



Independent investigation summary

Operation Motala

A report summarising the IOPC investigation into an allegation that the Lincolnshire Police and Crime Commissioner (PCC) sought to manipulate a Chief Constable selection process. This report includes the IOPC decision maker's rationale for not referring the PCC's actions to the Director of Public Prosecutions

> Terms used in this report

Police and Crime Commissioners (PCCs) replaced Police Authorities in November 2012. Among other things, PCCs set the budget for their police force, hold the Chief Constable to account and produce a Police and Crime Plan, which the Chief Constable must have regard to. If the position of Chief Constable becomes vacant, the PCC will appoint a replacement. PCCs are elected for four-year terms, and the last elections were in May 2021.

The Office of the Police and Crime Commissioner (OPCC) consists of the PCC and his support staff.

The **Police and Crime Panel (PCP)** is independent of the OPCC, being formed of mostly local authority members drawn from across the Lincolnshire police area. The PCP oversees the PCC's performance and approves certain decisions, including Chief Constable appointments. The PCP may veto an appointment if at least two thirds of the panel vote in favour of doing so.

Before approving or vetoing the appointment of a new Chief Constable, the PCP must hold a public **confirmation hearing** during which the candidate is expected to answer questions relating to the appointment.

Home Office Circular 013/2018 states that it is for the PCC to decide how they wish to run their recruitment process and which candidate they wish to appoint (the candidate will then be put forward to the above referenced confirmation hearing). Those responsible for the selection and appointment of chief officers must observe the **three principles of merit, fairness and openness**. Merit means appointing the best available person, judged against the essential criteria for the role. Fairness means ensuring that the selection process is unbiased, objective, impartial, and consistently applied. Openness means that job opportunities must be advertised publicly, and potential candidates must be given reasonable access to information about the job and selection process, and anyone who wishes must be allowed to apply.

Home Office Circular 013/2018 further states that the PCC should involve an independent panel member during the assessment, shortlisting and interview stages of a Chief Constable selection process. This person is referred to as the **Independent Member**, and one of their duties is to report to the PCP on whether the selection process was open, fair and merit-based.

The panel may also include a **Policing Advisor**, whose role is to provide the PCC with information and support from a policing perspective.

Misconduct in public office is a common-law offence, committed when a public officer, acting as such, wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office-holder, without reasonable excuse or justification.

> **People named or referred to in this report**

The person under investigation

Lincolnshire PCC Mr Marc Jones

OPCC staff

Chief Executive Mr Malcolm Burch

PR and media advisor

Corporate Administration Officer

PCP members and staff

Chair Mr Chris Cook

Monitoring Officer Ms Michelle Sacks

Team Leader (Performance, Governance and Commissioning) Mr John Medler

Panel members (3 September 2020)

Ms Anna Graves, Chief Executive of Harborough District Council until 2014 and joint Chief Executive of Breckland and South Holland Councils until 2020 (now retired), acting as the panel Chair

Mr Marc Jones

Ms Heather Roach, former DCC of Lincolnshire Police (retired), now an independent consultant and Chair of Adult Safeguarding for Lincolnshire and Norfolk County Councils

Ms Lynne Owens, Chief Constable of Surrey Police until 2016 and Director General of the National Crime Agency until 2021, acting as the Policing Advisor

The Independent Member

Panel members (10 September 2020)

OFFICIAL

Mr Marc Jones

Mr Simon Cole, then Chief Constable of Leicestershire Police, acting as Policing Advisor

As part of the IOPC investigation, Chief Constable Cole was interviewed as a witness on 3 March 2022. This interview was not recorded, but notes were taken while he provided his account. Chief Constable Cole also provided the IOPC with documentary evidence which was consistent with his account. Chief Constable Cole retired on 18 March 2022, having served as Chief Constable of Leicestershire Police for twelve years. Tragically, on 30 March 2022, he took his own life. It should be noted that our investigation did not identify any concerns in relation to Mr Cole's conduct or integrity.

Candidates

Candidate 1

Candidate 2

Candidate 3

As will be discussed within this document, it is acknowledged that there were three candidates who applied for the position of the Chief Constable of Lincolnshire Police. These applications were made in good faith and as per normal selection criteria. As part of the IOPC investigation, the three candidates do feature in the various lines of enquiry undertaken, alongside information regarding their performances during the selection process.

It is important to emphasise that the evidence discussed in this report is nothing more than an indicator of how well the candidates performed (in the subjective opinions of the panel members) during the highly pressurised environment of a formal selection process. It is not a measure of the candidates' capability, professionalism or integrity as officers.

It is also important to make clear that the candidates' participation and conduct in the recruitment process was never under investigation and did not form part of the allegations which led to the referral to the IOPC.

Other witnesses

Former Chief Constable of Lincolnshire Police Mr Bill Skelly was not directly involved in the events under investigation, but provided relevant background information and context.

An Assessment and Selection Specialist assisted with the running of two processes on 2-3 and 10 September 2020.

OFFICIAL

Former Chief Executive Officer (CEO) of the College of Policing, Mr Mike Cunningham, provided brief informal advice to Mr Jones following the process on 10 September 2020.

Another senior figure in policing provided brief informal advice to Mr Jones following the process on 10 September 2020.

A former Lead of the Chief Police Officers Staff Association (CPOSA) Panel of Friends became involved after Candidate 1 and other parties raised concerns about the process.

The then chair of CPOSA also became involved after concerns were raised.

> Introduction

In June 2020, Lincolnshire Chief Constable Mr Bill Skelly announced his intention to retire at the end of the year.

The OPCC initiated a process to appoint his replacement, and three candidates were shortlisted for the post on 25 August 2020.

The candidates were invited to take part in a two-day selection process on 2 and 3 September 2020, which included an interview with a panel of external stakeholders on the first day, and a presentation and interview on the second day, which was assessed by a different panel.

At the start of the day on 3 September 2020, the panel convened to decide what standard the candidates would have to meet in order to be considered appointable. They agreed that the candidates would have to score a minimum of 3 out of 5 (5 being the lowest score) in each of the three formally assessed elements of the process that were to be tested that day.

At this point, it is appropriate to include a note about the candidates' performance during the selection process, which was a key issue in our investigation. It should be noted that all three candidates passed the shortlisting stage, meaning they all had the knowledge, experience and qualifications required to perform the demanding and specialised role of Chief Constable. The selection process was rigorous, and all three candidates performed well at different times. Candidate 3 acknowledged, however, that they did not perform as well as they had hoped on the second day of the process, and gave an explanation for this.

At the end of the second day of the selection process, Mr Jones awarded Candidate 3 provisional scores which were noticeably higher than those awarded by the other panel members. He was also the only panel member to award Candidate 3 a passing score for his interview.

Following extensive discussions, the panel ultimately concluded that only Candidate 1 met the standard they had agreed at the start of the day. They recommended that either they be appointed, or the post be re-advertised. The Assessment and Selection Specialist and the other

OFFICIAL

panel members later observed, in their statements to the IOPC, that Mr Jones was clearly unhappy with this decision.

While these discussions were underway, Mr Jones messaged OPCC Chief Executive Mr Malcolm Burch:

'[Candidate 3] didn't shine. [Their] presentation was great, [their] interview a bit flat... we could be heading to not appointing.'

Mr Jones sent a further message to Mr Burch, saying that he had '*fought*' to get candidate 3's scores that high, but he wouldn't be able to appoint them due to their overall score.

Mr Burch asked how Candidate 1 had performed, and Mr Jones replied that they were '*just the right side to be appointed*'.

For context, OPCC Chief Executives hold the statutory position of Monitoring Officer. They are responsible for supporting and advising their PCC and assisting in the discharge of all their statutory duties.

