



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 18 of 2016

Ref: CS/JF/LS

19 May 2016

Attachments: PIRC General Guidance

Dear Colleague

PIRC General Guidance - Information

I refer to the above and attach, herewith, the guidance for your information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele'.

Calum Steele
General Secretary

PIRC-General Guidance

Colleagues

Several issues have arisen in recent months in relation to the powers of PIRC and to what extent officers are expected to engage with them during investigations. It is of course impossible to provide a definitive guidance document that addresses every set of circumstances and set out how officers should respond to requests for statements, interviews etc.

What follows is intended as a general guide in response to some of the specific questions raised recently. All officers should avail themselves of the PIRC website <http://pirc.scotland.gov.uk> in the first instance. In addition, legislation covering PIRC general powers can be viewed at <http://www.legislation.gov.uk/asp/2012/8/section/62/enacted>.

PIRC Powers

In summary, when conducting any investigation into whether a Constable has committed an offence or where a death in custody has occurred, PIRC staff are afforded the same powers, with all such lawful limitations attached, as Police Officers. There are no 'additional powers' attached to this. If an officer is voluntarily providing a statement or agreeing to be interviewed by PIRC and becomes uncomfortable by either the manner he or she is being dealt with or the framing of the questions, then he or she cannot be compelled to remain with the PIRC member/s of staff. There are no measures of compulsory co-operation attached to these enquiries. In summary, PIRC staff have the same powers as each of you when questioning witnesses, no more, no less. As serving officers, each of you should be well aware of the limitations in place and the absence of any power to compel witnesses or subject them to interviews. In short, if officers have significant concerns with how they are being treated, they could simply leave and refuse to provide further co-operation at that stage.

Additional Powers

Many officers have asked questions regarding PIRC having additional powers when investigating certain incidents. *A thorough read of the above legislation will provide some clarity on this.* In summary, such additional powers (known as

regulation 5 powers) only exist where PIRC are investigation serious incidents involving police. A serious incident would be, for example, a death following police contact (as opposed to death in custody) or a serious injury sustained whilst in police custody. Further this section extends to any investigation into an incident being carried out in the public interest.

Such additional powers are not defined in any great detail, however a demand for a statement or a document in relation to the investigation would probably be considered reasonable (remember, a statement is not an interview). PIRC also have power to inspect and if need be seize documents in relation to such an enquiry when on police premises. If officers are asked to avail themselves for any interview (as witnesses), they should consider requesting a list of questions or points the PIRC may have for them, to allow them to prepare for such an interview. A statement taking exercise from a witness is exactly that, it is not a compellable interview.

If an officer is in any doubt as to the specific authority PIRC are acting under (for example, if S33 A, exactly which part of this?), they should pose this question prior to any meeting. Officers may wish to know if the PIRC have been instructed to establish if any crime has been committed by an officer. If this is the case remember your rights to avoid answering questions whereby any response could potentially incriminate you.

Mobile Phones/Personal Property

Officers should also consider very carefully the consequences of handing over any personal property such as mobile telephones when agreeing to be interviewed by PIRC. *PIRC have no power to seize and interrogate any officers' mobile telephone without warrant or consent (when officer is not a suspect in criminal enquiry).* However, be mindful that if you have, contained within your personal mobile, evidence relating to an investigation, PIRC could request you hand this over for examination when conducting an enquiry with additional powers attached (regulation 5 powers). Be further mindful that, if you voluntarily hand over a mobile telephone in any enquiry, it can be equally difficult to retrieve this.

I would reiterate to members the view of the SPF is that officers should not use their personal mobile telephones to send/receive or store any information, take any photograph or assist them in any way in relation to any police incident. In

doing so they run the very real risk of seizure of their personal mobile and experience has shown it can be a very difficult and slow process attempting to retrieve this property.

Any non-urgent enquiries in relation to PIRC powers should in the first instance be directed to one of your local federation representatives who will advise and assist.