

Policy on the naming of police officers and police staff subject to IOPC investigation, appeal assessment or criminal proceedings

A: Introduction

1. This document sets out the IOPC's policy on whether a police officer or a member of police staff who is subject to a managed or independent IOPC investigation, an appeal assessment or criminal proceedings, will be referred to by his or her name in IOPC publications.¹ An IOPC decision maker should follow this policy when deciding whether or not to refer to such a police officer or staff member by name.
2. The policy provides for a usual practice in specified situations. The starting point is that the usual practice should be followed unless the decision maker considers that there are sufficiently compelling circumstances to depart from it. This document sets out the factors that the decision-maker should take into account when reaching naming decisions. This policy reflects the IOPC's assessment of what will best advance the due performance of its functions. However, having considered the facts of the case, the decision maker may consider that the functions of the IOPC are better served by departing from the usual practice. This document also sets out some of the thinking behind the policy in specific situations.
3. This policy strives to uphold the principles and the requirements of the Human Rights Act 1998 (the HRA), and the Data Protection Legislation² (the DPL) as well as relevant ICO guidance on data protection.

B: Background – the IOPC Director General's general functions and the Data Protection Legislation

4. The IOPC Director General has a general function to secure and maintain public confidence in the handling of complaints made about the conduct of persons serving with the police.³ Part of the way in which public confidence is maintained is by ensuring that the handling of complaints, including their investigation and outcome, is as open and transparent as possible.

¹ An IOPC publication, for the purposes of this policy, is any speech, writing or other communication in whatever form that is addressed to the public at large or any section of the public. This policy is not intended to cover issues around the disclosure of information to complainants or interested parties under the Police Reform Act 2002. For a broader summary of how the IOPC may process data subjects' data, see the IOPC's privacy notice concerning processing personal data for the purposes of investigations, appeals and our other core functions - which can be found on the IOPC website at www.policeconduct.gov.uk/

² 'Data Protection Legislation' is defined in section 3(9) of the Data Protection Act 2018 (the DPA) as meaning: (a) the GDPR; (b) the applied GDPR; (c) the Data Protection Act 2018; (d) regulations made under the Data Protection Act 2018; and, (e) regulations made under section 2(2) of the European Communities Act 1972 which relate to the GDPR or the Law Enforcement Directive.

³ Section 10(1)(d) (2)(a)&(c) Police Reform Act 2002.

Therefore, the IOPC makes public information concerning its own investigations and its appeal assessments – including news releases, investigation reports and, on occasion, appeal assessments.

5. The amount and nature of the information that the IOPC includes in these public statements varies and depends on a number of factors, including:
 - the stage of the investigative process
 - the public interest and seriousness of the issues that are being or have been investigated
 - the outcome of any investigation
 - the imperative not to prejudice legal proceedings
 - the IOPC's responsibilities under the DPL and the HRA
6. The naming of police officers and members of police staff in public statements must be seen in this context.
7. The DPL legal basis for the processing of personal data for the purposes of IOPC investigations, appeals and other core functions, is as follows:
 - processing where necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the IOPC (as controller):
 - GDPR article 6(1)(e)
 - processing carried out in the public interest or the exercise of official authority including processing necessary for the exercise of a function conferred on a person by an enactment;
 - DPA section 8(c)
 - Processing of special category personal data / criminal offence data:
 - GDPR article 9(2)(g) – substantial public interest purpose;
 - DPA section 10 and part 2(6) schedule 1 (part 2)
 - Processing for the purposes of law enforcement:
 - Part 3, chapter 2 (35) (2)(b) DPA 2018.
 - Part 3, Schedule 8 (1) DPA 2018 (processing of sensitive data)
8. The policy first sets out a non-exhaustive list of factors that the decision maker must (if relevant/applicable) take into account in deciding whether or not to name an officer or staff-member. It then sets out the different points at which the decision-maker will need to consider whether or not to name an officer or staff-member. At each point, this policy sets out the usual approach which, subject to a consideration of the factors set out in Section C as they apply to the case, it would expect the decision maker to follow. In this way, the policy strikes a balance between ensuring consistency of approach (which is important for all concerned) and the need to deviate from the usual approach where there are more important considerations that, singly or collectively, require it.
9. Where the IOPC is considering naming an officer or staff member it will, as far as possible, give that officer or staff member a minimum of two weeks' notice, during which that officer or staff member may make written representations. Notification will be given to officers or staff members through the relevant Appropriate Authority. It may not always be possible to provide an officer or

staff member with two weeks' notice, for example if the IOPC consider it to be necessary to respond to developments in the press. Where it is not possible to give an officer or staff member the full two weeks' notice, the IOPC will ensure, as far as possible, that the officer or staff member has the opportunity to make written representations to the IOPC in advance of publication.