Mr Jones subsequently decided to add an additional stage to the selection process, consisting of a further presentation and interview on 10 September 2020. The stated purpose of this additional stage was to enable him '*to gain additional reassurance and confidence so that he [had] sufficient information to make a decision about an appointment in the context of the recruitment panel's recommendation*'.

All three candidates were invited to attend the additional stage, and their performance was assessed by a panel consisting of Mr Jones and Chief Constable Cole. This new panel did not include an Independent Member (the Independent Member who was involved in the earlier process explained that Mr Jones did ask them to sit on the new panel, but they declined because they were concerned about his intentions and motivations).

College of Policing guidance for appointing Chief Officers states that an appointment panel should consist of three to five members from a diverse range of backgrounds with experience in the assessment and selection of candidates. It goes on to say that the panel must remain the same throughout the selection process to ensure consistency of assessment and approach. The original panel was diverse but the panel for the additional part of the process consisted of only two white males.

On 12 September 2020, Mr Jones publicly announced that, following an '*exhaustive recruitment process*', he had identified '*an outstanding preferred candidate*' in Candidate 3.

On 17 September 2020, the Independent Member submitted their report to the PCP. This report stated that, because Mr Jones had recommended an applicant who had not met the agreed

OFFICIAL

standard during the original two-day selection process, the process had not been conducted in accordance with the principles of merit, fairness and openness.

On 25 September 2020, Mr Jones offered to meet with the PCP privately ahead of the confirmation hearing, '*to offer context on the process and the Independent Member's report*'. He also asked the PCP to confirm that the Independent Member's report would not be discussed in public at the hearing, as it contained information which was potentially damaging to the candidates.

PCP Monitoring Officer Ms Michelle Sacks replied that a private meeting would not be appropriate, and that she could not make a decision about the Independent Member's report until she had received all relevant documentation from the OPCC. She explained to Mr Jones that her decision would need to balance the public interest of disclosure against '*the personal data impact on the candidates*'.

On 2 October 2020, Mr Jones publicly announced that he had decided to terminate the selection process on the grounds that 'protecting the identity and integrity of individuals who put themselves through this intensive process overrode the need to complete [it]'.

On 27 November 2020, the PCP met with Mr Jones as part of a fact-finding exercise into the failed selection process. During this meeting, Mr Jones stated that a conversation with one of the original panel members (whom he named) had led to his decision to add an additional stage to the process. This panel member subsequently stated that the decision to add an additional stage was made by Mr Jones, and contradicted the advice provided by them and the rest of the panel to Mr Jones.

During this questioning, Mr Jones also stated that '*at no point*' had he told Chief Constable Cole about the original panel's scoring or recommendations. Chief Constable Cole stated that Mr Jones told him about the scores awarded by the original panel, albeit, he did not know "*who was who*" at that point.

On 22 January 2021, Mr Jones wrote to the PCP expressing his '*dismay and disappointment*' that they were continuing their enquiries into the failed process. He stated that this had caused him to lose any residual confidence and trust he had in the PCP's direction and leadership.

On 5 February 2021, Mr Jones wrote to the Chair of the PCP urging him to stop '*this wasteful use of public resources*'. He also objected to the '*cloak and dagger*' way in which the PCP had approached panel members without informing him.

In March 2021, Mr Jones tweeted that PCPs were a 'pointless distraction' and 'negative drain on resources', and that PCCs were subject to 'substandard scrutiny', some of which was 'very politically motivated and very corrosive'

> **Concerns raised**

On 17 June 2021, the PCP made a referral to the IOPC outlining their concerns that Mr Jones may have abused his position by:

- Manipulating the selection process
- Misleading panel members and the Assessment and Selection Specialist regarding the true purpose of the additional element
- Attempting to force the PCP's hand by publicly announcing his preferred candidate
- Seeking to prevent a PCP investigation by publicly announcing that he had decided to terminate the selection process
- Sending letters to the PCP Chair in an attempt to intimidate him
- Publicly criticising the PCP in an attempt to discredit their investigation
- Misleading the PCP when questioned about the selection process

Following careful consideration, the IOPC determined that the referral from the PCP was valid and required investigation.

> **The IOPC investigation**

On 20 October 2021, the IOPC decided to conduct an independent investigation on the grounds that Mr Jones' alleged actions may (if proven) amount to an offence of Misconduct in Public Office.

In an IOPC investigation, the powers and obligations of the Director General are delegated to a senior member of IOPC staff, henceforth referred to as the decision maker. The decision maker for this investigation was Regional Director Mr David Ford.

It should be noted that, under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, the IOPC can only investigate criminal allegations against PCCs. The IOPC does not have the power to investigate allegations of misconduct by PCCs.

Following an investigation, the sole decision the IOPC is permitted to make is whether to make a referral to the CPS if the decision maker concludes that there is an indication a criminal offence may have been committed; and that it is appropriate to refer the case to the CPS. In this case,

having carefully considered all of the evidence obtained during the investigation, the decision maker concluded that there was no indication that a criminal offence may have been committed and therefore, no referral was made to the CPS.

> Investigation terms of reference

Our terms of reference were to investigate:

- a) Mr Jones' actions and decisions during the September 2020 Chief Constable selection process;
- b) Mr Jones' actions and explanations when the PCP investigated this matter;
- c) The appropriateness and accuracy of the press releases issued by Mr Jones on 12 September 2020, and 2 October 2020.

> Relevant guidance and legislation

Our investigation considered the following guidance and legislation:

- Section 38 and Schedule 8 of the Police Reform and Social Responsibility Act 2011
- Home Office Circular 013/2018 (guidance on the selection and appointment of chief officers)
- Guidance¹ issued by the College of Policing on appointing chief officers, which sets out good practice for assessment and selection processes
- CPS guidance on the offence of misconduct in public office

> Analysis of the evidence

¹ The guidance in place at the relevant time was issued in 2018. It has since been replaced by new guidance issued in January 2021.

Mr Jones' actions and decisions prior to and during the selection process on 2 and 3 September 2020

Our investigation did not identify any concerns in relation to the actual design or running of the selection process on 2 and 3 September 2020, and the Independent Member confirmed in their report at the time that the process itself, and the outcome, were demonstrably fair, open and based on merit.

The selection process held on day one (2 September), included a scored assessment by a panel of external stakeholders. Candidate 3 was the highest scoring candidate on this day. Neither Mr Jones, nor any of the interview panel members on day two (3 September) were involved in the assessment or scoring on day one.

All interview panel members stated that it was agreed at the beginning of day two that a candidate would have to score a 3 or above in each part of the scored process that day, to be appointable. If a candidate reached this level, it didn't mean that the PCC would be obliged to appoint them, but anyone not reaching this minimum level could not be recommended for appointment by the appointments panel. The Independent Member stated that they felt a 3 was generous for such a high-profile role and wanted higher than average, so a 2 or over, but agreed on the pass mark of 3 or above.

All of the witnesses involved in day two of the assessment process expressed doubts about Mr Jones' fairness and objectivity during the scoring process and subsequent panel discussions.

In particular, they stated that he was disproportionately generous in his scoring of Candidate 3, even though in their opinion Candidate 1 out-performed Candidate 3 in both the presentation and the interview.

Ms Graves recalled challenging Mr Jones, as she felt his scoring of Candidate 3 was not evidence-based. She stated that Ms Owens also challenged him robustly, but he seemed to have *'made his mind up early on and... knew what he wanted'*.

The Independent Member recalled searching for evidence to support Mr Jones' *'assessment'* of Candidate 3. They stated that Mr Jones himself was unable to produce evidence to back up his scoring.

They acknowledged that *'fit'* was important, and stated that they would be better able to understand Mr Jones' position if there had been a close contest between Candidate 3 and Candidate 1, but it was *'not even close... I am absolutely clear that following this process only one person was still in the running and the other two hadn't met the mark that we had set and agreed at the beginning of the day'*.

