

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 24th SEPTEMBER 2019**

Question

Is it lawful for the Jersey Police Complaints Authority to sign off on an investigation undertaken by the police into a complaint in instances where the complainant has not been interviewed or asked to provide evidence as part of that investigation and, in determining the lawfulness of such action by the Authority, is any consideration given to whether or not the complainant was informed by the Authority that they would be so interviewed or asked to provide evidence?

Answer

The relevant provisions detailing how a complaint is dealt with, either in relation to a States of Jersey Police Officer or an Honorary Police Officer, are contained in Police (Complaints and Discipline) (Jersey) Law 1999 (“the Law”), the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000 (“the Regulations”) and the Police (Complaints and Discipline Procedure) (Jersey) Order 2000 (“the Order”).

In relation to a complaint about a Police Officer, there is no specific obligation in the Law, the Regulations or the Order that a complainant is to be interviewed or asked to provide evidence as part of an investigation. However, Article 5 of the Law states that “where a complaint is submitted to the Chief Officer, he or she shall take any steps that appear to the Chief Officer to be desirable for the purpose of obtaining or preserving evidence relating to the conduct complained of”. This could mean that an interview is the appropriate way of obtaining such evidence, however, this is not an obligation. The Chief Officer is obliged to obtain or preserve evidence, in the manner that seems most appropriate to themselves.

Article 3(1) of the Order provides that the appointed officer shall “seek the views of the complainant and the member concerned about the matter”, therefore, the complainant’s opinion is to be considered throughout an informal resolution process. The complainant is not referred to in terms of a formal resolution process. Article 23(2) of the Order provides that “the complainant shall be allowed to attend the disciplinary hearing” if they so wish.

There is a similar process which applies to an Honorary Police Officer (as set out above for the States of Jersey Police). There is no specific obligation to interview, however, Article 19 provides that “where a complaint is submitted to a Connétable, he or she shall take any steps that appear to him or her to be desirable for the purpose of obtaining or preserving evidence relating to the conduct complained of”.

Article 3(1) (a) of the Regulations provides that where the Attorney General is satisfied that a complaint may be dealt with informally, the Connétable must “seek the views of the complainant and the member concerned about the matter”. This, as with the members of the States of Jersey Police, means that the complainant must be considered and consulted at all times, where the Connétable feels it to be appropriate. Article 21(2) of the Regulations provides that “the complainant shall be allowed to attend the disciplinary hearing” if they so wish.

It is not specified in either the Law, the Regulations or the Order, that consideration should be given as to whether or not the complainant is informed by the Authority that they will be interviewed or asked to provide evidence. The Law does provide for notifying the complainant of the outcome of the complaint. This can be found in Article 6(3) of the Law for members of the States of Jersey Police and Article 20(3) of the Law for the Honorary Police.

The overall objective of the Law, the Regulations and the Order is to do what is desirable for achieving the most appropriate outcome of the complaint. Whether an interview is required to be held is at the discretion of either the Chief Officer or the Connétable. Where the Authority signs off an investigation a statement will be made regarding whether the investigation has or has not been conducted to its satisfaction. The Authority shall send a copy of this statement to the complainant as per Articles 10(8) and 24(7) of the Law.

Accordingly, although generally a statement or other evidence will be taken from a complainant, it is possible for an investigation to be completed without such a statement being taken or evidence received. Such a course of action might be possible, for example, if the whole incident has been recorded on body worn camera, or the complainant is unable to provide a statement or there is another reason why the investigator, in their discretion, did not take one. Accordingly, it would be lawful for the Jersey Complaints Authority to agree that an investigation had been properly undertaken in the absence of a statement or other evidence being obtained from a complainant. However, without knowing the facts of a particular investigation or complainant it is not possible to say more.