

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 22nd OCTOBER 2019**

Question

Further to the response to Written Question 391/2019, will H.M. Attorney General explain how the lack of a specific obligation in the Police (Complaints and Discipline)(Jersey) Law 1999, the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000 and the Police Complaints and Discipline Procedure)(Jersey) Order 2000 to interview a complainant, or to ask for any evidence they may have regarding their complaint, is compatible with the European Convention on Human Rights, in particular with the right to a fair hearing?

Answer

The relevant part of Article 6.1 of the European Convention on Human Rights states:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

An investigation under the Police (Complaints and Discipline)(Jersey) Law 1999, the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000 and the Police Complaints and Discipline Procedure)(Jersey) Order 2000 of a complaint against a police officer is not the determination of any “civil rights” on the part of a complainant. If a member of the public exercises their right to bring a legal action against a police officer in the Royal Court (e.g. for wrongful imprisonment), that would involve a determination of the complainant’s civil rights and the right to a fair hearing would be engaged. Complaints under the statutory provisions, however, are a matter of determining what is necessary for police discipline and the integrity of the relevant police service. Such investigations and any subsequent proceedings do not fall within the meaning of an Article 6 determination of any rights of the complainant.

There are cases where the absence of a proper investigation into official conduct can give rise to a human rights violation. This will be in the context of violations of Article 2 of the Convention (“right to life”, e.g. deaths in custody) and Article 3 of the Convention (“torture, inhuman or degrading treatment”). There is no particular rule as to how such an inquiry would be carried out, and in this context it would very often be a criminal investigation as opposed to a police complaint. Whether a failure to interview any particular person in the course of an investigation represented a failure to carry out a proper investigation would depend on the particular facts.

Therefore, the European Convention and its jurisprudence does not lay out any general rules as to how police complaints should be investigated. The most that can be said is that the Convention creates a duty to conduct an effective investigation where violations of the most important rights are at issue. However, it does not prescribe for all cases what is required for an investigation to be effective.