OFFICIAL

The IOPC obtained and reviewed the panel's scoring sheets, which appeared to support the above witness accounts and, based on the agreed criteria, meant that only Candidate 1 had reached the level upon which the appointment panel could recommend they be considered for appointment.

Ms Roach, Ms Owens and the Assessment and Selection Specialist commented that Mr Jones appeared to have been influenced by his prior dealings with Candidate 1. The Assessment and Selection Specialist stated:

'...panel members and I reminded Marc that his assessment needed to be based on the evidence provided and recorded during the process. On a number of occasions, there was quite robust conversation with Marc from different panel members reminding him he shouldn't bring his prior knowledge into consideration when awarding his ratings and considering [Candidate 1's] suitability and that other candidates had been assessed based upon the evidence presented and recorded by the panel on the day and in front of them.'

Mr Jones himself confirmed in his account to the IOPC that he had '*reservations about the accuracy*' of one of Candidate 1's answers in interview, although he did not elaborate.

The Assessment and Selection Specialist stated that, ultimately, all of the panel members except Mr Jones (who '*didn't seem to be overly keen*') agreed that Candidate 1 should be recommended for appointment.

Ms Graves and the Independent Member also commented on Mr Jones' negative reaction to the panel's decision. Ms Graves stated that he did not seem himself at the end of the day, and the Independent Member stated that he seemed flustered, and his cheeks were red.

The Assessment and Selection Specialist stated that after the panel made their decision, Mr Jones repeatedly brought up the fact that Candidate 3 had performed well in the stakeholder interview on the previous day, and some of the panel members objected that they should not be discussing Candidate 3 because they had not met the agreed standard during the interview and presentation stage on day two. They stated that Ms Owens in particular strongly challenged Mr Jones and explained each of her provisional ratings with reference to her recorded notes.

They stated that Mr Jones also tried to argue that Candidate 1 and Candidate 3 had scored the same average marks across the three formally assessed elements (held over the two days). The Assessment and Selection Specialist stated that, again, they and some of the other panel members reminded Mr Jones that this was not the agreed standard and that they should not be discussing Candidate 3 as potentially appointable.

They stated that at no point did any of the other panel members support what Mr Jones was saying.

OFFICIAL

They went on to say that in an effort to move the discussion forward, they reminded Mr Jones and the panel that they could not change the interview and presentation standard and decision-making process after the event, which was exactly why they had taken the time to agree on both at the start of the day.

Ms Owens also recalled Mr Jones challenging the standard they had all agreed upon at the outset and arguing that both Candidate 1 and Candidate 3 would have achieved the required standard if the scoring had been done differently. She stated that he wanted to change the scoring criteria, but they all told him he could not do that at such a late stage.

Mr Jones' communications with Mr Burch may also offer some insight into his mindset at this time. Towards the end of the day on 3 September 2020, he messaged Mr Burch:

'[Candidate 3] didn't shine. [Their] presentation was great, [their] interview a bit flat. Didn't mention [a law enforcement agency] or the local to national stuff even when I asked them about their policing partners'

He sent a further message detailing [Candidate 3's] scores and added that he had '*fought to get [them] that high.*'

He also told Mr Burch they '*could be heading to not appointing*', despite confirming in the same exchange that Candidate 1 was '*just the right side to be appointed*'.

In his statement to the IOPC, Mr Jones stated that his messages to Mr Burch 'were not well-crafted documents, but... shorthand... I was not implying that I could not legally appoint based on the Appointment Panel's recommendation'.

He stated that, in his view, all of the candidates were qualified to be appointed, and none of them had shortcomings which were fatal to the process.

He explained that it was not as simple as picking the highest scoring candidate, instead he was looking for someone who was the right fit, the person who had the best plan for the county and the best person he could honestly work with for the best outcomes for the police and the county.

He stated that Candidate 3's interview 'was not as strong as it could have been, but that is not to say that I was not hearing anything from [them] to indicate [they] met the criteria... in my view [they] had clear capabilities, but was finding it difficult on the day to get [their] points across... The information I was hearing from Candidate 3 was [their] style of leadership, what [they] will deliver for the county and how [they] will take the force forward. Much of what I was hearing from [them] was partnership focussed and an understanding of the wide [sic] context of police [sic]'.

OFFICIAL

(It should be noted that this aspect of Mr Jones' statement appeared to conflict with his message to Mr Burch that Candidate 3 had not mentioned '*the [law enforcement agency] or the local to national stuff even when I asked [them] about [their] policing partners*'.)

Mr Jones stated that it would have been wrong to exclude Candidate 3 '*simply based on the Appointment Panel's assessment of [them].... in the 50-minute interview element*'. He denied that he had been biased in Candidate 3's favour. He stated that he knew Candidate 3 least well of all the candidates, had no personal relationship with them and had never worked with them directly.

However, our investigation found evidence which suggested that Mr Jones thought highly of Candidate 3.

Mr Skelly recalled that Mr Jones had a positive working relationship with Candidate 3 when they were in a senior temporary position. He stated that Mr Jones once told him he liked Candidate 3, and thought they were good for the force.

Ms Graves also recalled Mr Jones saying that he knew Candidate 3, and that they '*would do well [and] was great for the officers*'.

Finally, Candidate 3 stated that Mr Jones twice proactively approached them about applying for chief officer roles in Lincolnshire, and subsequently met with them to discuss what he was looking for in a Chief Constable (in short, someone with the same background and strengths as Candidate 3).

Mr Jones did not mention any of the above when questioned about this in his interview or within his prepared statements.

In relation to the agreed standard, Mr Jones stated that his position throughout the process was that it was there 'to assist the Appointment Panel in making a recommendation... it was never my understanding that a candidate had to reach a particular score in each of the three assessed elements for me to be able to consider them as suitable for appointment'.

He highlighted that the College of Policing guidance did not stipulate that a candidate must achieve a certain score in each element in order to be appointed, but rather an overall score based on the ratings from each assessment.

He stated that he had to take into account all of the information gained throughout the process, and when the scores from all three formally assessed elements were combined, Candidate 3 and Candidate 1 achieved identical scores. He expressed the view that the other panel members failed to take this into account.

OFFICIAL

(In relation to this point, as outlined above, both the Assessment and Selection Specialist and Ms Owens confirmed that Mr Jones made this point during the panel discussions. They stated that they explained to him this was not the scoring system they had agreed upon at the outset, and he could not change it at such a late stage.)

Mr Jones stated that he was not prepared to make a decision at the end of Day 2, because he did not feel confident the process had given him enough information to be able to do so.

It is correct that the College of Policing guidance does not specify that a candidate must achieve a specific score in each element of a process.

It is also correct that the PCC (rather than the panel) is responsible for deciding how to run the appointment process, and whom to propose appointing; and PCCs are entitled to consider all the information gained throughout the process, including whether a candidate is a good 'fit' generally.

However, both Home Office Circular 013/2018 and the College of Policing guidance state that selection processes must adhere to the principles of merit, fairness and openness. Our investigation identified the following evidence relevant to Mr Jones' application of these principles:

Ms Roach, Ms Owens, the Assessment and Selection Specialist and Mr Burch all stated that Mr Jones appeared to have been negatively influenced by his prior dealings with Candidate 1.

There was evidence that Mr Jones already had a very positive opinion of Candidate 3, and his messages to Mr Burch on 3 September 2020 seemed to imply that he wanted to appoint Candidate 3, but felt unable to because of their low scores.

Mr Jones also told Mr Burch he had '*fought*' to increase Candidate 3's scores. Witnesses agreed that he argued at length with the rest of the panel about those scores, even though they felt he was unable to produce any evidence to justify raising them. The panel's scoresheets also appeared to support witnesses' recollections that Mr Jones was disproportionately generous in his scoring of Candidate 3 and was unable to produce the evidence to support his scores.

