

Complaints and Misconduct

Allegations against members do not always arise from complaints from the public. There are instances where members may be suspected of having committed a criminal or disciplinary offence either as a result of a complaint, an allegation from a fellow Officer or from some other source that may result in a formal investigation. In any such case, members may be subject to both a criminal investigation and an internal disciplinary investigation. Where there is a criminal investigation a member has the same rights as any individual who is investigated for an alleged criminal offence under the provisions of the Police and Criminal Evidence Act 1984.

If you are the subject of a complaint and want the services of a “discipline friend”, contact your JBB office and one will be supplied.

A member has the right to consult with this “friend” at all stages of the investigation. It is important to seek advice at the earliest possible stage and certainly prior to making any formal statement.

The full extent of the allegation may not be known until the service of a notice in writing is made. This notice should be made under what is currently Regulation 9 of the Police Conduct Regulations 1999. It is accepted that other than in exceptional circumstances this notice should be served very shortly after receipt of the allegation.

Duty Statements

Questions as to whether or not duty statements should be made are constantly causing concern for federated ranks and for our trained Discipline Friends who advise them.

It would be correct and fair to say that the basic principle regarding duty statements is that an Officer may lawfully be required to make a duty statement in relation to his involvement in any incident.

There are, however, a number of safeguards and rights which officers should be aware of.

As you all know, it is a well established principle in law that every person has a right to silence. Criminal offences are covered by the codes of practice under PACE. It follows that an Officer may lawfully decline to make a duty statement where it could materially prejudice him or her in criminal proceedings which could be preferred against them.

Regulation 9 of the Police (*Conduct*) Regulations make it clear that an officer who is the subject of an investigation must be notified in writing of that investigation as soon as practicable. This notification takes the form of a notice, which clearly sets out the officer's rights, including the right not to say anything concerning the matter under investigation.

Home Office guidance states that ‘Where an Officer has (or should have) been so notified, he or she should not be required to make a duty statement concerning the matter when under investigation (*this also applies where an Officer has or should have been cautioned in relations to the investigation of a criminal allegation*).

It therefore follows that, where an officer is under investigation in respect of either criminal or misconduct matters, he or she cannot be made to make any statement, verbal or written, about the matter under investigation. However, the position becomes less clear when a situation arises where no complaint has been made or when initial enquiries are being made to establish whether an offence has been committed. This is particularly the case where an obligation to serve Regulation 9 Notice has not arisen. In such circumstances, an order to make a duty statement would be lawful and a refusal to make such a statement would be a breach of the code of conduct. The exception to this would be if the Officer could genuinely claim that the making of such a statement would result in providing evidence against him/herself of a criminal or discipline offence. Under these circumstances. Officers would be able to claim that they had ‘good and sufficient cause’ for declining to make the statement.

In situations where the claim of self incrimination does not apply and a Regulation 9 Notice has not been served, the best safeguard that officers may avail themselves of is to record a caveat at the bottom of the statement in the following terms:-

"I make this statement on the express understanding that it shall not be used or discussed in any proceedings of whatever nature against myself"

This caveat, whilst not in itself debarring the investigating Officer or prosecuting solicitor from relying upon the statement in any subsequent proceedings, would assist any future defence argument that the statement was obtained oppressively or unfairly.

Alternatively, the officer could seek an assurance from the investigating officer that any statement made under such circumstances would not be used in any subsequent proceedings. Whilst the absence of such an assurance would not prevent any investigating officers seeking to introduce a statement at a later stage, such a course of action may be construed as oppressive.

If you are ever faced with such a situation, you are strongly advised to seek advice from your local representative or the Federation Office on 01642 301246.

Where a member is the subject of a criminal investigation (i.e. where an allegation of criminal misconduct has been made against him/her) no request to provide a duty statement should be made, or if such a request is made this may be refused.

Where an allegation of the commission of a misconduct offence has been made, then, whether or not a Regulation 9 Notice has been served, a duty statement may be properly refused, it being a statement "concerning the matter".

An express assurance that a duty statement will not be used in any subsequent criminal or misconduct proceedings arguably provides the member with the necessary protection to enable a statement to be made. The circumstances in which this may arise are, for example, where a civil action has been commenced against the Chief Officer and a statement is necessary to help the Chief Officer oppose or defend the action. In these circumstances preface the duty statement with:

"I have been informed that I am not the subject of a criminal or misconduct allegation. I make this statement solely for the purposes of defending the civil action. I do not consent to it being used for any other purpose."

Regulation 9 Notices – Notice of Investigation

The Police Federation has many trained and experienced 'Friends' who can advise you on the specifics of a case.

Service of a Regulation 9 Notice

Upon receipt of a Regulation 9 Notice accused officers are advised not to make any immediate written or verbal statement, but to acknowledge receipt of the notice and inform the investigating officer that they wish to seek advice before doing so. Advice should be sought as soon as practicable.

The object of interviewing an officer about a possible failure to meet standards is twofold; first to provide the officer concerned with an opportunity to give his or her account of the matter and, second, to enable the officer to offer any explanatory detail which might serve to explain or defend the matter. The officer may not be compelled to answer any questions put to him or her during interview

Tape Recording of Interviews

Tape recorded interviews under the criminal caution must be conducted in accordance with the Codes of Practice on 'The Tape Recording of Police Interviews with Suspects at Police Stations.'

The Home Office Guidance on Codes of Practice states:

'There is no requirement in the Codes of Practice to tape record an interview with a police officer against whom a complaint has been made of behaviour which does not amount to an allegation of a Criminal Offence which is indictable or triable either way.'

There are a number of allegations which may lead to Criminal and/or Misconduct proceedings; for example an allegation of assault, where an interview for a possible criminal offence has been tape recorded. The tape recording will be admissible in a Misconduct hearing relating to the same matter.

The Police Federation offers the following advice where a Misconduct or Criminal/Misconduct interview is tape-recorded.

In pure Misconduct interviews, the choice to tape the interview is that of the accused officer. However, note should be taken of the guidance set out in paragraph 3.23.

The interview shall be conducted in accordance with the Codes of Practice issued by the Secretary of State under Section 60 of the Police and Criminal Evidence Act 1984.

The interview should take place in a room other than in a custody suite.

Should the accused officer be charged with Misconduct Matters, no charge shall be levied for the supply of the taped record of the interview(s) to a 'Friend' or legal representative.