator considers that the police witness is not co-operating, they will explain to the police witness the grounds on which they believe that the witness has not co-operated with the investigation, what the witness needs to do to demonstrate that they are co-operating, and also provide an explanation of what the consequences may be if co-operation is not forthcoming.

¹² For example where a police witness has used force on an individual or individuals. What constitutes sufficient detail will depend on the circumstances however there should be sufficient information to allow an investigation to commence or proceed, which will normally mean more than merely confirming duty hours etc.

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- If non-co-operation persists following this, where the police witness is still serving with the police the IOPC may escalate the matter to chief officer level at the relevant force and/or refer the matter to the Appropriate Authority.¹³
- We may also reference any non-cooperation in the final report of the investigation.

¹³ The Appropriate Authority for a person serving with the police is (a) for a chief officer or an acting chief officer, the local policing body for the area of the police force of which the officer is a member; or (b) in any other case, the chief officer with direction and control over the person serving with the police. The AA will assess the matter and may record a conduct allegation against the witness in relation to potential breaches of the professional standard relating to duties and responsibilities referred to above. This will then be subject to assessment and possible investigation.