Mr Jones accepted that the appointment panel agreed at the outset that a candidate would have to score 3 or above in each of the formally assessed elements. However, he stated that it had been his position throughout that this standard was only set to assist the panel; and that a candidate did not actually have to reach that score in each of the three elements to be considered for appointment. This aspect of his recollection was at odds with other witness accounts.

Who suggested introducing an additional element to the selection process

OFFICIAL

Following the selection process on 2 and 3 September 2020, Mr Jones decided to introduce an additional element to the process.

Mr Jones told the PCP he had discussed the available options with another panel member on 4 September 2020 and, *'as a result of that conversation... considered the option of an additional element'*. He later clarified that his conversation with this panel member had *'led to the additional stage'*.

He reiterated in his statement to the IOPC that it was a panel member who *'suggested adding the extra stage to the process'*, and referenced a text message exchange between him and a different panel member on 4 September 2020, during which, the different panel member expressed concern about the additional element, to which Mr Jones replied that another panel member (whom PCC Jones names) had suggested it.

However, the panel member stated that it was Mr Jones who proposed adding an additional element when they spoke to him on 4 September 2020. They stated:

'Marc wasn't asking me for my opinion of the further stage but telling me that was what he was going to do next...I did not suggest the additional stage... it was clearly decided by Marc. I made suggestions to change and amend the approach which... included advice that a policing advisor was involved and all three candidates should be included. Marc suggested the new process.'

They expressed the view that Mr Jones only told another panel member they had suggested it *'as a way of getting [them] on board'*.

In keeping with the panel member's account, the Assessment and Selection Specialist stated that Mr Jones first asked them on the evening of 3 September 2020 whether an additional process could be carried out. The Assessment and Selection Specialist further stated that they, Mr Jones and Mr Burch met to discuss Mr Jones' proposal early the following morning. According to the panel member, this would have been before Mr Jones contacted the panel member.

The purpose of the additional element

Ms Roach, Ms Owens, the Independent Member and the Assessment and Selection Specialist all stated that they made it clear to Mr Jones at the end of the day on 3 September 2020 that his only options were to appoint Candidate 1, or to start the process afresh.

The Assessment and Selection Specialist stated that it was also suggested during the course of these discussions that Mr Jones could invite Candidate 1 back alone and *'tease out'* any areas where he had doubts and concerns.

OFFICIAL

They stated that Mr Jones raised the possibility of introducing an additional element later that evening, and they reiterated that it would be better to re-start the process.

They stated that they met with Mr Jones and Mr Burch early the next morning to discuss Mr Jones' proposal in more detail and stated:

'In principle we agreed the additional element was to gather additional information about the concerns Marc had about [Candidate 1] so he could decide to appoint [them] or not. And essentially there were two potential outcomes if we ran an additional assessment element. One, clarify and remove the existing doubts and concerns that Marc has about [Candidate 1] and then appoint [them]. Two, the additional assessment element confirms and or reinforces the existing concerns and doubts that Marc had about [Candidate 1] and decide [sic] not to appoint.... If we were going to run an additional process it's to gather additional information to confirm or refute the concerns Marc had about appointing [Candidate 1]...

At no point did I think this was about appointing someone else. The additional element was to simply alleviate or confirm the concerns Marc had about [Candidate 1]... only [Candidate 1] could be appointed at the end of any additional element...

Once Marc confirmed he wanted an additional process, it was agreed... it would focus around any development areas that the original assessment process and Marc highlighted about [Candidate 1's] performance.'

They stated that, during this conversation, either Mr Jones or Mr Burch asked whether the additional element could end in a candidate other than Candidate 1 being recommended. They stated:

'Whoever it was, said something along the lines of "what if, one of the other candidates performed exceptionally well in the additional element and based on that performance Marc/I decided to appoint one of the other candidates". I said that appointing another candidate was not an option available because only one candidate was recommended by the panel and that outcome (option 3) couldn't happen. Again I can't remember who responded but they said something like "...I know it wouldn't happen but in the unlikely event that a candidate performed exceptionally well and better than the recommended candidate during the additional assessment is it not a possible outcome...?" Again, I said but it can't happen and while I was saying it I recall there being a bit of laughter along with the comment but do we not need to recognise it as a possible outcome, to which I responded possibly and repeated but it can't happen because none of the other candidates met the standard and were not recommended by the Appointment Panel... Whoever said this initially then said that they were just checking but it had to be a possible outcome didn't it... I made it clear that the "unlikely event" couldn't happen as it wasn't possible to undo the recommendation of the panel.'

OFFICIAL

They stated that they spent that weekend designing the content for the additional element; which, as agreed, focused on the areas for development identified for Candidate 1.

They stated that they spoke with Mr Burch again on 7 September 2020, and reiterated that it would be better to start the process afresh. They stated that they also repeated this advice to Mr Jones in a subsequent teleconference, but Mr Jones still wanted to proceed. They stated:

'The two possible outcomes remained as before, appoint [Candidate 1] or not. Nothing else could happen. The "unlikely event" outcome was raised again, and I said again that couldn't happen. I explained the rationale for inviting all three candidates as this was a continuation and not a separate process.'

Ms Roach stated that she also spoke to Mr Burch by phone later that morning, and 'specifically said... the scenario could not be allowed to happen whereby one of the candidates who had not previously met the agreed standard suddenly became the preferred candidate'.

She stated that Mr Jones agreed this could not and would not happen and reassured her that the further process was designed only to test whether Candidate 1 was or was not suitable for the appointment.

The Independent Member stated that they spoke with Mr Jones by phone at around the same time, and emphasised that they would not support him appointing anybody other than Candidate 1. They stated that they felt he understood this by the end of the call.

In contrast to the above witness accounts, Mr Jones told the PCP that the purpose of the additional element was to gain information about all the candidates' approaches, their styles of working, and their ability to meet the challenges faced by the force. He stated that, as far as he knew, there was never any indication from anybody that it was designed around one individual.

In his statement to the IOPC, he stated that he had been torn between appointing Candidate 1 and Candidate 3. He stated that the purpose of the additional element was to gather further information from the candidates about their strategic vision, and once it was complete, he might have decided to appoint Candidate 1, or even nobody.

He stated that it would not have been in the public interest to re-start the process, as a successful candidate may have been identified following the additional element. He highlighted that in legal advice dated 8 September 2020, his external legal advisors made it clear that in the event that a Chief Constable appointment was not made imminently, and he delayed making such an appointment, it may be deemed a performance failure.

(In relation to this point, Mr Jones' solicitors advised that it may constitute a performance failing if Mr Jones delayed appointing a Chief Constable; however, there was no limit on the length of time Lincolnshire Police's Deputy Chief Constable could perform the role as temporary Chief

OFFICIAL

Constable until the role could be filled substantively. Both the Corporate Administration Officer and Mr Burch interpreted this advice to mean that Mr Jones did not have to make a decision imminently.)

Mr Burch supported Mr Jones' account and stated that he was '*surprised and disturbed*' by the Assessment and Selection Specialist's account. He stated:

'Only [Candidate 1] and no one else was not a discussion we had. I thought it was extremely unlikely that another candidate would be appointed but if only [Candidate 1] could have been considered for appointment, then why would we run the additional day? If we'd had that discussion, I would have reflected it in an email sent to Marc Jones and [the Assessment and Selection Specialist] at 07.07 hours on 8 September 2020² which was designed to set out our 'shared' view. If that was the only possible outcome, then individual negotiation with [Candidate 1] would have been a better way forward.'

The fact that all three candidates were invited back did appear to support Mr Jones' account.

However, as outlined previously, the Assessment and Selection Specialist and three other witnesses all stated that it was made clear to Mr Jones at the end of the day on 3 September 2020, and several more times in the days that followed, that he could appoint Candidate 1 or nobody. The Assessment and Selection Specialist in particular was adamant about this and recounted these conversations in considerable detail.

