



Home Office

Home Secretary

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BY EMAIL ONLY

Lord Hogan-Howe
House of Lords
London
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17 January 2019

Dear Lord Hogan-Howe,

In response to concerns that you have previously raised, I am writing to notify you of the outcome of the Home Office review of the procedural and legal framework governing police use of firearms incidents. We ask our firearms officers to do a vital and uniquely challenging job on behalf of the public – to put themselves in harm’s way in situations where they may have to take a split second decision whether to discharge their firearms. I am very grateful for this. We will always ensure armed officers are supported to take the difficult decisions necessary to protect the public, without fearing that a justified use of force will damage their careers. However, any use of force must be proportionate and necessary.

Firearms officers play a vital role in protecting the public and our national security, as witnessed in the speed and professionalism of their response in recent terrorist attacks. We are providing £144 million over a 5 year period to uplift our national armed policing capability and capacity, in order to respond more quickly and effectively to a firearms attack. The programme is ongoing; we expect to see officer numbers reach 7,000 once concluded.

However, it is not just in counter terrorism operations that we rely on firearms officers. Their role in protecting the public from other forms of crime is equally important. In all cases, officers must make split second decisions under extreme pressure which are then subject to intense scrutiny, and I understand how seriously this process can affect the officers involved. However, it is essential that in the event of a death or serious injury the Independent Office for Police Conduct (IOPC) is able to investigate effectively and establish the facts of the case for all concerned.

Our review was comprised of a number of different strands of work, which are set out below.

Self-defence legislation

It is my view that the law continues to give sufficient protection to officers, including firearms officers, who use reasonable force to protect themselves or the public.

In a great majority of fatal shootings, officers have been dealt with as witnesses not suspects, and to date no firearms officer has ever been found guilty of murder. The self-defence legislation and case law on which firearms officers rely, acknowledges the difficult circumstances officers find themselves in when called to respond to a potential armed threat. It accepts that, providing it was honestly held at the time, an officer's belief that the use of force was necessary is permitted to be mistaken.

Crown Prosecution Service guidance

The Crown Prosecution Service (CPS) has reviewed its legal guidance for prosecutors on deaths in custody, highlighting two important principles from case law that prosecutors always apply when reaching a charging decision in firearms cases: that decisions by firearms officers should be judged in light of the situation as the officer honestly believed it to be at the time, which may be different from the actual situation; and undue weight should not be placed on minute dissections of time with the benefit of hindsight. The updated CPS guidance was published on 17 January.

IOPC guidance on achieving best evidence in death or serious injury matters

It is in the interests not just of the families of the deceased, but of the police officers themselves, that IOPC investigations into the use of force gather all the available evidence at an early stage, in order to clearly establish the facts of what happened. Effective investigations maintain public confidence that in the rare instances where lethal force is used, it is used appropriately.

To this end, the IOPC has produced statutory guidance on achieving best evidence, which applies to all death or serious injury matters, including the police use of firearms. The guidance covers the crucial period immediately following a death or serious injury and aims to ensure that evidence is preserved and safeguarded, non-policing witnesses identified and that police witnesses provide as much information as they are able, as soon as possible.

Since taking up office in 2018, Michael Lockwood, the IOPC Director General, has reviewed the draft guidance taking into consideration learning from the 2017 terrorist attacks, the views of a wide variety of interested parties, as well as the College of Policing forthcoming Authorised Professional Practice (APP) on post-incident procedure guidance for all deaths or serious injuries following police contact. Michael formally submitted the revised IOPC statutory guidance to the Home Office in October 2018. I am grateful to Michael for his work and wide engagement on this issue. I have now formally approved the guidance, which I believe will further improve post-incident investigations.

I recognise that an officer's memory immediately after an incident can be affected by stress, trauma and fatigue, but I am satisfied that the level of detail which will be required for officers' initial statements before going off duty is set at a reasonable level which

reflects these factors. The guidance is also clear that officers will be provided with their own body worn video footage, at the appropriate point in the investigation.

Separation remains the IOPC's preferred option although the guidance recognises the operational discretion of senior officers, particularly where there is an ongoing threat to public safety. Separation of witnesses in these cases can provide better protection for officers against any perception of conferral, as well as reassurance to the families of the deceased. The guidance does allow, when a decision is made not to separate officers, alternative measures to be put in place to prevent conferral, as long as the rationale for doing so is recorded.

The IOPC guidance includes provision for officer welfare. It is made clear officers are entitled to medical and legal advice before giving a statement, and that being separated does not prevent officers being supported by individuals not involved in the incident, such as Police Federation representatives.