10. Any written representations received from the officer or staff member or the Appropriate Authority will be considered, and a final decision in respect of naming will be communicated to the officer or staff member in writing.

C: Non-exhaustive list of factors to be taken into account

11. In determining whether to name an officer or member of staff in a public statement or report, the IOPC will take into account the following factors (if relevant):
 - whether naming the officer or staff member might reasonably be expected to enable other persons who might have been mistreated by the officer or staff member to come forward and report the mistreatment;
 - whether naming the officer or staff member might reasonably be expected to enable other persons to make a contribution that would assist the IOPC Director General in the performance of their functions;
 - the nature/seriousness of the conduct and whether it is to be dealt with at a misconduct hearing or misconduct meeting;
 - the level of responsibility of the officer or member of police staff (the greater their prominence and leadership role, the more compelling the need for the name to be disclosed in order to maintain public confidence);
 - the written representations of the police officer or staff member;
 - whether there is evidence that makes it likely that disclosing the person's name will result in a real risk of disproportionate distress or harm either to the person or to a third party;
 - whether there is the possibility of currently unknown facts that might alter the picture subsequently coming to light;
 - whether there is considered to be a need to dispel speculation in the public domain as to the names of the officers and/or staff members involved in the matters being investigated;
 - whether information accessible from any other open access sources enables identification of the officer or staff member. [It is important to consider whether information is realistically accessible to a member of the general public. Information which can be easily found using a simple internet search will be in the public domain. Information will not be in the public domain if it would require unrealistic persistence or specialised

knowledge to find it. In general terms if information is already in the public domain it is less likely to cause additional harm];

- whether the officer or staff member has given evidence in respect of the matters investigated in another public forum, for example an inquest. [It might be that information disclosed in a public court hearing can be considered to have entered the public domain. However, its accessibility in practice may be limited unless that information has passed in to other more permanently available sources, for example a court judgment, inquest or public inquiry website or a newspaper];
 - whether naming would involve processing special category data, for example health related information, and the effect this has on the fairness of publication (because special category data could be used in a discriminatory way and is likely to be of a private nature, the presumption is that the more sensitive the data the greater the care it should be handled with);
 - parity of treatment between the officers or staff members involved in the matters being investigated; and
 - whether there is some other public interest factor which would be served by disclosure of the person's name.
12. The factors set out above are not the only factors that the decision maker may take into account. Depending on the circumstances, other factors may also be relevant. The weight given to each factor will depend upon the circumstances of the case. The above list of factors is not intended to mean that each factor is of equal importance in any particular case.

D: The usual approach

1. Naming officers/staff at the beginning of, or during the course of, an IOPC investigation

13. Where an IOPC investigation is underway, the usual practice of the IOPC will be to not name any officer or member of staff who is the subject of that investigation. The decision whether to depart from normal practice will take account of the matters set out in paragraphs 11 and 12 above.

2. Naming officers/staff facing criminal proceedings or following a conviction

14. Unless precluded by order of the Court, when an officer or staff member is charged with a criminal offence, the usual practice of the IOPC will be for it thereafter to name that officer or staff member in any of its publications that refer to the charges. The decision whether to depart from normal practice will take account of the matters set out in paragraphs 11 and 12 above.
15. Unless precluded by order of the Court, when an officer or staff-member is

convicted of any criminal offence, the IOPC will name that officer or staff member in any of its publications that refers to the convictions. A criminal conviction is a matter of public record. Defendants in criminal proceedings are, in the main, named during the course of criminal proceedings and may be the subject of press reporting. The authoritativeness of the IOPC's publications and the confidence which the IOPC commands are likely to be diminished if material in the public domain is omitted from IOPC publications in deference to the embarrassment and other sensitivities of convicted officers and members of staff.