(As previously referenced, the makeup of this subsequent panel was not in keeping with the College of Policing guidance, given that there was a lack of diversity and no Independent Member).

Chief Constable Cole's recollection was also more in keeping with the Assessment and Selection Specialist's account, as he was recorded as saying that he had been under the clear impression that '*only [Candidate 1] or nobody could be appointed*' following the additional element. (Mr Skelly also recalled Chief Constable Cole saying something similar to him after Mr Jones announced Candidate 3 as his preferred candidate.)

Moreover, in text message exchanges on 4 and 8 September 2020, Mr Burch warned Mr Jones that simply overriding the panel's recommendation remained '*a big risk*', and that it would be better to re-start the process if Mr Jones was concerned they were heading towards an outcome he did not want.

² The IOPC was provided with a copy of this email, which stated that the purpose of the additional element was for Mr Jones 'to gain additional reassurance and confidence so that he has sufficient information to make a decision about an appointment in the context of the recruitment panel's recommendation'.

OFFICIAL

Again, these messages appear to be consistent with the Assessment and Selection Specialist's, Ms Roach's, Ms Owens' and the Independent Member's recollections that they expressly warned Mr Jones and Mr Burch against appointing anyone other than Candidate 1.

The Assessment and Selection Specialist also stated that Mr Burch messaged them on the evening of 10 September 2020 that Mr Jones was '*back on option 3*'. The wording of this message appeared to corroborate the Assessment and Selection Specialist's account of the conversation between them, Mr Burch and Mr Jones on the morning of 4 September 2020 (see above).

What information Mr Jones provided to Chief Constable Cole before the process on 10 September 2020

In an email exchange on 7 September 2020, Chief Constable Cole asked Mr Jones whether it would be better if he did not know the candidates' previous scores, to avoid any risk of prejudice.

Mr Jones replied that it would be better if Chief Constable Cole brought '*fresh eyes*' to the process, as he wanted his honest professional assessment of the candidates' performance on the day.

Mr Jones later told the PCP that Chief Constable Cole was not made aware of the appointment panel's recommendations ahead of the additional element. He explained that Chief Constable Cole had not wanted to know anything about the initial process, as he had felt that it would be better for him to assess the candidates' performance based on what was in front of him.

In his statement to the IOPC dated 27 April 2022, Mr Jones reiterated that Chief Constable Cole did not have knowledge of the previous assessment days.

However, our investigation found evidence which suggested Mr Jones may have disclosed details of the candidates' previous performances to Chief Constable Cole.

During his IOPC witness interview, Chief Constable Cole was recorded as saying that Mr Jones told him on or around 7 September 2020 that "*one candidate had been judged appointable, one scored A's in part of the process but blew it at the interview stage whilst the third candidate was a bit off*" (albeit he did not know at that point who was who).

Chief Constable Cole was also recorded as saying he was told during the briefing on 9 September 2020 that Candidate 1 was the appointable candidate. While he did not say who told him this, in his notes on the briefing he recorded:

'Marc – been 3 cand's one appointable – [Candidate 1], one did well – 'blew the int' one way off [Candidate 2], wants to test 'gravitas & fit' & wrote it down – sent email.'

OFFICIAL

One of Chief Constable Cole's daybook entries also suggested he was also made aware during the briefing that the candidate who was scheduled to appear first (Candidate 3) was Mr Jones' preferred candidate, although it was not clear from the entry who told him this.

In his account to the IOPC, the Assessment and Selection Specialist stated that they deliberately did not tell Chief Constable Cole the scores or outcome from 2 and 3 September 2020 when they briefed him on 9 September 2020; however, Chief Constable Cole told him '*he had heard on the policing grapevine that no one made the grade and Marc wanted to appoint [Candidate 3] and wanted to find a way to do so... he had also picked up information that indicated [Candidate 1] did well and was recommended for appointment, [Candidate 3] blew the Appointment Panel Interview and [Candidate 2] was way off*'.

In relation to this point, in her statement to the IOPC, Ms Owens also confirmed that during a conversation with Chief Constable Cole, on or shortly after 4 September 2020, she told him what had happened so far and mentioned that only Candidate 1 had met the agreed standard.

Mr Jones' actions and decisions during and following the additional element on 10 September 2020

Mr Jones stated that as he understood it, the purpose of the additional element was to explore topics that had not been covered on 2 and 3 September 2020; and that in theory, either Candidate 1 or Candidate 3 (or nobody) could have emerged as the preferred candidate.

He stated that he and Chief Constable Cole only used the scoring framework to provide structure, and that it was '*about the quality of the answers and the context added... not strictly the scoring*'.

Despite this, the recorded scores showed that Mr Jones again scored Candidate 3 most generously, and Candidate 1 least generously (in comparison to Chief Constable Cole). While their scores for Candidate 3 were reasonably close, there were some noticeable differences in how they scored Candidate 1.

In relation to the scoring, Chief Constable Cole was recorded as saying:

'In general terms I thought [Candidate 1] put in a good performance and I scored [them] higher than [Candidate 3] but there will always be discussion and movement. The nature of the process is that we need to find a point of agreement. Marc had some doubts around the public service bit in relation to [Candidate 1]. It is a subjective process and I may have initially over-marked [Candidate 1]. I was content with where we got to.'

However, the Assessment and Selection Specialist stated:

OFFICIAL

'I recall there was quite a protracted conversation with a considerable amount of disagreement and debate about the provisional grades that Simon awarded [Candidate 1], particularly the value area of 'Public Service'... it appeared that no matter what Simon said and no matter how much positive quality evidence he cited from his recorded notes to substantiate his provisional ratings he was fighting a losing battle. Marc consistently had a negative or counter perspective about what Simon said. In trying to justify and explain some of his provisional grades I recollect Marc saying once again during the conversation that "I can't un-know what I know" about [Candidate 1]. Simon and I reminded Marc that he was meant to award his provisional grades and ratings based on the evidence and examples [Candidate 1] presented on the day... Marc indicated he knew that, but it was very difficult. Following... protracted discussions... Simon agreed to drop his provisional ratings for [Candidate1] in both the Presentation and Interview... Marc didn't appear to accept Simon's assessment of the evidence or professional opinion. In the end, I think Simon realised that he wasn't getting anywhere and there was little value in trying to convince Marc to change his opinion and or ultimately his provisional grades.'

Mr Jones subsequently told the PCP that he believed Candidate 3 was the best fit and was more convincing in their vision and plans for the force, and had a more strategic and analytical outlook.

Advice and warnings Mr Jones received regarding whether he could recommend Candidate 3 for appointment

As outlined above, our investigation found evidence suggesting that the Assessment and Selection Specialist, Ms Roach, the Independent Member and Ms Owens all repeatedly warned Mr Jones that the only acceptable options were to appoint Candidate 1 or to re-start the process.

On the evening of 10 September 2020, Mr Jones also sought advice from Mr Cunningham and another senior figure in policing.

He subsequently messaged Mr Burch:

'Spoke to Mike [Cunningham]. He's clear that it's my decision and if (he thinks it's almost a non-starter) [Candidate 1] did more than ask for feedback, me [sic] and the CoP would back me fully. [Another senior figure in policing] was clear [this person's organisation] have no role in PCC's appointment in Chiefs and [they] feel that Mike's assurance is huge.'

During his meeting with the PCP, Mr Jones stated that Mr Cunningham told him he had '*gone above and beyond what was required*' to find the right candidate. He reiterated this in his statement to the IOPC and added that Mr Cunningham '*fully endorsed the adding of the extra process*'.

However, Mr Cunningham stated that he had been under the impression from speaking to Mr Jones that he had to choose between two appointable candidates who had tied scores. He stated

OFFICIAL

that he told Mr Jones he would have to make a judgement, and reminded him that it was the primary function of a PCC, *'and left it at that'*. He stated that the whole situation seemed *'a bit chaotic'*, and he was unhappy that Mr Jones had not given him *'a clear indication... of what exactly had gone on'*.

