

Police Federation
Of England and Wales



Ffederasiwn Heddlu
Lloegr a Chymru

Established by Act of Parliament

Federation House, Highbury Drive, Leatherhead, Surrey KT22 7UY
Telephone 01372 352022 Fax 01372 352078
www.polfed.org

NATIONAL SECRETARY'S OFFICE

13 August 2020

BB CIRCULAR – 008-2020

To: All Branch Board Chairs & Secretaries
Cc: CAPLO's, National Board Info and Branch Council Admin

Dear Colleague,

Privacy and requests for mobile phones/devices when under investigation

[JBB circular 019-2016](#) provided information on advice received from Counsel on the lawfulness of obtaining information from an officer's personal phone/electronic devices, the use to which it could be put in misconduct proceedings and any impact a Force or the IOPC's behaviour has on an officer's right to privacy.

The purpose of this circular is:

- to remind you of the contents of [JBB 019-2016](#);
- to update that information in light of recent legal advice received; and
- to highlight the guidance set out in the [Home Office statutory guidance on professional standards, performance and integrity in policing 2020](#) on the issue of online activity and messaging and privacy.

Privacy and Home Office Guidance (HOG)

The HOG 2020 recognises that officers do have a right to privacy, albeit that this is a qualified right when considered against Police Regulations 2003 and the Standards of Professional

Behaviour, set out in schedule 2 of the Police (Conduct) Regulations 2020, which officers are required to adhere to at all times.

Officers must therefore take care in the use of phones/devices and remember that even off-duty behaviour could be considered to breach the Standards of Professional Behaviour.

The HOG provides the following guidance on the issue of online activity and messaging:

*2.19 Particular care must be taken when considering the private online behaviour of a police officer, even where they are not immediately identifiable as such. Consideration of off-duty online activity should take into account the officer's right to privacy and to free speech. However, the **ultimate test is whether that online activity, notwithstanding that it is done in a private capacity, breaches the Standards of Professional Behaviour and brings discredit to the police as a whole.***

*2.20 It is important to recognise that any content or messages that are shared with colleagues via social media, email, text message or encrypted messaging services (even in an off-duty or private capacity) are nevertheless shared with workplace colleagues. **Due care should, therefore, be taken as any material is potentially reportable.** Where shared with other officers or staff, whether an individual is actually off-duty at the time that such a message is sent may not be relevant – individuals should apply the test as to whether the comments, content or material would be considered appropriate in the workplace and in line with the Code of Ethics and Standards of Professional Behaviour before sending or sharing any material in this way.*

Therefore, if a phone/device is lawfully seized or voluntarily surrendered and material is found that gives rise to a possible breach of the Standards of Professional Behaviour such as inappropriate messages sent or received on a social network group, the material is very likely to be admissible in misconduct proceedings.

Requests for phones/devices when under investigation

PFEW is concerned that officers who are under investigation for alleged misconduct and/or criminal behaviour are regularly being asked to voluntarily surrender their personal phones or electronic devices to those investigating when powers of seizure, retention and examination may not otherwise exist. Therefore, before responding to any such requests, members are advised to contact their branch board in accordance with the following guidance:

- **Conduct investigations**

In relation to an officer's personal property, there is no power of seizure attached to investigations that relate only to alleged breaches of the Standards of Professional Behaviour. If ever an officer is asked to surrender their personal phone or electronic device whilst under a conduct (only) investigation, members should **seek Federation advice as soon as possible and before responding to any such request.**

- **Criminal investigations**

Many investigations are in effect dual purpose and can be investigating criminal as well as conduct matters. A request for an officer's phone or device will often be made at the very

early stages of an officer being informed that they are under investigation and it may well be accompanied with a request for the password/pin code for the particular phone or device.

When a criminal investigation is taking place, powers may exist to enable investigators to seize and retain evidence and this can include the seizure and retention of personal phones/electronic devices for examination. However, such powers will not necessarily apply in each and every case. In certain circumstances, where a request for a phone/device is made, it may not be proportionate or indeed lawful for those investigating to take further steps in order to seize a personal phone or device. It may be that it is in fact not necessary for a phone/device to be seized or surrendered for examination for instance, if alternative lines of enquiry could establish the evidence that is being sought by those investigating.

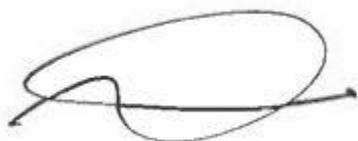
It is therefore imperative that advice and assistance is sought by a member under investigation as soon as possible.

In the unlikely event that a member is informed that they are under investigation for alleged criminality and if they are asked to surrender their personal phone/device as part of the process, they should **immediately request the assistance of a PFEW Friend so that legal advice and assistance can be arranged and provided.**

Furthermore, if a member under investigation has surrendered a phone or device or has had a phone/device seized as part of an investigation and is requested to provide any passwords/pin codes attributable to that device, they will be entitled to **obtain PFEW assistance and seek to obtain legal advice before responding to the request.**

If you have any questions about the contents of this circular please email elaine&karen@polfed.org

Yours sincerely

A handwritten signature in black ink, appearing to be 'John Partington', written in a cursive style.

John Partington
Deputy National Secretary