3. Naming officers facing misconduct proceedings

Misconduct hearings

16. Unless precluded by order of the Court, once a misconduct charge has been laid against an officer and that charge is to be the subject of a misconduct hearing, the usual practice of the IOPC will be to name that officer in any of its publications that refers to the misconduct. The decision whether to depart from normal practice will take account of the matters set out in paragraphs 11 and 12 above.
17. Misconduct hearings for police officers are held in public, unless the legally-qualified person chairing the panel decides that it is appropriate to exclude any person and to hold all or part of a hearing in private. This recognises that the public interest requires openness and transparency in police misconduct hearings. Police officers are not ordinary employees. They are office holders entrusted with extensive powers over members of the public. They are subject to greater public scrutiny than ordinary members of the public in relation to the way they conduct themselves at work. Moreover the misconduct of a police officer may bring discredit to the police force to which he or she belongs.
18. Information is likely to be published [by police forces/Hearing Chairs] in advance of hearings, including the names of officers. Information is also likely to be published by police forces in respect of the outcomes of hearings.
19. Misconduct hearings take place in circumstances where an officer faces a case to answer for gross misconduct and where the option of dismissal is available to the misconduct panel.⁴ The presumption in favour of naming officers in these circumstances recognises the seriousness of the allegation made against them and the enhanced need for openness, transparency and public accountability.

Misconduct meetings

20. Once a misconduct charge has been laid against an officer and that charge is to be the subject of a misconduct meeting, and until determination of the charge has concluded, the usual practice of the IOPC will not be to name that officer in any of its publications that refers to the misconduct unless,

⁴ If misconduct proceedings are to take place further to regulation 19(5)(a) of the Police (Conduct) Regulations 2012 then regulation 19(9) requires an appropriate authority to instigate a misconduct hearing against a police officer even if they only face a case to answer for misconduct, if the officer had a final written warning in force at the date when the officer's conduct was first assessed as being capable of amounting to misconduct (usually near the beginning of the investigation) or had been reduced in rank within 18 months of that date.

having taken account of the matters set out in paragraphs 11 and 12 above, it is considered that the circumstances justify it.

4. Naming police staff facing misconduct proceedings

21. The IOPC recognises that there are two important differences between police officers and members of police staff which it will take into account when deciding whether to name a member of police staff. These are:
 - i. police staff do not (on the whole) exercise the intrusive powers of police officers; and
 - ii. their disciplinary procedures are more akin to the normal private employer/employee hearings.
22. However, many police staff undertake significant roles in the provision by the police of a public service (such as call handlers; detention officers, etc) and misconduct can have a detrimental effect on the service received by the public. Finally police staff are “persons serving with the police”⁵ and therefore the IOPC has the same duty of maintaining public confidence in the handling of complaints made about police staff, as it does in relation to police officers. Therefore, depending on the nature of their role, the level of their seniority and the conduct alleged against them, the naming of police staff facing misconduct proceedings may be necessary to maintain confidence in the police complaints system.
23. Accordingly, once a misconduct charge has been laid against a member of police staff and until the determination of the charges has concluded, the usual practice of the IOPC will be not to name that member in any of its publications that refers to the misconduct unless, having taken account of the matters set out in paragraphs 11 and 12 above, it is considered that the circumstances justify it.

5. Naming officers/staff after misconduct proceedings have concluded

24. The considerations when deciding whether to name police officers or staff after misconduct proceedings have concluded are broadly the same as for deciding whether to name when the officers or staff are facing misconduct proceedings.
25. Where the IOPC has named an officer or member of staff when s/he was facing misconduct proceedings, the IOPC will also name him/her at the conclusion of proceedings to ensure that the full public record concerning the officer or member of staff is properly reflected.⁶
26. Otherwise, the usual practice of the IOPC after the proceedings have

⁵ See section 12(7)(aa) PRA – a “person serving with the police” includes a “civilian employee of a police force”

⁶ The “*IOPC policy on the publication of final investigation reports and report summaries*” (see the IOPC website for a copy) sets out the IOPC approach to deciding what final investigation report content should be published. Where a subject officer or member of staff, has already been named in an IOPC publication prior to the publication of any investigation report or summary, then it is likely that they will also be named in any published full IOPC report (i.e. level 1 publication). However, if the IOPC only publishes an investigation summary (i.e. level 2 publication), they will not be named in that investigation summary.

concluded will follow the practice which applied under sections 3 and 4 above while those proceedings were underway.