The senior figure in policing stated that they told Mr Jones *'[Their organisation] do not get involved in the specifics of chief constable appointments, that I could not give him advice on how the process had been designed and that the final decision on who to appoint was ultimately one for him... I found it all a bit baffling and couldn't quite understand why Marc had contacted me'*.

As outlined previously, the Assessment and Selection Specialist stated that Mr Burch texted him the same evening to say that Mr Jones was *'back on option 3'*; namely Candidate 3.

(Incidentally, this evidence appeared to contradict Mr Burch's account that Mr Jones spent the night *'agonising'* over the matter and told him his decision in person the following morning. Mr Jones also told the PCP he did not make a decision until the following morning.)

The Assessment and Selection Specialist stated that they called Mr Burch the following morning and reiterated their concerns in light of the above text message, and warned him that Mr Jones *'was in very dangerous territory and needed to be very careful'*.

They stated that Mr Burch told them that Mr Jones had spoken to both the College of Policing and a senior figure in policing, and both had said that they were behind him and would support his decision.

Mr Jones also sought advice from his external legal advisors at around this time. Their response of 11 September 2020, noted that Mr Jones had *'received reassurance that [a senior figure in policing] and the College of Policing will be supportive of the proposed approach'*.

In their advice, the solicitors explained that Mr Jones was free to recommend whomever he wished, and could lawfully disregard the panel's advice, provided he could demonstrate to the PCP that his preferred candidate met the *'criteria used to assess the suitability of the candidate'* and the *'threshold for appointment'* for a Chief Constable.

However, they advised that such a decision may be vulnerable to challenge on the grounds that it was irrational or unreasonable; or because there was a legitimate expectation that the advice of the appointment panel would be heeded; or because the additional element was *'extraordinary and not anticipated'*.

The legal advice provided to Mr Jones relating to this area is included below:

'2. Would such a decision be lawful?'

We suggest that a decision by the PCC in the circumstances described in 1 to propose to appoint a candidate where the recruitment panel did not consider them to have met the requirements for eligibility could be lawful, as long as the PCC can provide the necessary explanation to the PCP as to why the candidate meets the “criteria used to assess the suitability of the candidate” (and the “threshold for appointment” for a Chief Constable) notwithstanding views from the recruitment panel that he/she does not.

3. Could such a decision be subject to viable legal challenge?

The viability of a legal challenge would depend on seeing the reasoning of the recruitment panel and the PCC for their alternative views as to suitability. It is not possible to say that a sufficiently affected individual could not seek permission to judicially review the decision (or bring some other type of challenge). In addition to arguing that the decision was irrational or unreasonable they might also seek to argue that there was a legitimate expectation (through custom and practice and quite possibly in the materials you made available to candidates) that the advice of the recruitment panel would be heeded. They may also raise concerns about the additional selection day that took place (again presumably this was extra-ordinary and not anticipated in the materials). It is not possible to fully assess the merits of any such hypothetical claim but we hope the above advice highlights where the decision making will be scrutinised closely and will need to be justified.

Any attempt to challenge could be defended also by suggesting that the PCP confirmation process, report and recommendation stages should be completed and that would be an alternative way for the PCC’s proposed candidate to be scrutinised (and after this process would be an additional support of reasonableness of the appointment).’

Mr Jones’ responses to the PCP’s questions on 27 November 2020

As outlined above, Mr Jones told the PCP that, ‘as a result of [his] conversation’ with a panel member on 4 September 2020, he ‘considered the option of an additional element’. He subsequently reiterated that his conversation with the panel member had ‘led to the additional stage’.

He also told the PCP that Chief Constable Cole was not made aware of the appointment panel’s recommendations ahead of the additional element, as he had felt it would be better for him to assess the candidates’ performance based on what was in front of him.

Finally, he told the PCP that Mr Cunningham had said he had ‘gone above and beyond what was required’ to find the right candidate.

As is also outlined in previous sections, evidence from other sources appeared to contradict these aspects of Mr Jones’ account.

In relation to the PCP meeting, Mr Cook stated:

'I don't think Marc gave the whole truth and after the meeting there were more questions than answers.'

In a further prepared statement Mr Jones submitted following his interview with the IOPC, relating to his attendance at the PCP, he stated, '*The only time I was permitted to provide any account was during the private meeting in November 2020. The questions to me were not provided in advance, were predetermined and I was not permitted to provide any further narrative. I also requested that my Chief Executive be permitted to provide a detailed account of the process to support the PCP's understanding but this was also denied. I answered the questions put to me to the best of my knowledge and ability.*'

The appropriateness and accuracy of the September 2020 press release

Our investigation did not identify any concerns in relation to the accuracy of the September 2020 press release.

Mr Jones announced Candidate 3 as his preferred candidate before the appointment had been confirmed by the PCP.

Mr Jones told the PCP that he issued the press release because, 'as is standard practice with these things... it will always leak out anyway... [it is] not possible to keep these things watertight, so it's a usual thing to do'.

In his statement to the IOPC, he pointed out that Mr Skelly had also been announced as the preferred candidate before his appointment was formally approved.

Mr Jones' decision to terminate the process, and the appropriateness and accuracy of the October 2020 press release

Both Mr Jones and Mr Burch stated that the primary issue was that the Independent Member's report identified Candidate 1 as the only appointable candidate.

They stated that Mr Jones believed releasing this information could lead to a public debate about the candidates' respective merits, and ultimately he decided to terminate the process because the PCP could not assure him that the candidates' data would be redacted.

Mr Jones further stated that he had been trying to protect the candidates, as '*a concerted amount of information and misinformation and part-information*' had been leaked to the media about elements of the process.

OFFICIAL

(In relation to this point, the IOPC was provided with a copy of an email from the PR and Media advisor to Mr Jones dated 16 October 2020, which referenced leaked information that *'[Candidate 1] came top in interview process and [Candidate 3] came third and you are determined to appoint [Candidate 3] come what may'*. The IOPC was not provided with any evidence of leaked information prior to the press release on 12 September 2020.)

With regard to Mr Jones' explanation for his decision to terminate the process, evidence showed that neither Mr Burch nor Mr Jones mentioned any concerns about the candidates' personal data in an exchange of messages on 17 September 2020. Instead, they discussed the role of the panel (and their belief that the Independent Member and the Assessment and Selection Specialist had not understood this); how *'windy'* the PCP would be; whether they could get Mr Cunningham *'more on board'*, and whether the Independent Member's conclusions were valid.

Moreover, when the Corporate Administration Officer sought advice from external solicitors on 17 September 2020, he did not ask about the feasibility of redacting the candidates' data from the Independent Member's report. Instead, he asked whether the entire report and hearing had to be made public. In response, the solicitors confirmed that this was not a legislative requirement and would probably be inappropriate.

Mr Cook also stated that when he spoke with Mr Jones following receipt of the Independent Member's report, Mr Jones' main concern was whether the PCP would exercise their power of veto.

Mr Cook did not say whether Mr Jones ever raised any concerns with him about redacting the candidates' data. However, Mr Jones himself did not mention that he ever discussed this matter with Mr Cook directly.

On 25 September 2020, the Corporate Administration Officer informed Mr Burch via email that Mr Medler agreed there was a strong argument for the Independent Member's report to be exempted (and, therefore, not published), due to the naming of at least one of the candidates.

At the request of Mr Burch, the Corporate Administration Officer subsequently asked Ms Sacks whether the Independent Member's report could be exempted in its entirety. The Corporate Administration Officer further suggested that it would be better not to invite the Independent Member to the hearing, as it would make the proceedings *'potentially adversarial'* and may even jeopardise the entire hearing.