Overall, I expect this guidance to spread the good post-incident practice seen in the most recent firearms investigations, to the full range of death or serious injury matters, and ensure a consistent post-incident process and a clear set of expectations for everyone involved.

Special measures in the event of a terrorist attack

Under Article 2 of the European Convention on Human Rights, the Government has an obligation to conduct an independent, effective investigation into state-caused deaths. In the event of a terrorist attack in which the authorities are required to use lethal force, it is for the benefit of all concerned that such an investigation is able to produce clear and reliable conclusions about the actions officers have taken to protect the public.

The Government and the IOPC are clear that adherence in all respects to the IOPC's statutory guidance may not be possible in the context of an ongoing threat to life, and in the event of a terrorist attack in particular, procedures would be departed from as necessary to deal with the ongoing threat. However, it is important the police have as much clarity as possible in such difficult circumstances. That is why in 2017 the then Independent Police Complaints Commission (IPCC) agreed with AC Mark Rowley a set of operational principles for such an eventuality. This operational agreement was implemented successfully for the first time following the Westminster attack, and will remain in place.

To ensure the longer term investigation is able to comply with the legal requirement for an effective investigation, and produce fair and coherent outcomes, my officials reviewed the process at the end of 2016 with the Ministry of Defence, the then IPCC, police counter terrorist leads, CPS and the Chief Coroner's Office.

All parties agreed that co-operation between all the investigative bodies involved, from an early stage and continuing throughout the process, would be a matter of priority to ensure a coherent, effective investigation. Consequently, it is not envisaged that investigations into actions taken by different personnel would proceed on parallel paths or leave police officers at any disadvantage over other personnel involved.

The protocols that the police and IOPC have agreed for post-incident procedures following a terrorist attack have improved clarity and addressed concerns about safety and fairness.

The post-incident procedures following the 2017 terrorist attacks worked well and were concluded quickly.

Length of investigations

I know that the length of time taken to conclude IOPC investigations, inquests and sometimes further legal proceedings following a fatality is of great importance to both officers and families of the deceased. Drawn out processes can cause distress and health issues for both officers and families, and in a very small number of cases, the period of time has been significant.

One particular cause of delay in a small number of cases has been caused by the need to convert an inquest into a public inquiry. This has occurred where sensitive material contains relevant evidence but cannot be shared with a jury and can result in a drawn out process for both officers and families. It is clear that all parties, including the police, IOPC, CPS and Coroners, should act to progress such cases without delay. However, continuous improvements are needed to find ways of concluding proceedings more quickly.

In recent years, the IOPC component of fatal firearms investigations has concluded in approximately 12 months, with the most recent investigations taking 4, 15, 12, 8 and 11 months respectively. The average length of an independent investigation by the IOPC has fallen. As of the end of June 2018, the IOPC completed 78% of investigations within 12 months and 55% of investigations were closed within 9 months. Work is in hand by the IOPC, under its Director General, Michael Lockwood, to reduce these investigation times further and the Home Office is implementing a large package of reforms to overhaul the police complaints and discipline systems, a number of which are aimed at making investigation processes simpler and therefore quicker. Officers are informed of the expected timetable at the outset, and kept updated monthly.

While it would not be appropriate for Government to comment on the timeliness or the decisions or detail of a specific investigation, as a general point, it is important that all IOPC investigations are conducted to a high standard and dealt with in as timely a fashion as possible. Going forward the Government expects the IOPC to build further on improvements to the times taken to investigate.

Improving the timeliness of their investigations remains a key priority for the IOPC. The police also have a role to play in reducing delays, along with other partners in the end to end process within the CJS. The Minister of State for Policing and the Fire Service is leading work to look for further improvements in this area. I hope productive dialogue between the police and IOPC can continue, in order to find solutions from both sides that allow effective investigations to conclude more quickly.

I recognise that we ask firearms officers to submit to tougher scrutiny than in many other countries in the world, and that police officers in general are held to a higher standard than almost any other profession. However, we should remember that the use of lethal force by the police, and the processes that follow, are rare.

Police officers play an invaluable role in keeping the country safe, not just from the terrorist threat but in their day to day work tackling other serious crime. They should be encouraged by the legal and procedural framework we have in place to protect them in this work.

A copy of this letter will be placed in the House of Lords library.

A handwritten signature in black ink, appearing to read 'S. Javid', with a small comma at the end.

Rt Hon Sajid Javid MP