6. Naming officers/staff facing Unsatisfactory Performance Procedures/Capability Procedures

27. The IOPC has the power to recommend and direct that a police officer or member of staff face unsatisfactory performance procedures or capability procedures following an IOPC independent or managed investigation or following an appeal from a local or supervised investigation (*Specified Procedures*).⁷
28. Unsatisfactory performance is different from misconduct or gross misconduct. Misconduct or gross misconduct involves a breach of the Standards of Professional Behaviour, whereas unsatisfactory performance concerns the person's ability or failure to perform their role to a satisfactory level. His or her performance may be unsatisfactory but not breach the Standards of Professional Behaviour.
29. These meetings usually take place in private, but the IOPC has the power to direct that the whole or part of a third stage meeting involving a police officer be held in public. This power may be exercised where the IOPC has conducted an independent investigation and it considers that, because of the gravity of the case or other exceptional circumstances, it would be in the public interest to do so.⁸ Therefore, the regulatory regime recognises that the public interest requires complete openness and transparency in relation to unsatisfactory performance of a particularly grave and exceptional nature.
30. Accordingly, where Specified Procedures have been initiated against an officer, then for so long as their determination takes place in private, the usual practice of the IOPC will be not to name that officer in any of its publications that refer to the procedures unless, having taken account of the matters set out in paragraphs 11 and 12 above, it is considered that the circumstances justify it. Where the IOPC has directed that the procedure be held in public, the usual practice of the IOPC will be to name that officer in any of its publications that refer to the Procedures.

E. Circumstances where officer/staff names will not be published

31. Notwithstanding the usual practice in respect of the naming of police officers or staff, the IOPC will not publish the names of officers or staff:
 - i. who have been granted anonymity by a court or who will be applying to a court for anonymity; or
 - ii. where to do so would be likely to lead members of the public to identify the victim of a sexual offence⁹ (including by way of 'jigsaw')

⁷ See paragraph 27(3) and (4) of Schedule 3 PRA and regulation 30 of the Police (Performance) Regulations 2012.

⁸ Regulation 40(10) Police (Performance) Regulations 2012

⁹ Further to sections 1 and 2 of the Sexual Offences (Amendment) Act 1992 which provides for the anonymity for life of victims of certain offences. The provisions are wide reaching and apply where an allegation has been made that a relevant offence has been committed as well as where a person is being prosecuted for a relevant offence. Publication of information in breach of sections 1 and 2 of the 1992 will constitute a criminal offence.

identification), a child or young person under the age of 18 or anyone who has been granted anonymity by a court.

F. Individuals who are not the subject of the investigation – Police Officers and staff who are witnesses (N.B. publishing final investigation report content)

32. The names of other police officers or staff witnesses may also be included in an IOPC publication, including the final report. The *“IOPC policy on the publication of final investigation reports and report summaries”* (see the IOPC website for a copy) sets out the IOPC approach to deciding what final investigation report content should be published. This policy sets out three levels of final report content publication:
- “i. Level 1 – both the full report and an investigation summary are published on the IOPC website, subject to any necessary redactions. The full report remains publicly available for 6 months and the summary remains available for 5 years.*
 - ii. Level 2 – an anonymised investigation summary is published on the IOPC website for 5 years. This should apply to the majority of cases.*
 - iii. Non-publication – No investigation summary or investigation report is published. This should only apply in exceptional cases.”*
33. The policy states that, *“... In the majority of cases it is only an anonymised version of the investigation summary... that is published on the IOPC external website. However, in certain circumstances it will be in the public interest to depart from this usual position by also publishing the entire report, subject to any necessary redactions. Conversely, in circumstances where the risk of harm is particularly great it may be necessary to refrain from publishing any report content at all. However, it is likely to be quite rare that not even a summary can be safely published.”*
34. If the publication decision is level 2 (which will be the approach in the majority of cases), then no officers or staff will be named in the anonymised investigation summary. If the publication decision is Level 1, then the usual practice will be to name police officer or staff witnesses in the full report. However, consideration will be given to those factors set out at paragraph 11 and 12 that are relevant, in particular whether the officer or staff member has given evidence in respect of the matters investigated in another public forum, for example an Inquest, and whether the usual position should be departed from on the particular facts of the case. When the IOPC is considering naming any police officers or staff witnesses it will use its best endeavours to notify them so that they can make representations should they wish to do so.