On 29 September 2020, Ms Sacks replied that she would not be able to decide whether to make the Independent Member's report an exempt item until she had received all the relevant paperwork, but that her decision would balance the public interest against *'the personal data impact on the candidates'*.

OFFICIAL

She stated that, while there was no intention to create an adversarial situation, the Independent Member's report '*does raise a number of questions that are best asked of [them], not the PCC*'.

Finally, she stated that, in light of the issues raised in the Independent Member's report, the PCP had sought advice from Counsel, and was considering seeking views from the other panel members as part of the hearing.

In a subsequent text message exchange with Mr Jones, Mr Burch commented that it looked like it was '*going to be a battle*'. Mr Jones replied that he was '*minded to scrap it all and start over*'.

Later that afternoon, Mr Jones emailed Mr Burch and the PR and Media advisor a draft press release for review and '*tightening up*'. Part of this press release referenced the risk of putting candidates' names into the public domain, and the PR and Media advisor commented that this aspect '*chime[d] with the angle I proposed*'.

The final version of the October 2020 press release stated that Mr Jones had decided to re-start the process because, having sought legal advice, '*it became clear that it would be complicated, costly and potentially lengthy to address issues relating to the probable disclosure of candidates' information to the Police and Crime Panel*'.

The release went on to clarify that the issue related to '*naming candidates publicly on [sic] how and why decisions were arrived at*'.

Mr Jones was quoted as saying that he '*could not put members of the Police and Crime Panel in the intolerable position of having to place information in the public domain that is specific to applicants in the process... I could not stand by and permit the possibility of personal information... being discussed in open forum. Allowing such a discussion would have been totally wrong, not something panel members would have been comfortable with I'm sure, and not something my personal integrity would permit... protecting the identity and integrity of individuals who put themselves through this intensive process overrode the need to complete the recruitment process*'.

As discussed previously, the legal advice in question did not reference the cost or difficulty of redacting candidates' information, and in fact the external solicitors confirmed it may not be necessary or appropriate to publish this information.

Further, no evidence was identified to suggest that Mr Cook, Ms Sacks or Mr Medler ever voiced any doubts about the cost or difficulty of redacting the Independent Member's report. Rather, the evidence suggests they were open to this possibility, but Mr Jones terminated the process before they had the chance to discuss it or make a decision about it.

In his statement dated 10 May 2022, Mr Cook stated:

OFFICIAL

'I was amazed at the press release... I didn't understand it and was also annoyed. Usually, the PCP would be consulted beforehand, press officer to press officer but there was no consultation. The press release seemed to put the cause at the door of the PCP... [it] was complete nonsense. I interpreted the release as saying the PCC didn't want to put the PCP in a difficult position. I thought that wouldn't happen as the confirmation hearing would have been our meeting.

My interpretation of the view expressed by Marc that there was a problem putting personal information into the public domain was that this was absolute nonsense. We hold exempt sessions when we wish to discuss confidential matters. This is commonplace in PCP and local authority meetings. Otherwise, the panel is at risk of a breach of data protection. I personally believe Marc pulled it as he knew we would veto the appointment. I think the public were deceived by the press release.'

In Mr Jones' initial prepared statement to the IOPC, he stated, 'The press release was not misleading and had to factor in the legitimate interests of a number of different parties. The motivation for ending the process was to protect other candidates from foreseeable damaging reputational consequences at any public hearing if the relative performances were discussed at the confirmation hearing. This reason is documented at the time and was objectively justified.'

Mr Jones' actions in response to scrutiny from the PCP

Between 3 November 2020 and 5 February 2021, Mr Jones sent four letters to the PCP.

The first letter (which was from the external solicitors, on Mr Jones' behalf) threatened the PCP with legal action if they shared the Independent Member's report with any third party without authorisation, and observed that there was '*likely to be limited usefulness and no public interest in the PCP undertaking an ex post facto analysis of the PCC's rationale and decision-making*'.

The second letter (also from the external solicitors) accused the PCP of contacting candidates about the terminated process, and invited them to explain '*on what basis, under what powers and in relation to which statutory functions the PCP is acting*'.

In the third letter, Mr Jones expressed '*dismay and disappointment*' that the PCP were continuing their enquiries. He reiterated his belief that this was not in the public interest and argued that everyone had moved on and needed to look to the future. In closing, he stated that any residual confidence and trust he had in the PCP's direction and leadership had '*ebbed away*', and would be hard to rebuild due to the PCP's '*wasteful and perplexing course of action*'.

In the fourth letter, Mr Jones urged the PCP '*to stop this wasteful use of public resources*'. He stated that CPOSA and the College of Policing were '*all content with my actions and have moved on*'. (In relation to this point, the IOPC obtained accounts from senior leaders in CPOSA who were in post at this time and Mr Cunningham which suggested otherwise.)

Mr Jones further suggested that the PCP expand its investigation '*to review the actions of the Panel and its Chairman*', and complained about the PCP's '*selective*' and '*cloak and dagger*' approach, and accused them of misleading him. He reiterated that their actions had caused him to lose trust and confidence in their leadership.

Mr Cook expressed the view that these letters were sent in an attempt to undermine him and bring an end to the PCP's enquiries ahead of the PCC elections in May 2021. He stated that he perceived the letters as a personal attack, and even considered making a formal complaint against Mr Jones, but his colleagues persuaded him not to.

Finally, on the evening of 20 March 2021, Mr Jones tweeted:

'PCPs in current form are worse than a waste of money they are a negative drain on resources. That doesn't mean they could [sic] be better.'

'We are subject to substandard scrutiny though which is much more dangerous. Some of that 'scrutiny' is very politically motivated and very corrosive. PCPs are, in my experience a costly waste of time and a massive distraction from delivering quality service for the public.'

'The cost isn't the issue it's the structure. We are accountable to the public at the ballet [sic] box, the police authority didn't have a PCP. We need a standardised structure for mediation with Chiefs nut [sic] the rest is political. The Panel is a pointless distraction.'

> **The decision maker's opinion**

As set out previously, the threshold for a CPS referral will be met if the decision maker concludes that there is an indication of a criminal offence; and that it is appropriate to refer the case to the CPS.

In this case, the decision maker concluded that the first limb of this test was not met and, therefore, that a CPS referral would not be appropriate.

A summary of the decision maker's findings are set out below, with reference to the points to prove for an offence of misconduct in public office.

A public officer, acting as such

In light of Mr Jones' position and the nature of the matters under investigation, the decision maker was satisfied that Mr Jones was a public officer, acting as such, at the relevant time.

Wilfully misconducts himself

In Attorney General's Reference No 3 of 2003, the court approved the definition of 'wilful' as 'deliberately doing something which is wrong, knowing it to be wrong or with reckless indifference as to whether it is wrong or not'.

Having carefully reviewed the evidence, the decision maker concluded that Mr Jones did not always adhere to the guiding principles of fairness, openness and merit at all times during the process, and moreover, at times, his decisions were directly in conflict with these principles.

However, the decision maker formed the opinion that Mr Jones' actions and decisions did not meet the threshold to be considered wilful misconduct.

The decision maker noted that the appointment principles and guidelines were not legally binding, which was an important factor when considering whether deviations could reasonably fall into the realm of potential criminality. The decision maker formed the opinion that Mr Jones' failure to comply in totality with these principles in this instance, could not reasonably be considered so grave as to amount to potential criminality.

The decision maker attached weight to the fact that Mr Jones selected people around him who would assist him with the process and appointed a very strong and knowledgeable appointment panel whose members were clearly comfortable challenging him. The decision maker was of the opinion that, if Mr Jones had been motivated by corruption to appoint Candidate 3 by any means possible, it was unlikely he would have appointed such an experienced panel.

The decision maker also attached significant weight to the fact that Mr Jones was not seeking to appoint an individual with whom he had a close personal relationship; nor was he seeking to appoint a person who lacked the appropriate knowledge and experience to perform the role of Chief Constable.

The decision maker highlighted that, if Mr Jones had sought to wilfully disregard the process, he could simply have recommended Candidate 3 as his preferred candidate after the initial two-day process. If he had, the Independent Member's report would have raised the same issues, regardless of whether additional processes had been added.

The decision maker noted that, while the unorthodox decision to introduce an additional element had a negative impact on many of the parties involved in the process, and potentially contravened the principles of merit, fairness and openness, the fact remained that both Candidate 1 and Candidate 3 did achieve the same cumulative score over the initial two-day process.

OFFICIAL

The decision maker found it understandable that Mr Jones would have wanted to take a holistic view of the candidates' performance, given the importance of appointing the most appropriate person for such a senior role.

The decision maker considered that – while it was unfortunate that Mr Jones apparently did not raise this approach when the original process was being devised - he was supported to some extent by the College of Policing guidance, which stated:

'The decision on who to appoint is ultimately the responsibility of the PCC/CC, however they must base this decision on the final marks that have been agreed by the appointments panel and all the information that has been gained throughout the appointment process.'

The decision maker noted the strength of challenge from various parties regarding Mr Jones' approach, and the fact that Mr Jones sought assurance via his legal advisors that his decision making was lawful.

The decision maker considered it unlikely (given the number of witnesses and volume of documentary evidence) that Mr Jones would have persevered with his course of action if he had thought he was potentially committing a criminal offence.

The decision maker also considered whether Mr Jones could be said to have acted with reckless indifference.

The decision maker noted that Mr Jones' decision was supported by his Chief Executive and, to a lesser extent, by external advice from solicitors. The decision maker could not therefore be satisfied that instead, Mr Jones closed his ears to the advice he was being given and pursued his preferred course regardless.

An important factor, in the decision maker's view, was that a PCC *may* legally recommend a lower-scoring candidate, against the panel's advice; for example, if he felt they were suitably experienced and qualified to perform the role and best met the needs of the force (although in the decision maker's opinion, such a decision is more or less unprecedented, and would be extremely vulnerable to challenge).

In light of the above considerations, the decision maker was of the view that advice from others remained just that; and that it fell to Mr Jones to consider that advice against his desire to appoint the most suitable candidate (in his opinion) to lead the force.

Ultimately, the decision maker was of the opinion that Mr Jones' approach was more indicative of unconscious bias, naivety or misplaced self-confidence, rather than any wilfulness amounting to potential criminality.

The decision maker also carefully considered both press releases issued by Mr Jones.

OFFICIAL

The decision maker was of the opinion that the first press release was not inappropriate, and that Mr Jones' rationale for issuing the release was reasonable. The decision maker noted that other PCCs had taken a similar approach in the past.

The decision maker considered that it was fairly apparent from the second press release that Mr Jones was beginning to realise his actions and decisions would face strong challenge from the PCP. The decision maker believed that Mr Jones would have been aware by this point that the Independent Member's concerns would be difficult to overcome; and that there was a real possibility the PCP would exercise their power of veto, resulting in a degree of personal and professional embarrassment for him.

The decision maker noted that, while PCP members confirmed they would have considered redactions and closed sessions, there was nonetheless a potential for the candidates' strengths and weakness to have been discussed during the confirmation hearing, as it is an extremely unusual situation for a PCC and an appointment panel to support different candidates.

However, the decision maker ultimately agreed that the internal processes were not explored fully before the second press release was issued. It was the decision maker's view, based on the evidence, that Mr Jones still had time to seek reassurance from the PCP that individual identities would have been protected, either through closed session meetings or appropriate redactions.

While the decision maker formed the view that the second press release was issued prematurely, and gave the impression that Mr Jones was seeking to shift responsibility for the failed process away from him, the decision maker did not ultimately consider that the content was so misleading as to meet the high threshold required for an offence of misconduct in public office.

In conclusion, for the reasons set out above, the decision maker was of the opinion that Mr Jones' actions and decisions were not so grave and wilful as to amount to potential criminality.

To such a degree as to amount to an abuse of the public's trust

In *Shum Kwok Sher v HKSAR* (2002) 5 HKCFAR 381, Sir Anthony Mason stated that the seriousness of the conduct will be determined with regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve, and the nature and extent of the departure from those responsibilities.

In Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868, the court said that the misconduct must amount to 'an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder.'

OFFICIAL

The likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected. Public officers carry out their duties for the benefit of the public as a whole. If they neglect or misconduct themselves in the course of those duties, this may constitute a breach or abuse of the public's trust.

The decision maker noted that appointing a Chief Constable is one of a PCC's most important duties, and the appointment can have significant and far-reaching implications both for the force, and for the public it serves.

For these reasons, the decision maker agreed that Mr Jones' position was one of great responsibility; and that the public must be able to have confidence that Chief Constable selection processes are open, fair and merit-based.

However, the decision maker noted that Mr Jones' actions and decisions during the selection process would have been explored in detail at the PCP confirmation hearing, if it had gone ahead. It would have fallen to Mr Jones to convince the PCP that Candidate 3 was the better candidate, and that the selection process was fair. The decision maker held the view that this scrutiny by the PCP, which is a legislative requirement, would have been the most effective and appropriate means by which the public would expect such a decision to be tested and scrutinised.

The decision maker believed that this safeguard (of which Mr Jones was fully aware) was a key factor when considering the high threshold required for an offence of misconduct in public office.

The decision maker noted that, while Mr Jones' actions and decisions may have fallen short of the guiding principles, they would have had one of two likely consequences:

- 1 - The appointment of Candidate 3, who had no personal relationship with Mr Jones, and on paper, had the required knowledge and experience to perform the role; or
- 2 - Mr Jones' decision would have been vetoed by the PCP and the process would have to be repeated, leading to additional costs and delays.

The decision maker did not believe, in light of the above considerations, that Mr Jones' actions were so serious and significant as to indicate a potential abuse of the public's trust, so as to call for condemnation and punishment through the criminal courts system.

Without reasonable excuse or justification

The decision maker gave thorough and careful consideration to Mr Jones' account to the PCP, and to his statements to the IOPC dated 27 April and 8 June 2022.

OFFICIAL

The decision maker noted his insistence that his focus was to appoint the most suitable candidate to lead the force. The decision maker considered this a powerful argument and - while there were clearly questions around how Mr Jones handled the process overall – the decision maker did not believe his motives were so lacking that they tipped the balance into potential criminality.

The decision maker highlighted that it would have been a relevant consideration if Mr Jones had sought to appoint a close personal friend, or an applicant who did not have the required knowledge or experience. However, the decision maker considered that no evidence had been provided to indicate that either was the case.

In conclusion, based on the evidence obtained during this investigation, the decision maker agreed that Mr Jones may not have been completely open or sufficiently clear in some of his dealings with the appointment panel members, Chief Constable Cole, the three candidates, third parties he approached for advice, and the PCP.

However, having carefully considered these matters, the decision maker felt that they were more appropriate to be considered by the PCP, as part of their review and scrutiny role, rather than by a criminal court.

© IOPC 2022

OGL This is licensed under the Open Government Licence v3.0
except where otherwise stated.

This does not include material on this site as belonging to third parties.

Authorisation to use such material must be obtained from the copyright holders concerned.

To find out more about our work or to request this report in an alternative format, you can contact us in a number of ways:

Independent Office for Police Conduct (IOPC)
10 South Colonnade Canary Wharf London E14 4PU
Tel: **0300 020 0096**
Email: enquiries@policeconduct.gov.uk
Website: www.policeconduct.gov.uk
Text relay: **18001 020 8104 1220**

We welcome telephone calls in Welsh
Rydym yn croesawu galwadau ffôn yn y Gymraeg

